

BOARD NOTICE 79 OF 2003

FINANCIAL SERVICES BOARD

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

CODES OF CONDUCT FOR ADMINISTRATIVE AND DISCRETIONARY FSPs

**Section 15(1)(a) of Financial Advisory and Intermediary Services Act, 2002
(Act No. of 2002)**

I. Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), publish a general code of conduct for administrative and discretionary FSPs, as respectively contained in Chapter I and II of the Schedule hereto, after consultation with the Advisory Committee on Financial Services Providers

This Notice is called the Notice on Codes of Conduct for Administrative and Discretionary FSPs, 2003, and comes into operation on the date determined by the Minister of Finance in terms of section 7(1) of the said Act.

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J VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

CHAPTER 1

CODE OF CONDUCT FOR ADMINISTRATIVE FSPs

Section 15(1)(a) of Financial Advisory and Intermediary Services Act, 2002 (Act No. of 2002)

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PART I

INTRODUCTORY PROVISIONS

Object and application of Code

1. The object of this Code is to ensure that clients to whom financial services are rendered subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, administrative FSPs and their representatives are obliged to comply with the provisions of this Code.

Definitions

- 2.1 In this Code “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 the meaning so assigned to it and, unless the context indicates otherwise –

“**administrative FSP**” means a FSP, other than a discretionary FSP –

- (a) that renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term

insurance contract or policy referred to therein), (d) and (e), read with paragraphs (h), (i) and (j) of the definition of “financial product” in section 1(1) of the Act, on the instructions of a client or another FSP and through the method of bulking; and

- (b) acting for that purpose specifically in accordance with the provisions of this Code, read with the Act, the General Code (where applicable), and any other applicable law;

”**bulking**” means the aggregation by an administrative FSP of –

- (a) clients’ funds when buying or investing in financial products on behalf of clients, and the subsequent allocation of such financial products to each client separately in the records of the FSP;
- (b) the financial products belonging to clients when selling such financial products on their behalf, and the subsequent allocation of the proceeds of such sale to each client separately in the records of the FSP;

”**completed day**” means a period commencing at 16h00 on any business day and ending at 16h00 on the next business day;

”**discretionary FSP**” means a FSP -

- (a) that renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of “administrative FSP” in this subsection, but without implementing any bulking; and
- (b) acting for that purpose specifically in accordance with the provisions of the Code set out in Chapter II of this Schedule, read with the Act, the General Code (where applicable) and any other applicable law;

”**FSP**“ means an authorised financial services provider;

”**General Code**” means the General Code of Conduct for Authorised Financial Services Providers, 2002;

”**independent nominee**”, in relation to an administrative FSP, means a company or trust referred to in section 9;

”**netting**” means an offsetting of offers to purchase and repurchase financial products and where the administrative FSP buys and sells the financial products on behalf of clients;

”**regulations**” means the Financial Advisory and Intermediary Services Regulations, 2002.

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the firstmentioned provision shall prevail.

PART II

OPERATIONAL REQUIREMENTS

Prohibitions and duties

- 3.1 An administrative FSP may not directly or indirectly without the relevant client's prior written approval –
- (a) sell to or provide a third party with a client's details, unless obliged by, or in terms of, any law;
 - (b) exercise a vote in a ballot conducted by a unit trust management company;
 - (c) exercise voting rights on behalf of clients to gain control of a listed or unlisted company, except where such voting rights are exercised to protect the interests of clients on whose behalf the listed or unlisted securities involved are held, or on the instructions of such clients;
- 3.2 An administrative FSP may not directly or indirectly engage in the netting of transactions.
- 3.3 An administrative FSP may not directly or indirectly –
- (a) sell any financial products owned by the administrative FSP to any client;
 - (b) buy for own account any financial products owned by any client.
- 3.4 An administrative FSP must
- (a) render to the client, on request and in a comprehensible and timely manner, any reasonable information regarding the financial products of the client and market practices and the risks inherent in the different markets and products concerned;
 - (b) obtain and transmit to a client any information which a relevant product supplier must disclose in terms of any law, unless the client specifically has requested in writing the administrative FSP not to provide such information.

General functions

4. An administrative FSP must, prior to accepting instructions from a person who is providing intermediary services on behalf of another person, ascertain whether

that person is an authorised financial services provider and, if not, whether that person is required to be so authorised and, if so, decline to accept instructions from that person until that person is so authorised.

