

FAIS NOTICE 32 OF 2014

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

COMPLIANCE REPORT FOR FOREIGN FINANCIAL SERVICES PROVIDERS, 2014

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (“the Act”), I, Caroline Dey da Silva, the Deputy Registrar of Financial Services Providers, determine the manner in which the compliance report for a foreign Financial Services Providers must be submitted, and the matters which the report must have regard to.

- (a) A written report for the reporting period, by completing the attached schedule, or by electronically completing the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by 31 October 2014.
- (b) No answers may be provided in columns that are shaded in grey in the schedule.
- (c) In this Notice, unless the context indicates otherwise—
 - (i) any word or expression shall have the meaning that it was assigned in the Act;
 - (ii) **“Determination of Fit and Proper Requirements”** means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
 - (iii) **“FICA”** means the Financial Intelligence Centre Act, 2001;
 - (iv) **“foreign FSP”** or **“foreign financial services provider”** means a financial services provider that is not domiciled or that does not have a branch or representative office in the Republic of South Africa;
 - (v) **“FSP”**, **“financial services provider”** or **“provider”** means an authorised financial services provider, and includes, where applicable, any representative of the provider;
 - (vi) **“General Code of Conduct”** or **“General Code”** means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;
 - (vii) **“key individual”** means a key individual as defined in section 1(1) of the Act, and a sole proprietor as defined in section 1(1) of the Fit and Proper Requirements, 2008;
 - (viii) **“Regulations”** means the Financial Advisory and Intermediary Services Regulations, 2003;
 - (ix) **“reporting date”** means 31 August 2014;

- (x) **“reporting period”** means the period the latter of-
- (aa) the date of authorisation as financial services provider in terms of section 8 of the Act;
 - (bb) the first day of the month following the reporting period for the previous compliance report submitted; or
 - (cc) the date of appointment of the compliance officer of the FSP,
- until the reporting date.

This Determination is called the Compliance Report for Foreign FSPs, 2014, and comes into operation on 1 June 2014.

A handwritten signature in black ink, appearing to read 'CD DA SILVA', with a small dot at the end.

CD DA SILVA
Deputy Registrar of Financial Services Providers

DATE OF NOTICE: 29 MAY 2014

SCHEDULE

Compliance Report for Foreign FSPs for reporting period ended 31 August 2014

Scope

In accordance with section 17(4) of the Act, I/we the approved compliance officer(s), if appointed) or the sole proprietor or key individual of the FSP if no compliance officer is appointed, hereby report as follows as regards compliance with the Act by(full name of the FSP and the FSP Number) and any representatives of the FSP, for the reporting period(date reporting period started) to 31 August 2014.

