BOARD NOTICE 99 OF 2004

FINANCIAL SERVICES BOARD

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

EXEMPTION OF SOLE PROPRIETORS AND PARTNERS FROM COMPLIANCE OFFICER QUALIFICATIONS AND EXPERIENCE REQUIREMENTS, 2004

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), sole proprietors and partners from complying with compliance officer qualifications and experience requirements, to the extent as set out in the Schedule.

J VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

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

EXEMPTION OF SOLE PROPRIETORS AND PARTNERS FROM COMPLIANCE OFFICER QUALIFICATIONS AND EXPERIENCE REQUIREMENTS

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-

"financial services business", in relation to a sole proprietor or partnership, means the rendering by any such proprietor or partnership of financial services under the Act in the capacity as an authorised financial services provider with more than one key individual or one or more representatives;

"the Notice" means the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2004, published by Board Notice 83 of 2003 in *Gazette* No. 25299 of 8 Augustus 2003.

Objective of exemptions

2. The objective of the exemption mentioned in paragraph 3, is to address the exclusion of sole proprietors and partners in a partnership, carrying on financial services business, from the provisions of section 17(1)(b) of the Act, which relate to cases where utilisation of a compliance officer is compulsory.

The said section provides that a director (in the case of a company), member (in the case of a close corporation), auditor, trustee (in the case of trust), principal officer, public officer or company secretary of a provider may be appointed as the compliance officer of any such provider, but not including any such proprietor or partner.

If a provider is trading as a sole proprietor or partnership it will have to appoint an external party as compliance officer if such sole proprietor or partner in such partnership does not comply with the qualification and experience requirements set out in the Notice. The appointment of an external person seems to the registrar to be capable of causing financial hardship as contemplated in section 44(1)(b), read with section 44(4), of the Act, to such provider. The registrar is otherwise satisfied that the requirements of section 44(1)(c) are met. The registrar has consequently decided that it would be reasonable to exempt providers trading as a sole proprietor or partnership

from the qualification and experience requirements contemplated in section 17(1)(b) of the Act and set out in the Notice.

Extent of exemption

3. A sole proprietor of, or a partner in, any financial services business who applies individually for approval as compliance officer in terms of section 17(2) of the Act is hereby exempted from the provisions of section 17(1)(b) of the Act, read with the Notice.

Amendment and withdrawal

4. The 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 Sole Proprietors and Partners from Compliance Officer Qualifications and Experience Requirements, 2004, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.