Dealing with clients

- 5.1 An administrative FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information.
- 5.2 The mandate must comply with the following minimum requirements:
- (a) State whether the client will deal with the administrative FSP through another person or in a personal capacity;
 - (b) if the client will deal with the administrative FSP through another person –
 - (i) state the name of the person;
 - (ii) state whether that person is an authorised FSP;
 - (iii) state whether that FSP is appointed with full or limited discretion and where the discretion is limited, indicate those limits;
 - (iv) authorise the administrative FSP to accept from that FSP instructions given on behalf of the client;
 - (c) record the names, telephone and fax numbers, and postal and e-mail addresses of the client and the other FSP;
 - (d) indicate that the financial products will be registered in the name of the independent nominee of the administrative FSP;
 - (e) provide in bold font an indication of the time period involved with regard to the following administrative processes:
 - (i) The cut-off times within which an instruction must be received by the administrative FSP to enable it to render an intermediary service on that particular day;
 - (ii) once an instruction has been received, the maximum number of working days it will take to render that intermediary service and an indication of the day that will determine the price that the client eventually receives;

- (iii) maximum number of working days that it will take to process a switch or withdrawal instruction and an indication of the day that will determine the price that the client eventually receives;
 - (f) stipulate separately in respect of the administrative FSP and the other FSP (if any), the total fees and benefits to be received by each in respect of a client's financial products, whether by way of a deduction from the financial product or not, including –
 - (i) the initial fees or costs;
 - (ii) ongoing fees or costs;
 - (iii) any other benefit, fees or costs, whether in cash or kind;
 - (iv) costs (if any) to have the financial products registered in the name of the client or in the name of the nominee company of another administrative FSP at the request of the client or at termination;
 - (v) any fees or costs that will be levied on additional investment in or purchase of the same financial product; and
 - (g) the signatures of the client, as well as the other FSP, where applicable.
- 5.3 Further to paragraph 5.2 above, an administrative FSP may, subject to the approval of the registrar, provide the said information either in the mandate or in a combination of the mandate and the administrative FSP's written terms or guides of business.
- 5.4 The registrar must initially approve a specimen of the mandate and where relevant, the administrative FSP's terms of business, and may grant approval subject to the conditions that the registrar may determine. The registrar may subsequent to approval require that any other information that is deemed necessary, be disclosed in the interest of the client. An administrative FSP may not substantially amend the documents approved by the registrar, without the prior written approval of the registrar.
- 5.5 The administrative FSP must ensure that it has, in relation to the financial products offered by it, appropriate forms available to enable the client or the other FSP to conduct business with it. These forms include application, instruction, transfer, switch, withdrawal or additional investment forms.
- 5.6 An administrative FSP must –
- (a) within 14 days of receipt of a notice from a product supplier of an increase in costs, notify the client or the other FSP (if any) in writing of such increase, who in turn must inform the client in writing within 14 days;
 - (b) if it wishes to increase costs unrelated to the costs referred to above, give

the client or such other FSP three months prior written notice thereof, who in turn must notify the clients of the other FSP in writing within 14 days, provided that the cost of the increase may not become effective during the notice period.

- 5.7 If a client notifies an administrative FSP in writing that the client has terminated the client's relationship with a particular FSP and wishes to continue with the relationship with an administrative FSP through another FSP, such notification must be sent by the administrative FSP to the terminating FSP.
- 5.8 An administrative FSP may accept telephonic or electronic instructions without written confirmation, provided that appropriate controls and personal identification procedures have been put in place to ensure security of information and transactions, and that records of such telephonic or electronic instructions must be made and stored for a period of five years from the date when the instruction was received.
- 5.9 Where another FSP intends to provide, through an administrative FSP, a client with its own personalised range of financial products, such other FSP and the administrative FSP must first enter into a written agreement which must provide for termination of the agreement by either party on written notice of not less than 30 days.
- 5.10 An administrative FSP must enter into an appropriate written agreement with each product supplier from or to whom it buys or sells financial products on behalf of clients, which agreement records their particular arrangements and makes provision for termination of the agreement by either party on written notice of not less than 30 days.
- 5.11 In relation to new investments placed with an administrative FSP, no interest shall be payable to a client until the expiry of the first completed day after receipt of the funds. After the expiry of the first completed day, interest earned shall be payable to the client.
- 5.12 No interest shall be payable to clients in relation to funds held in bulk during the execution of a switching instruction, provided that the administrative FSP adheres to the time standards which are stipulated as part of the service levels to clients. In the event of non-adherence, the client shall be entitled to interest for the period in excess of the stipulated time period.
- 5.13. If an administrative FSP has made a mistake in executing an instruction or allocating client funds in such a manner that a client is entitled, in law, to be placed in the position that the client would have been in had the administrative FSP not made the mistake, the client shall only be entitled to compensation to the extent that the client is placed in said position. The administrative FSP shall not be required to pay interest to the client in addition to restoration.
- 5.14. Where an administrative FSP effects payment of an investment to a client, whether in whole or in part, no interest shall be payable to that client on funds