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	SECTION 1 – GENERAL				
1	Conditions and restrictions imposed, made, given or issued by Registrar <i>Sections 7, 8(4) (a) and (5) (b) of Act</i>				
1.1	Does the FSP have procedures in place to ensure compliance with condition 1 of the licensing conditions requiring the FSP to update business information within 15 days of any change occurring?				
1.2	Does the FSP verify that any FSP that it gives an instruction to, or from whom it receives an instruction, is authorised to render the relevant financial services in South Africa without any licence restriction in relation to the specific financial product?				
1.3	Financial products in respect of which FSP renders financial services Condition 5 imposed by Registrar in terms of section 8(4) of the Act				
1.3.1	Is the FSP regulated in terms of any other law (within or outside South Africa)? (Please note that this does not include membership of professional bodies.)				
1.3.2	<i>If the answer to Question 1.3.1 is YES -</i> Provide details of the Regulator (name of Regulator and registration and licensing				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	number, if applicable) in a separate annexure and indicate the annexure number in column 4.				
1.3.3	Does the FSP render financial services on any product in South Africa that is not specifically defined in the Act or regulated in terms of any other legislation (i.e. hedge fund, depending on the structure)?				
1.3.4	<i>If the answer to Question 1.3.3 is YES – Questions 1.3.4.1 to 1.3.4.4 must be answered</i>				
1.3.4.1	Provide details of the products concerned in a separate annexure and indicate the annexure number in column 4.				
1.3.4.2	Do you disclose in writing to clients that these financial products are not regulated in terms of the FAIS Act?				
1.3.4.3	Do you conduct due diligence on these financial products and on the product suppliers who offer or issue them?				
1.3.4.4	Do you provide clients with details of the unregulated financial products?				
1.4	Financial products in respect of which FSP renders financial services <i>Authorisation in terms of licence of FSP</i>				
1.4.1	Does the FSP have procedures in place to ensure that it renders financial services within the limitation on categories and subcategories for which it is licensed ?				
1.4.2	Did any non-compliance occur in respect of the limitation on categories and subcategories during the reporting period?				
1.4.3	<i>If the answer to Question 1.4.2 is YES -</i> Provide details of any instances of non-compliance found as well as steps taken to reasonably ensure that such non-compliance does not occur again in a separate annexure and indicate the annexure number in column 4.				
1.5	Indicate whether the following form part of the main business of the FSP:				
1.5.1	Asset manager				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
1.5.2	Bank				
1.5.3	Pension fund administrator				
1.5.4	Long-term Insurer				
1.5.5	Short-term Insurer				
1.5.6	Collective Investment Scheme manager				
2	Group structure				
2.1	Does the FSP form part of a group of companies?				
2.2.1	If the answer to Question 2.1 is YES – Provide full details of the group (including an organogram or diagram as well as the FSPs relation to the group of companies) in a separate annexure and indicate the annexure number in column 4.				
2.2.2	<i>If the answer to Question 2.1 is YES –</i> Does the FSP have service level agreements in place with other FSPs within the group?				
2.3	Does the FSP have any branches, business units or offices situated in South Africa? If YES, provide the full contact details thereof in a separate annexure and indicate the annexure number in column 4.				
3	Key individuals Section 8(1) and (4)(b) of the Act and <i>Determination of Fit and Proper Requirements</i>				
3.1	Are the people involved in a managing/overseeing function in relation to the rendering of financial services in South Africa appointed as key individuals?				
3.2	In a separate annexure, provide information on the organogram/structure with regard to key individuals (what position they have in the organisation, where they are situated). Indicate the annexure number in column 4.				
3.3	Does the FSP have procedures in place to ensure compliance with section 8(4)(b) of the				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
	Act in the case of replacement of key individuals?				
4	Financial soundness				
4.1	Is the FSP required to comply with solvency requirements in the FSP's country of registration?				
4.1.1	<i>If the answer to Question 4.1 is YES –</i> Did the FSP comply with these requirements at all times during the reporting period?				
4.2	Did the FSP comply with the solvency requirements as required in terms of paragraph 9 of the Determination of Fit and Proper Requirements at all times during the reporting period?				
4.3	Does the FSP prepare monthly accounting records as required by section 19 of the Act?				
	SECTION 2 – REPRESENTATIVES				
5	Representatives <i>Sections 13 and 14 of the Act and section 8(8) of the Determination of Fit and Proper Requirements</i>				
5.1	Does the FSP have representatives? If YES, the Statistical Information Sheet (Section 6) must be answered.				
5.2	<i>If the answer to question 5.1 is YES, questions 5.3 to 5.6.1 must be answered.</i>				
5.3	Does the FSP have any juristic representatives? If YES, the Statistical Information Sheet (Section 6) must be completed.				
5.4	<i>If the answer to Question 5.3 is YES – questions 5.4.1 to 5.4.3 must be answered</i>				
5.4.1	Does the FSP have an agreement with each juristic representative?				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
5.4.2	Are all employees of the juristic representative that are rendering financial services on behalf of the provider appointed as representatives of the provider in terms of section 13 of the Act?				
5.4.3	Does the FSP have procedures in place to ensure that juristic representatives have the necessary operational ability to render financial services to clients?				
5.5	Does the FSP have procedures in place (including documentation) to enable representatives to provide clients with confirmation, as certified by the provider, of their status as representative as provided for in section 13(1)(b)(i) of the Act?				
