

FAIS NOTICE 35 OF 2014

FINANCIAL SERVICES BOARD

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

COMPLIANCE REPORT FOR A FINANCIAL SERVICES PROVIDER WHO HAS APPOINTED A COMPLIANCE OFFICER DURING THE REPORTING PERIOD, 2014

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Caroline Dey da Silva, the Deputy Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of a financial services provider who did not had a compliance officer and who has appointed a compliance officer during the reporting period, must be submitted, and the matters which it 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 the key individual within one month after the appointment of a compliance officer.
- (b) A written report for the reporting period prior to the appointment of a compliance officer, by completing the attached schedule , or by electronically completing the schedule on the web site of the Financial Services Board, must be submitted by the key individual within one month after the appointment of the compliance officer.
- (e) No answers may be provided in columns that are shaded in grey in the schedule.
- (f) In this Notice and the schedule, unless the context indicates otherwise—
 - (i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of 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 (Act No. 38 of 2001);
 - (iv) **"Forex Investment Business Code of Conduct"** means the Code of Conduct for Authorised Financial Service Providers, and their Representatives, involved in Forex Investment Business, 2004;
 - (v) **"FSP" and "financial services 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;
- (x) **“Regulations”** means the Financial Advisory and Intermediary Services Regulations, 2003;
- (xi) **“reporting date”** means the appointment date of the compliance officer;
- (xii) **“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 Determination of Compliance Report for a FSP who has appointed a Compliance Officer during the reporting period, 2014, and comes into operation on 1 June 2014.



CD DA SILVA
Registrar of Financial Services Providers

DATE OF NOTICE: 29 MAY 2014

SCHEDULE

Compliance Report in terms of section 17(4) of the Act by key individual or sole proprietor appointing a compliance officer

Scope

In accordance with section 17(4) of the Act, I/we the key individual of FSP or sole proprietor 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 (date of appointment of compliance officer)

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 the Registrar <i>Sections 7, 8(4)(a) and (5)(b) of the 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 relevant financial services without any restrictions in its licence in relation to the specific financial product/s?				
1.2	Financial Products in respect of which the FSP renders financial services <i>Condition 5 imposed by the Registrar in terms of section 8(4) of the Act</i>				
1.2.1	Does the FSP render financial service in respect of any 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>				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	Provide details of the financial products 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 <i>Authorisation in terms of the licence of the FSP</i>				
1.3.1	During the reporting period did any non-compliance occur in respect of the limitation on categories and sub-categories 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 8(4)(b) of Act and <i>Determination of Fit and Proper Requirements</i>				
2.1	Are all persons involved in the managing/overseeing function in relation to the rendering of financial services appointed as key individuals?				
2.2	A list of all approved key individuals must be provided as a separate annexure and it must be indicated whether the key individual has passed, failed, enrolled for or not yet enrolled for the first level regulatory examination.				
2.3	Fit and Proper Requirements for key individuals <i>Determination of Fit and Proper Requirements</i>				
2.3.1	Did any changes occur in the personal circumstances of any key individual during the reporting period that may adversely affect such key individual's compliance with the Determination of Fit and Proper Requirements?				
2.3.2	<i>If the answer to Question 2.3.1 is YES -</i> Provide full details thereof in a separate annexure and indicate the annexure number in column 4.				
2.4	Financial soundness				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
2.4.1	Did the FSP comply with the financial soundness requirements as required in terms of paragraph 9 of the Fit and Proper Requirements at all times during the reporting period?				
2.4.2	Does the FSP prepare monthly accounting records in terms of section 19 of the Act?				
3	Compliance function <i>Section 17 of the Act, Chapter IV of the Regulations and Board Notice 127 of 2010</i>				
3.1	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?				
3.2	Are there any matters not referred to in this report that you want to bring to the attention of the Registrar? If YES, indicate these matters in a separate annexure and indicate the annexure number in column 4.				
	SECTION 2 – GENERAL CODE OF CONDUCT				
4	General Code of Conduct				
4.1	General provisions <i>Section 3 and 3A of the General Code of Conduct (Board Notice 58 of 2010)</i>				
4.1.1	Has the FSP adopted, maintained and implemented a conflict of interest management policy?				
4.1.2	<i>If the answer to Question 4.1.1 is YES – Questions 4.1.3 to 4.1.7 must be answered</i>				
4.1.3	Was this reporting period the FSP's first year of business?				
4.1.3.1	<i>If the answer to question 4.1.3. is YES –</i>				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	Provide a copy of the conflict of interest management policy of the FSP as a separate annexure. Indicate the annexure number in column 4.				
4.1.4	If this reporting period was not the FSP's first year of business, did the FSP amend/ or revise the conflict of interest management policy during the reporting period?				
4.1.4.1	<i>If the answer to question 4.1.4 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.				
4.1.5	Are the employees of the FSP and, where appropriate, associates aware of the conflict of interest management policy?				
4.1.6	Has appropriate training and educational material been provided to the employees and where appropriate, associates?				
4.1.7	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?				
4.2	Furnishing of advice and record of advice <i>Sections 8 and 9 of the General Code of Conduct</i>				
4.2.1	Did the FSP furnish advice as a regular feature of its business during the reporting period?				
4.2.2	<i>If the answer to Question 4.2.1 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?				
4.3	Custody of Financial Products and Funds <i>Section 10 of the General Code of Conduct</i>				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
4.3.1	During the reporting period did the FSP receive client funds and / or premiums?				
4.4	Risk Management <i>Sections 11 and 12 of the General Code of Conduct</i>				
4.4.1	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?				
4.4.2	Does the FSP have a documented Risk Management Plan?				
4.5	Advertising <i>Section 14 of the General Code of Conduct</i>				
4.5.1	Does the FSP advertise its financial services?				
4.5.1.1	<i>If the answer to Question 4.5.1 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?				
SECTION 3 – MONEY LAUNDERING CONTROL PROCEDURES					
5	Money laundering control procedures				
5.1	Is the FSP an accountable institution listed in Schedule 1 of FICA?				
5.2	<i>If the answer to Question 5.1 is YES –</i> Are you (key individual / sole proprietor) also appointed as the Money Laundering Control Officer of the FSP?				