that are paid within the first complete day after the receipt of the funds from the liquidation of the underlying investment by the administrative FSP: Provided that should the administrative FSP issue a cheque for the amount received within the abovementioned time period, the issuing of the cheque shall be deemed to be payment and no interest liability shall accrue to the administrative FSP in respect of the time period between the issuing of the cheque and the actual payment of the cheque by the drawee bank.

Termination of relationship with client

6. When a client either personally or through a properly mandated FSP terminates the relationship with a particular administrative FSP, such administrative FSP must at once, subject to the wishes of the client and depending on the nature of the financial product involved-
 - (a) return the client's cash (if any) to the other FSP or client, as the case may be;
 - (b) provide the other FSP or client, as the case may be, with a detailed final statement of account; and
 - (c) issue an instruction to the independent nominee to either return the client's assets or documents of title in the name of the client to the other FSP or client, as the case may be, or to sell the relevant financial products and pay the realised amount to the other FSP or client; or
 - (d) issue an instruction to the independent nominee to transfer the financial products into the name of an independent nominee of an administrative FSP specified by the client: Provided that the written instruction in this regard is signed personally by the client and is accompanied by written confirmation from the client that the client had received full disclosure of the relevant implications and costs and of incentives due to the other FSP as a result of the transfer.

Record-keeping

- 7.1 An administrative FSP must maintain records recording the financial products owned by each client clearly maintaining the linkage between the client and each financial product.
- 7.2 If a client is a pension fund as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), or other financial institution whose members, policyholders or participants have the right to select the financial products allocated to their accounts, the linkage must also be maintained between those members, policyholders or participants and the financial products selected by them if the administrative FSP has undertaken to provide such record-keeping service to the client, but the foregoing is not to be construed so as to mean that ownership of such a financial product vests in such a member, policyholder or participant, as ownership remains with the said pension fund or other financial

institution.

Insurance

8. An administrative FSP must if, and to the extent, required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Independent nominees

- 9.1 An administrative FSP must prior to commencing business, subject to such conditions and restrictions as may be imposed by the registrar under section 8(4) of the Act, and the applicable provisions of regulations made under the Act, enter into a written agreement with a company or trust, whether local or foreign, the main object of which is being the registered holder and custodian of the investments of clients, and which agreement provides for termination of the agreement by either party on written notice of not less than 90 days.
- 9.2 An administrative FSP must make any report contemplated in section 17(4) of the Act available at all meetings of its independent nominee.

Reporting to clients

- 10.1 An administrative FSP must furnish a written report, that complies with subsection 10.2, to the client or other FSP (if any) –
- (a) on request; and
 - (b) at regular intervals, which may not exceed three months at a time, unless the client consents in writing not to receive the report because the other FSP or client, as the case may be, is able to access the information continuously, as made available by the administrative FSP through other means such as the Internet or a facsimile service: Provided that administrative FSP may only furnish such a report on behalf of a client to another FSP, on the written instruction of that client.
- 10.2 A report to a client or another FSP on behalf of a client must contain such information as is reasonably necessary to enable the other FSP or client to –
- (a) produce a set of financial statements;
 - (b) determine the composition of the financial products comprising the investment and the changes therein over the period reported on; and
 - (c) determine the market value of the financial products comprising the investment and the changes therein over the period reported on.
- 10.3 Despite subsection 10.2, the other FSP or the client, as the case may be, is on request entitled to detailed information about the following matters with

regard to all financial products:

- (a) All monies received by the administrative FSP from the other FSP or client, as the case may be;
- (b) financial products purchased with the monies referred to in paragraph (a) and the price at and date on which purchased;
- (c) financial products repurchased on the instructions of the other FSP or client, as the case may be, in order to disinvest from a particular financial product;
- (d) payment of the proceeds to the other FSP or the client or the administrative FSP, as the case may be;
- (e) financial products purchased with the proceeds and the price at and date on which purchased;
- (f) price at and date on which financial products referred to in paragraph (e) were repurchased; and
- (g) as at the date of the report, all financial products held on behalf of the client and the current market value thereof.