5.6	Debarment of representatives <i>Section 14 of Act</i>				
5.6.1	Does the FSP have procedures in place to debar a representative, if necessary?				
SECTION 3 – GENERAL CODE OF CONDUCT					
6	General Code of Conduct				
6.1	General provisions <i>Section 3 of General Code of Conduct and Board Notice 58 of 2010</i>				
6.1.1	Has the FSP adopted, maintained and implemented a conflict of interest management policy?				
6.1.2	<i>If the answer to Question 6.1.1 is YES – Questions 6.1.3 to 6.1.7 must be answered</i>				
6.1.3	Was this reporting period the FSP's first year of business?				
6.1.3.1	<i>If the answer to question 6.1.3 is YES – Provide a copy of the conflict of interest management policy of the FSP as a separate annexure. Indicate the annexure number in column 4.</i>				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
6.1.4	If this reporting period was not the FSP's first year of business, did the FSP amend/revise the conflict of interest management policy during the reporting period?				
6.1.4.1	<i>If the answer to question 6.1.4 is YES –</i> Provide a copy of the amended conflict of interest management policy as a separate annexure. Indicate the annexure number in column 4.				
6.1.5	Are the employees, representatives and, where appropriate, associates aware of the conflict of interest management policy?				
6.1.6	Has appropriate training and educational material been provided to the employees, representatives and where appropriate, associates?				
6.1.7	Has the conflict of interest management policy been published in appropriate media and is the policy easily accessible for public inspection at all reasonable times?				
6.1.8	If applicable, did the FSP and any representative disclose any conflict of interest in respect of a client to the client in writing?				
6.1.9	Does the FSP have procedures and internal controls in place to ensure that it does not disclose any confidential information acquired from clients without obtaining written consent from the clients or, unless it is required to do so in terms of any legislation?				
7	Insurance cover <i>Sections 5(e) and 13 of General Code of Conduct and Board Notice 123 of 2009</i>				
7.1	Does the FSP have professional indemnity cover? If yes, the Statistical Information Sheet (Section 6) must be completed.				
7.1.1	<i>If the answer to Question 7.1 is YES –</i> Attach a copy of the latest insurance schedule in a separate annexure and indicate the annexure number in column 4.				
7.2	Does the FSP have fidelity insurance cover? If yes, the Statistical information Sheet (Section 6) must be completed.				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
7.2.1	<i>If the answer to Question 7.2 is YES – Attach a copy of the latest insurance schedule in a separate annexure and indicate the annexure number in column 4.</i>				
7.3	Does the FSP have guarantees in place as contemplated in section 13 of the General Code of Conduct and section 3 of Board Notice 123 of 2009? If yes, the Statistical Information Sheet (Section 6) must be completed.				
7.3.1	<i>If the answer to Question 7.3 is YES – Attach a copy of the latest guarantees in a separate annexure and indicate the annexure number in column 4.</i>				
7.4	Does the FSP disclose to clients whether the FSP holds guarantees or professional indemnity or fidelity insurance cover?				
7.5	During the reporting period did the FSP have any claims against its professional indemnity cover, fidelity insurance cover or guarantees by any client based or resident in South Africa?				
8	Disclosure requirements <i>Sections 4, 5 and 7 of General Code of Conduct</i>				
8.1	Does the FSP have procedures in place to ensure that its disclosure documentation complies with sections 4 and 5 of the General Code of Conduct?				
8.2	Does the FSP have procedures in place to ensure that the disclosure documentation complies with section 7 of the General Code of Conduct?				
8.3	Does the FSP disclose the following information to the client in writing:				
8.3.1	The name, class or type of financial product concerned;				
8.3.2	The nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerage which will or may become payable to the provider, directly or indirectly, by any product supplier or any other person as a result of the financial service concerned;				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
8.3.3	Any material risk and where applicable investment risk associated with the product concerned;				
8.3.4	Extent of monetary obligations assumed by the client, the frequency thereof and consequences of non-compliance concerned.				
9	Furnishing of advice and record of advice <i>Sections 8 and 9 of General Code of Conduct</i>				
9.1	Is the FSP licensed to furnish advice in South Africa?				
9.2	Did the FSP furnish advice in South Africa as a regular feature of its business during the reporting period?				
9.3	<i>If the answer to question 9.2 is YES – questions 9.3.1 and 9.3.2 must be answered:</i>				
9.3.1	Does the FSP have procedures in place to ensure that an analysis of the client's financial situation and objectives is performed before advice is furnished?				
9.3.1.1	<i>If the answer to Question 9.3.1 is NO -</i> In a separate annexure, provide details on how and when (specific time frame) such procedures will be put in place. Indicate the annexure number in column 4.				
9.3.2	Does the FSP keep a record of advice and provide it to clients in accordance with section 9 of the General Code of Conduct? Provide details of non-compliance in a separate annexure and indicate the annexure number in column 4.				
10	Custody of financial products and funds <i>Section 10 of General Code of Conduct</i>				
10.1	Does the FSP receive or hold funds on behalf of clients in accounts other than in separate bank accounts in the name of the clients, or receive or hold financial products and those financial products are not held in safe custody by a custodian appointed by the client?				
10.2	<i>If the answer to question 10.1 is YES – questions 10.2.1 to 10.2.4 must be answered</i>				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
10.2.1	Has the FSP notified the Registrar of the details of the auditor or accounting officer in terms of section 19 of the Act read with the Exemption of Certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness, 1 of 2003 and Exemption of Certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements (2), 2004?				