Question		Column			
		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
	SECTION 4 – DISCRETIONARY FSPs				
8	Particular duties/obligations relating to discretionary FSPs				
8.1	Nominee companies <i>Section 8 of the Code of Conduct for Discretionary FSPs, 2003</i>				
8.1.1	Does the FSP hold client investments?				
8.1.2	<i>If the answer to Question 8.1.1 is YES – Questions 8.1.2.1 and 8.1.2.2 must be answered</i>				
8.1.2.1	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?				
8.1.2.2	Does the FSP make use of another approved nominee company to hold client assets?				
	SECTION 5 – FOREX FSPs <i>The Forex Investment Business Code of Conduct 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>				
9	Particular duties/obligations relating to forex FSPs				
9.1	<i>If the FSP is licensed to render services with respect to forex investment business (subcategory 1.15 of Table A under para 4 of the Determination of Fit and Proper Requirements) Questions 9.1.1 and 9.1.2 must be answered</i>				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/Annexure
9.1.1	Is the FSP licensed to give advice as a forex investment advisor?				
9.1.2	When giving advice on forex investment business, does the FSP ensure that clients comply with exchange control regulations (including tax legislation)? If any non-compliance was found, please provide full details thereof as a separate annexure and indicate annexure number in column 4.				
9.2	<i>If the FSP is licensed to render services with respect to forex investment business (subcategory 2.12 of Table B of para 4(2) of the Determination of Fit and Proper Requirements) Question 9.2.1.1 to 9.2.1.3 must be answered</i>				
9.2.1	Special prohibitions applying to forex investment intermediaries <i>Section 5 of the Forex Investment Business Code of Conduct</i>				
9.2.1.1	Does the FSP provide forex investment intermediary services?				
9.2.1.2	Did the FSP comply with Exchange Control Legislation (including Tax Laws) when rendering forex investment business services?				
9.2.1.3	<i>If the answer to Question 9.2.1.2 is NO – Provide full details of any instances of non-compliance and indicate the 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 6 – HEALTH SERVICES BENEFITS				
10	Accreditation under section 65(3) of the Medical Schemes Act, 1998 Section 8(7)(e) of the Act				
10.1	Is the FSP licensed to render financial services relating to health services benefits?				
10.1.1	<i>If the answer to Question 10.1 is YES – Was the accreditation of the FSP in terms of section 65(3) of the Medical Schemes Act, 1998 suspended, or withdrawn, or did it lapse during the reporting period? Please provide</i>				

		Column			
Question		1	2	3	4
		Yes	No	Not applicable	Note No. Comment/ Annexure
	details of any suspensions, withdrawals or lapses an as Annexure to the report and indicate the annexure number in column 4.				

SECTION 7 – ATTACHMENTS

Question number	Comments	Additional Information attached Annexure reference no

To be completed and signed by the key individual of the FSP in the case of a juristic entity, or the sole proprietor in the case of a natural person to acknowledge that the information contained in the report is correct and a true reflection of the affairs of the FSP at the time that the compliance officer was appointed

Name of the FSP _____

FSP Number _____

Name of key individual _____

ID number of the key individual _____

Date appointed as key individual _____

Signature _____

Date _____