PART III

SHORT TITLE

11. This Chapter is called the Code of Conduct for Administrative FSPs, 2003.

CHAPTER II

CODE OF CONDUCT FOR DISCRETIONARY FSPs

Section 15(1)(a) of Financial Advisory and Intermediary Services Act, 2002 (Act No. of 2002)

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PART I

INTRODUCTORY PROVISIONS

Object and application of Code

1. The object of this Code is to ensure that clients to whom financial services are rendered subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, discretionary FSPs and their representatives are obliged to comply with the provisions of this Code.

Definitions

- 2.1 In this Code “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 the meaning so assigned to it and, unless the context indicates otherwise –

“**administrative FSP**”, “**bulking**”, “**discretionary FSP**”, “**FSP**”, “**netting**” and “**General Code**” have the respective meanings assigned thereto in section 2 of the Code of Conduct for Administrative FSPs, 2002, contained in Chapter 1 of this Schedule;

“**nominee company**” means a nominee company referred to in section 8;

“regulations” means the Financial Advisory and Intermediary Services Regulations, 2002.

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the firstmentioned provision shall prevail.

PART II

OPERATIONAL REQUIREMENTS

Prohibitions

- 3.1 A discretionary FSP may not directly or indirectly without the relevant client’s prior written approval –
- (a) sell to or provide a third party with a client’s details, unless obliged by, or in terms of, any law;
 - (b) exercise a vote in a ballot conducted by a unit trust management company;
 - (c) exercise voting rights on behalf of clients to gain control of a listed or unlisted company, except where such voting rights are exercised to protect the interests of clients on whose behalf the financial products involved are held as investments or on the instructions of such clients;
- 3.2 A discretionary FSP may not directly or indirectly engage in the netting of transactions.
- 3.3 A discretionary FSP may not directly or indirectly –
- (a) sell any financial products owned by the discretionary FSP to any client;
 - (b) buy for own account any financial products owned by any client.

Duties of discretionary FSP

4. A discretionary FSP must –
- (a) provide to the client, on request in a comprehensible and timely manner, any reasonable information regarding the financial products of the client, market practices and the risks inherent in the different markets and products;
 - (b) prior to entering into a written or electronic mandate with the client -
 - (i) obtain information with regard to the client’s financial circumstances, needs and objectives and such information that is necessary to enable the FSP to render suitable intermediary

services to the client;

- (ii) identify the financial products that best suit the client's objectives, risk profile and needs, subject to the limitations and restrictions imposed on the FSP by its licence issued under the Act.

5. Mandates

5.1 A discretionary FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information, and that the mandate records the arrangements made between the parties, and must –

- (a) authorise the discretionary FSP to act on behalf of the client, indicating whether the authorisation is given with full or specified limited discretion;
- (b) state the investment objectives of the client and whether there are any investment or jurisdiction restrictions that apply to the rendering of intermediary services in relation to the financial products involved;
- (c) contain a general statement pertaining to the risks associated with investing in local and foreign financial products, with particular reference to any currency risk;
- (d) stipulate in whose name the financial products are to be registered and whether they are, for example, to be registered in the name of -
 - (i) the client or a nominee company nominated by the client;
 - (ii) the nominee company of the discretionary FSP or a nominee company within the group of companies of which the discretionary FSP forms part;
 - (iii) the nominee company of a product supplier;
 - (iv) a nominee company of any depositary institution or central securities depository registered or licensed in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992), or of any bank registered or licensed in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (v) an administrative FSP's independent nominee, in the case of a FSP who deals through an administrative FSP;
- (e) stipulate the bank account details of the trust account opened at a bank or other bank account opened in the name of the client in which the discretionary FSP must deposit and, where applicable,

from which the discretionary FSP must withdraw moneys received in connection with the rendering of intermediary services;

