

FAIS NOTICE 34 OF 2014

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

COMPLIANCE REPORT FOR A FINANCIAL SERVICES PROVIDER SUBSTITUTING OR REMOVING A COMPLIANCE OFFICER DURING THE REPORTING PERIOD, 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 Financial Services Provider substituting or removing its compliance officer during the reporting period must be submitted, and the matters which the report must have regard to.

- (a) A written report for the reporting period prior to the resignation of a compliance officer, 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 the key individual or resigning compliance officer within one month after the resignation of, or the termination of the services of the compliance officer.
- (b) No answers may be provided in columns that are shaded in grey in the schedule.
- (c) The FSP does not have to submit this report if-
 - (ii) its compliance officer died during the reporting period, provided that the FSP informs the Registrar in writing;
 - (iii) the compliance officer is substituted by a compliance officer employed by the same compliance practice; or
 - (iv) the FSP has more than one compliance officer.
- (d) 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) **“Forex Investment Business Code of Conduct”** means the Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2004;

- (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 Code of Conduct for Authorised Financial Services Providers and their 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) **“previous reporting period”** means the reporting period of the last annual compliance report submitted;
- (ix) **“Regulations”** means the Financial Advisory and Intermediary Services Regulations, 2003;
- (x) **“reporting date”** means date on which the compliance officer resigns;
- (xi) **“reporting period”** means the period from the latter of-
 - (aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or
 - (bb) the first day of the month following the previous reporting period,until the reporting date.

This Determination is called the Compliance Report for a FSP substituting its Compliance Officer during the reporting period, 2014, and comes into operation on 1 June 2014.



CD DA SILVA
Deputy Registrar of Financial Services Providers

DATE OF NOTICE: 29 MAY 2014

SCHEDULE

Compliance report for a FSP substituting or removing its compliance officer during reporting period

Scope

In accordance with section 17(4) of the Act, I/we (the approved compliance officer(s) of the FSP) hereby report as follows as regards compliance with the Act by(full name of the FSP and the FSP Number) for the reporting period(date reporting period started) to (reporting date)