10.2.2	Has the FSP changed auditors during the reporting period?				
10.2.2.1	<i>If the answer to Question 10.2.2 is YES -</i> Did the FSP submit a profile change request to the Registrar in respect of the change of auditors?				
10.2.3	Does the FSP issue written confirmation of receipts to clients when funds and/or premiums are received from clients without the mediation of a bank?				
10.2.4	Does the FSP have procedures in place to ensure that clients' financial products can readily and clearly be distinguished from the assets of the FSP?				
11	Risk management				
11.1	Does the FSP have and effectively employ appropriate risk management resources, procedures, systems and controls?				
11.2	Does the FSP have a documented Risk Management Plan?				
12	Advertising <i>Section 14 of General Code of Conduct</i>				
12.1	Does the FSP advertise its financial services in South Africa?				
12.2	<i>If the answer to Question 12.1 is YES - questions 12.2.1 and 12.2.2 must be answered</i>				
12.2.1	Does the FSP have procedures in place to ensure that advertisements and advertising communications and material comply with section 14 of the General Code of Conduct?				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
12.2.2	Was reference to the fact that a licence is held contained in all advertisements that were placed during the reporting period?				
13	Direct marketing <i>Section 15 of General Code of Conduct</i>				
13.1	Does the FSP act as a direct marketer as defined in the General Code of Conduct?				
13.2	If the answer to Question 13.1 is YES – questions 13.2.1 to 13.2.2 must be answered				
13.2.1	Does the FSP have recording systems in place to record all telephonic conversations with the clients in the course of direct marketing?				
13.2.2	Does the FSP have appropriate procedures and systems in place to store and retrieve recordings?				
14	Complaints and regulatory action <i>Sections 16 to 19 of General Code of Conduct</i>				
14.1	Does the FSP have a complaint policy and resolution system in place?				
14.2	Provide the following details on complaints referred to the Ombud for Financial Services Providers during the reporting period: number of complaints referred to the Ombud, type of complaint (what the complaint was about) as well as outcome of the complaint. Indicate the annexure number in column 4.				
14.3	During the reporting period was disciplinary or regulatory action taken against the FSP by any regulatory authority, exchange, professional body or government body or agency (within or outside South Africa)?				
14.4	During the reporting period was the FSP or any of its subsidiaries prohibited by any regulatory body from operating in the financial services industry?				
14.5	If the answer to Question 14.4 is YES – In a separate annexure, provide full details thereof; and indicate the annexure number in column 4.				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
15	Maintenance of records <i>Section 18 of Act</i> <i>Section 22 of FICA</i>				
15.1	Does the FSP have appropriate procedures and systems in place to record the information contemplated in section 18 of the Act?				
15.2	Are all records stored in a manner that reasonably ensures that the records are safe from destruction?				
15.3	Does the FSP have a process in place to ensure that records are kept for a period of five years after termination of the product concerned or, in any other case, after the rendering of the financial service concerned?				
15.4	Does the FSP have electronic back-ups of all electronic records?				
15.5	If the answer to Question 15.4 is YES – questions 15.5.1 and 15.5.2 must be answered				
15.5.1	Does the FSP have procedures (e.g. disaster recovery procedures) in place to ensure that back-ups are tested on a sample basis in order to reasonably ensure that records can be retrieved in a proper manner?				
15.5.2	In a separate annexure, indicate the last time such back-ups were tested and the result of the test. Indicate the annexure number in column 4.				
	SECTION 4 – COMPLIANCE FUNCTION				
16	Compliance function <i>Section 17 of the Act, Chapter IV of Regulations and Board Notice 127 of 2010</i>				
16.1	Is the compliance function established as part of the risk management framework of the business of the FSP in compliance with section 17(3) of the Act and regulation 5 of the Regulations?				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
16.2	Did you indicate any aspect in this report as a “Developmental Area” (Column 4) that was also indicated as a developmental area in the previous compliance report?				
16.2.1	<i>If the answer to question 16.2 is YES –</i> In a separate annexure, provide details thereof, the reason for continued non-compliance and corrective actions to be taken. Indicate the annexure number in column 4.				
16.3	Are you (compliance officer) domiciled in the home jurisdiction of the FSP?				
16.3.1	<i>If the answer to question 16.3 is NO –</i> In a separate annexure confirm in which country you (compliance officer) are domiciled and provide full details of how monitoring was conducted during the reporting period. Indicate the annexure number in column 4.				
17	Monitoring				
17.1	Indicate whether you monitored the following during the reporting period :				
17.1.1	Financial products in respect of which the FSP renders financial services.				
17.1.2	Representatives under supervision.				
17.1.3	Juristic representatives				
17.1.4	Disclosure documents to verify whether it complies with sections 4 and 5 of the General Code of Conduct.				
17.1.5	Disclosure documents to verify whether it complies with section 7 of the General Code of Conduct.				
17.1.6	Furnishing of advice and record of advice.				
17.1.7	Receipt of funds and/or collection of premiums.				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
17.1.8	Waiver of rights.				
17.1.9	Money laundering control procedures.				
17.1.10	Policies and procedures.				
17.1.11	Other. Please provide details on type of monitoring in a separate annexure and indicate the annexure number in column 4.				
17.2	In a separate annexure, provide an explanation as to how you did the monitoring. Please also include the extent of monitoring. Indicate the annexure number in column 4.				