- (f) stipulate, where applicable, at which intervals any cash accruals (including dividends and interest) which the discretionary FSP receives on behalf of a client, must be paid to the client;
- (g) stipulate the basis on which, the manner in which and the intervals at which the client will remunerate the discretionary FSP for the rendering of intermediary services on the client's behalf: Provided that for the purposes of this paragraph it shall be deemed that the basis of the remuneration has not been stipulated if the remuneration must be calculated with reference to a source outside the mandate or if it is placed within the discretion of any person;
- (h) state whether the discretionary FSP receives commission, incentives, fee reductions or rebates from an administrative FSP or product supplier for placing a client's funds with them;
- (i) if the discretionary FSP is capable to do so, provide a client with the option to receive reports and statements in electronic or printed format;
- (j) empower either party to the mandate to terminate the mandate after notice in writing of not more than 60 calendar days;
- (k) stipulate whether the discretionary FSP may vote on behalf of its clients in respect of their financial products;
- (l) obtain and transmit to a client any information which a relevant product supplier must disclose in terms of any law, unless the client in writing specifically requested the discretionary FSP not to provide such information;
- (m) where applicable, obtain a statement to the effect that the discretionary FSP may, in order to render an intermediary service to the client, utilise the services of its own staff or that of another approved FSP.

5.2 The mandate of a discretionary FSP must initially be approved by the registrar who may grant approval subject to such conditions as the registrar may determine. The initially approved mandate is hereinafter referred to as the "specimen mandate". The registrar may subsequent to approval require that specific amendments be made to the specimen mandate or that any other information be disclosed that is deemed necessary in the interest of the client.

5.3 A discretionary FSP may not amend the specimen mandate substantially, without the prior written approval of the registrar.

- 5.4 When the mandate of a discretionary FSP is terminated, such FSP must at once return all cash, financial products and documents of title to the client and must simultaneously provide the client with a detailed final statement of account. If the financial products and documents of title are in possession of a nominee company, the discretionary FSP must at once issue an instruction to such nominee company to return such financial products or documents of title to the client.

Reporting to clients

- 6.1 A discretionary FSP must furnish a written report to a client which complies with subsection 6.2 –
- (a) on request; and
 - (b) at regular intervals which may not exceed three months at a time, unless the client consents in writing not to receive the report because such client is able to access the information made available by the discretionary FSP through electronic means, such as the Internet or a facsimile service, on a continuous basis.
- 6.2 A report to a client must contain such information as is reasonably necessary to enable the client to –
- (a) produce a set of financial statements;
 - (b) determine the composition of the financial products comprising the investment and the changes therein over the period reported on; and
 - (c) determine the market value of the financial products comprising the investment and the charges therein over the period reported on.
- 6.3 Despite subsection 6.2, the a discretionary FSP must on request by a client, furnish detailed information about the following matters:
- (a) Original cost of financial products held, as well as the current market value thereof;
 - (b) financial products purchased or sold during the period;
 - (c) cash receipts and payments during the period;
 - (d) income earned and expenditure incurred during the period;
 - (e) non-cash transactions during the period including, without limiting the generality of the foregoing, capitalisation issues and scrip dividends and option expiries;

- (f) financial products received or delivered to a client or nominee company during the period;
- (g) profits and losses realised during the period;
- (h) with regard to foreign financial products -
 - (i) the conditions in terms of which the rendering of intermediary services with regard to a financial product will take place;
 - (ii) the manner in which such financial product may be acquired;
 - (iii) the jurisdictions from which the financial products may be acquired;
 - (iv) the specific licensed exchange or other exchange on which the financial products are listed or traded, if applicable;
 - (v) the country in which the financial products are licensed or registered, if applicable;
 - (vi) the name and address of the foreign FSPs used, if applicable;
 - (vii) the name and address of the foreign regulator regulating the foreign FSP and if such FSP is approved or registered by such regulator;
 - (viii) the name and address of the foreign regulator under whose jurisdiction the rendering of intermediary services in relation to specific financial products falls.

Insurance

7. A discretionary FSP must if, and to the extent, required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Nominee companies

8. A discretionary FSP must establish a nominee company with the main object of being the registered holder and custodian of the investments of clients, subject to such conditions and restrictions as may be imposed by the Registrar under section 8(4) of the Act, and the applicable provisions of regulations made under the Act, and enter into a written agreement with the company, which provides for termination of the agreement by either party on written notice of not less than 90 days.

PART III

SHORT TITLE

9. This Chapter is called the Code of Conduct for Discretionary FSPs, 2003.