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	SECTION 1 – GENERAL				
1	Conditions and restrictions by Registrar <i>Sections 7 and 8(4)(a) and (5)(b) of Act</i>				
1.1	Does the FSP verify in all instances that any other FSP that it gives an instruction to, or receives an instruction from, is authorised to render the specific financial services without any licence restriction in relation to a specific financial product?				
1.2	Financial products in respect of which FSP renders financial services <i>Condition 5 imposed by Registrar in terms of section 8(4) of Act</i>				
1.2.1	Does the FSP render financial services on any financial product that is not specifically defined in the Act or regulated in terms of any other legislation (e.g. hedge funds, depending of the structure)?				
1.2.2	<i>If the answer to Question 1.2.1 is YES –</i> Provide details of the financial product concerned in a separate annexure and indicate the annexure number in column 4.				
1.3	Financial products in respect of which FSP renders financial services				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	<i>Authorisation in terms of licence</i>				
1.3.1	During the reporting period did any non-compliance occur in respect of the limitation on Categories and subcategories for which the licence is issued?				
1.3.2	<i>If the answer to Question 1.3.1 is YES -</i> Provide details of such non-compliance as well as steps taken to reasonably ensure that such non-compliance will not occur again in a separate annexure and indicate the annexure number in column 4.				
2.	Key individuals Section 8(1) and (4)(b) of Act and <i>Determination of Fit and Proper Requirements</i>				
2.1	Are all people involved in the managing/overseeing function in relation to the rendering of financial services, appointed as key individuals?				
2.2	Fit and Proper Requirements for key individuals <i>Determination of Fit and Proper Requirements</i>				
2.2.1	Did any changes occur in the personal circumstances of any key individual during the reporting period that adversely affected the fitness and propriety of the person, as it relates to Part II of the Determination of Fit and Proper Requirements?				
2.2.2	<i>If the answer to Question 2.2.1 is YES -</i> Provide full details thereof in a separate annexure and indicate the annexure number in column 4.				
3	Representatives <i>Sections 13 and 14 of the Act</i>				
3.1	Was the representative register updated during the reporting period in terms of the licensing conditions?				
3.2	Debarment of representatives <i>Section 14 of the Act</i>				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
3.2.1	Did the FSP debar any of its representatives during the reporting period without informing the Registrar accordingly?				
4	Financial soundness				
4.1	Did the FSP comply with the financial soundness requirements as required in terms of paragraph 9 of the Determination of Fit and Proper Requirements at all times during the reporting period?				
4.2	Does the FSP prepare monthly accounting records in terms of section 19 of the Act?				
	SECTION 2 – GENERAL CODE OF CONDUCT				
5	General Code of Conduct				
5.1	General provisions <i>Sections 3 and 3A of General Code of Conduct</i>				
5.1.1	Has the FSP adopted, maintained and implemented a conflict of interest management policy? If the answer is YES a copy of the policy must be attached and indicate the annexure number under column 4.				
5.1.2	Are the employees and, where appropriate, associates aware of the conflict of interest management policy?				
5.1.3	Has appropriate training and educational material been provided to the employees and where appropriate, associates?				
5.1.4	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?				
5.2	Furnishing of advice and record of advice <i>Sections 8 and 9 of General Code of Conduct</i>				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
5.2.1	Is the FSP licensed to furnish advice?				
5.2.2	Did the FSP render advice as a regular feature of its business during the reporting period?				
5.2.2.1	<i>If the answer to Question 5.2.2 is YES –</i> Did the FSP comply in all instances with section 8(1)(d) of the General Code of Conduct relating to replacement products during the reporting period?				
5.3	Custody of Financial Products and Funds <i>Section 10 of General Code of Conduct</i>				
5.3.1	During the reporting period did the FSP receive client funds and / or premiums?				
5.3.2	During the reporting period did any representatives of the FSP receive client funds and / or premiums?				
5.4	Risk management <i>Sections 11 and 12 of the General Code of Conduct</i>				
5.4.1	Does the FSP have and effectively employ appropriate risk management resources, procedures, systems and controls as described in sections 11 and 12 of the General Code of Conduct?				
5.4.2	Does the FSP have a documented Risk Management Plan?				
5.5	Advertising <i>Section 14 of General Code of Conduct</i>				
5.5.1	Does the FSP advertise financial services?				
5.5.2	<i>If the answer to Question 5.5.1 is YES-</i> Was a reference to the fact that a licence is held contained in all advertisements that were placed during the reporting period?				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
	SECTION 3 – MONEY LAUNDERING CONTROL PROCEDURES				
6	Money laundering control procedures				
6.1	Is the FSP an accountable institution in terms of Schedule 1 of FICA?				
6.2	<i>If the answer to Question 6.1 is YES –</i> Are you also appointed as the Money Laundering Control Officer of the FSP?				
	SECTION 4 – COMPLIANCE FUNCTION				
7	Compliance function <i>Section 17 of Act, Chapter IV of Regulations and Board Notice 127 of 2010</i>				
7.1	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?				
7.2	Did you provide written reports on the compliance monitoring and recommendations relating to the FSP on a regular basis in terms of Board Notice 127 of 2010? If YES, the Statistical Information Sheet (Section 11) must be completed.				
7.3	Are there any matters not referred to in this report that you want to bring to the attention of the Registrar? If YES, attach a written copy of your comments as a separate annexure and indicate the annexure number in column 4.				
7.4	In a separate annexure, provide reasons for resigning as Compliance Officer of the FSP. Indicate the annexure number in column 4.				
7.5	In a separate annexure, attach a copy of the latest report that you (compliance officer) provided to the FSP on the rendering of financial services. Indicate the annexure number in column 4.				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
7.6	Has any irregularity or suspected irregularity taken place in the conduct of the affairs of the FSP during the reporting period that was not reported to the Registrar?				
8	Monitoring				
8.1	Please indicate the type of monitoring that you (compliance officer) performed during the reporting period:				
8.1.1	Financial products in respect of which the FSP renders financial services.				
8.1.2	Representatives under supervision.				
8.1.3	Juristic representatives				
8.1.4	Disclosure documents to check compliance with sections 4 and 5 of the General Code of Conduct.				
8.1.5	Disclosure documents to check compliance with section 7 of the General Code of Conduct.				
8.1.6	Furnishing of advice and record of advice.				
8.1.7	Receipt of funds and/or collection of premiums.				
8.1.8	Waiver of rights.				
8.1.90	Money laundering control procedures.				
8.1.10	Exchange control regulations (in case of a forex FSP).				
8.1.11	Policies and procedures.				
8.1.12	Conflict of interest management policy				
8.1.13	Mandates and application forms.				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
8.1.14	Direct marketer's telesales script and/or telesales voice recordings to check compliance with Section 15 of the General Code of Conduct.				
8.1.15	Other. Please provide details on other monitoring in a separate annexure and indicate the annexure number in column 4.				
8.1.16	In a separate annexure, provide an explanation as to how you did the monitoring (methodology). Please also include the extent of monitoring. Indicate the annexure number in column 4.				
8.2	Did you (compliance officer) find any instances of non-compliance with the Act and subordinate legislation during the reporting period? If YES, provide full details thereof in a separate annexure and indicate the annexure number in column 4.				
SECTION 5 – ADMINISTRATIVE FSPs					
9	Record keeping <i>Section 7 of the Code of Conduct for Administrative FSPs, 2003</i>				
9.1	Are client records maintained to identify the specific financial product owned per client?				
9.2	Independent Nominee <i>Section 9 of the Code of Conduct for Administrative FSPs, 2003</i>				
9.2.1	Does the FSP ensure that the independent nominee is approved in terms of the Requirements imposed by the Financial Services Board for Nominees to operate in South Africa (Board Notice 63 of 2007)?				
9.2.2	Does the FSP have procedures in place to ensure that all bank and unit reconciliations are up to date?				
SECTION 6 – DISCRETIONARY FSPs					