SECTION 6 – STATISTICAL INFORMATION SHEET

6.1 REPRESENTATIVES AT REPORTING DATE		
TYPE OF INFORMATION REQUIRED	RELEVANT QUESTION NUMBER	NUMERIC AMOUNT
Number of representatives	5.1	
Number of juristic representatives	5.3	

6.2 TYPE OF INSURANCE COVER	RELEVANT QUESTION NUMBER	CURRENCY	EXTENT OF COVER (NUMERIC AMOUNT)
Professional Indemnity Cover as contemplated in section 5(e) and 13 of the General Code of Conduct	7.1		
Fidelity Insurance Cover as contemplated in sections 5(e) and 13 of the General Code of Conduct	7.2		
Guarantees as contemplated in section 13 of the General Code of Conduct	7.3		

COMPLIANCE REPORT COMPLETED AND SIGNED BY FSP

Name of FSP _____

FSP number _____

Name of key individual _____

ID number of key individual _____

Date appointed as key individual _____

Signature _____

Date _____

COMPLIANCE REPORT COMPLETED AND SIGNED BY COMPLIANCE OFFICER(S)

Name(s) of compliance officer(s) of FSP _____

ID number(s) of the compliance officer(s) _____

Name(s) of the compliance practice(s) (if applicable) _____

Reference number(s) of compliance officer(s)/practice(s) _____

Signature(s) of the compliance officer(s) _____

Date _____

Telephone number _____

Fax number _____

E-mail address _____

Please note that all unsigned reports will be regarded as “Not Submitted”.

DECLARATION COMPLETED AND SIGNED BY COMPLIANCE OFFICER(S) SUBMITTING REPORT

Name of compliance officer: _____

Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Act, 2002 (Act No 37 of 2002) by Compliance Officers/Financial Services Providers for reporting period _____ (insert period) to _____ (insert period).

In accordance with section 17(4) of the Act, I/we _____ (being the approved compliance officer(s)) hereby report as follows as regards compliance by _____ (insert full names of FSP and FSP number) and any representative and key individual of the FSP with the Act, for the reporting period.

Having completed the attached annual compliance report for the FSP, I/we hereby confirm that, to the best of my/our knowledge and ability all the information contained in the attached annual compliance report is both true and correct in all respects/aspects.

I/we are aware that the information contained in the attached annual compliance report may be subject to verification by the Registrar of Financial Services Providers, and should I/we knowingly submit false, incorrect or misleading information to the Registrar, this may impact on my/our compliance with the Determination of Fit and Proper Requirements with regard to personal character qualities of honesty and integrity as determined by section 8(1) of the Act.

Signed on _____ (day) _____ (month) _____ (year).

Signature(s): _____