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
10	Particular duties/obligations relating to discretionary FSPs				
10.1	Nominee companies <i>Section 8 of General Code of Conduct for Discretionary FSPs, 2003</i>				
10.1.1	Does the FSP hold client investments?				
10.1.2	<i>If the answer to Question 10.1.1 is YES – Questions 10.1.2.1 and 10.1.2.2 must be answered</i>				
10.1.2.1	Does the FSP hold client investments in its own nominee company approved by the Registrar as required in terms of regulation 6 of the Regulations?				
10.1.2.2	Does the FSP make use of another approved nominee company to hold client assets?				
	SECTION 7 – FOREX FSPs <i>The Forex Investment Business Code regulates forex investments which are investments in a financial product referred to in paragraph (e) of the definition of “financial product” in section 1(1) of the Act.</i>				
11	Particular duties/obligations relating to Forex FSPs				
11.1	<i>If the FSP is licensed for subcategory 1.15 Questions 11.1.1 and 11.1.2 must be answered</i>				
11.1.1	Is the FSP licensed to give advice as a forex service provider?				
11.1.2	Does the FSP ensure that clients comply with exchange control legislation (including tax legislation) when giving advice on forex investment business? If any non-compliance were found, please provide full details thereof as a separate annexure and indicate annexure number in column 4.				
11.2	Special prohibitions applying to forex investment intermediaries				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	<i>Section 5 of Forex Investment Business Code of Conduct</i>				
11.2.1	<i>If the FSP is licensed for subcategory 2.12 Question 11.2.1.1 to 11.2.1.3 must be answered</i>				
11.2.1.1	Does the FSP render forex investment intermediary services?				
11.2.1.2	Did the FSP comply with exchange control legislation (including tax legislation) when dealing with forex investment business?				
11.2.1.3	<i>If the answer to Question 11.2.1.2 is NO – Provide full details of any instances of non-compliance as well as steps taken to reasonably ensure that such non-compliance does not occur again in a separate annexure. Indicate the annexure number in column 4.</i>				
	SECTION 8 – HEALTH SERVICES BENEFITS				
12	Health Services Benefits				
12.1	Is the FSP licensed to render financial services relating to health services benefits?				
12.2	<i>If the answer to Question 12.1 is YES – Was the accreditation of the FSP in terms of section 65(3) of the Medical Schemes Act, 1998, during the reporting period suspended, or withdrawn, or did it lapse? Please provide details of any suspensions, withdrawals or lapses as an Annexure to the report and indicate the annexure number in column 4.</i>				
	SECTION 9 – HEDGE FUND FINANCIAL SERVICES PROVIDERS				
13	Does the FSP manage assets of a hedge fund? If the answer is YES, Questions 14 to 16 must be answered.				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
14	Code of Conduct for Discretionary FSPs, 2003 <i>and Notice on Hedge Fund FSP Disclosures, 2008</i>				
14.1	Did you (compliance officer) perform monitoring procedures to ensure that the hedge fund FSP complied with paragraph 8A (1) to (4) of the Code of Conduct for Discretionary FSPs, 2003?				
14.2	Did you (compliance officer) perform monitoring procedures to ensure that the risk disclosure document as stipulated in paragraph 8A(2)(b) of the Code of Conduct for Discretionary FSPs, 2003?				
15	Risk Management Part IX of the General Code of Conduct				
15.1	Does the Hedge Fund FSP have a risk management plan in place in accordance with Part IX of the General Code of Conduct describing the risk management process in respect of the hedge fund management business?				
15.2	Did the FSP disclose the risks as published in the <i>Notice on Hedge Fund FSP Disclosures, 2008</i> in respect of hedge funds to its investors in the hedge fund portfolios at all times during the reporting period?				
16	General				
16.1	Did the FSP provide valuations for any instruments to the fund administrator which, to the best of the FSPs knowledge, is relied upon by the administrator in valuating the fund?				
16.2	Have any changes occurred in the operational ability of the FSP since approval as hedge fund FSP?				
16.3	<i>If the answer to Question 16.2 is YES –</i> In a separate annexure, attach an updated Form 15B (available as part of the application form for hedge fund managers) clearly indicating the changes in operational ability.				
16.4	Did the Registrar approve all specimen mandate/s of the hedge fund portfolios?				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
16.5	Did the FSP breach their mandate during the reporting period? If YES – the Statistical Information Sheet (Section 11) must be completed.				
16.6	Did you (compliance officer) receive mandate breach reports during the reporting period? If YES – the Statistical Information Sheet (Section 11) must be completed.				

SECTION 11 – STATISTICAL INFORMATION SHEET

11.1 COMPLIANCE FUNCTION		
TYPE OF INFORMATION REQUIRED	QUESTION NUMBER IT RELATES TO	NUMERIC AMOUNT
Number of reports issued to the FSP on compliance monitoring	7.2	

11.2 HEDGE FUNDS: GENERAL		
TYPE OF INFORMATION REQUIRED	QUESTION NUMBER IT RELATES TO	NUMERIC AMOUNT
Number of times that the FSP breached their mandate during the reporting period.	16.5	
How often compliance officer received mandate breach reports during the reporting period.	16.6	

COMPLETED AND SIGNED BY FSP

Name of the FSP _____

FSP Number _____

Name of key individual _____

ID number of the key individual _____

Date appointed as key individual _____

Signature _____

Date _____

COMPLETED AND SIGNED BY COMPLIANCE OFFICER

Name of compliance officer of FSP _____

ID number of the compliance officer _____

Name of the compliance practice (if applicable) _____

Reference number of compliance officer/practice _____

Signature of the compliance officer _____

Date _____

Telephone number _____

Fax number _____

E-mail address _____

DECLARATION TO BE COMPLETED AND SIGNED BY THE COMPLIANCE OFFICER SUBMITTING THE 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 for the period between _____ (insert date) and _____ (insert date).

In accordance with section 17(4) of the Act, I/we _____ (being the approved compliance officer(s) of the financial services provider hereby report as follows as regards compliance by _____ (insert full names of FSP and FSP number) and any representatives and/or Key Individuals of the FSP with the Act, for the period _____ (insert period).

Having completed the attached hand-over compliance report for the abovementioned FSP, I/we hereby confirm without any reservations 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 hand-over compliance report may be subject to verification by the Registrar of Financial Services Providers at any time, and should I/we in my/our capacity as compliance officer knowingly submit false, incorrect or misleading or in any manner not to be to the satisfaction of the Registrar, this may impact on my/our compliance with the 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 this the _____ day of _____ (month) _____ (year).

Signature: _____