



**FINANCIAL ADVISORY AND
INTERMEDIARY SERVICES ACT, 2002**

GUIDE FOR REGISTERED AUDITORS

[REVISED MAY 2008]

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It is the intention of the Financial Services Board (FSB) and the IRBA to update this guide as changes to the legislation and underlying compliance requirements occur.

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Introduction

01. This guide has been prepared by the Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA) to provide general guidance to registered auditors ("auditors") on various matters relating to the audit requirements for authorised financial services providers ("providers") in accordance with the requirements of the Financial Advisory and Intermediary Services Act, 2002, ("the Act") and its subordinate legislation.¹
02. The auditor of a provider considers the basic principles and essential procedures contained in International Standards on Auditing (ISAs). The CFAS recognises that the audit of providers may give rise to specific audit considerations and additional reporting responsibilities to meet the regulatory requirements of the Financial Services Board ("FSB"). Accordingly, this guide has been developed to clarify the auditor's responsibilities when performing such engagements, and to provide guidance regarding additional factors which the auditor may consider when planning and conducting the audit and reporting on the annual financial statements of a provider, and in reporting on trust accounts controlled by the provider.
03. It is important to note that this guide does not impose any responsibilities on the auditor of a provider beyond those which are imposed by ISAs and the requirements of the Act. This Guide does not relieve auditors who perform audits of providers of their responsibility to have a working knowledge of the Act and its subordinate legislation in so far as it may affect the provider and the responsibility to comply with those requirements of the Act and its subordinate legislation affecting the auditor.

Scope

04. The purpose of this guide is to provide assistance to auditors of providers with respect to:
 - (a) the auditing requirements of the Act;
 - (b) the auditor's responsibilities to report to the registrar of Financial Services Providers (the "registrar") in terms of Section 19(3) and 19(4) of the Act;
 - (c) possible threats to independence that the auditor considers before accepting appointment as compliance officer for a provider who is an audit client; and
 - (d) the duties of the auditor when appointed as the compliance officer of a provider who is an audit client.

Effective Date

05. This guide is effective for engagements commencing on or after 1 June 2008. Early adoption is encouraged.

¹ Subordinate legislation includes applicable notices issued by the FSB from time to time.

Definitions

06. Selected definitions are reproduced from the Act and its subordinate legislation where applicable and are included in Appendix F for ease of reference when applying this guide.

Regulatory Requirements for Providers

07. Section 19 of the Act generally requires a provider to maintain full and proper accounting records² on a continual basis; which records must be brought up to date monthly. A provider must prepare annual financial statements prepared in a manner appropriate to the business of the provider in accordance with generally accepted accounting practice³ reflecting the financial position of the business as at the last day of its financial year and must cause the financial statements prepared to be audited and reported on by an external auditor. Note that the auditor's report referred to here is known as a Section 19(2)(a) report.
08. The financial statements so audited and reported on are regarded as meaning:
- (a) Annual financial statements as set out in the Companies Act, 1973 (as amended) for all providers registered as a company in terms of the Companies Act.
 - (b) Annual financial statements as set out in the Close Corporations Act, 1984 (as amended) for all providers incorporated as a close corporation in terms of the Close Corporations Act.
 - (c) Financial statements for all other providers are to include at least the following in one of the official languages of South Africa:
 - (i) a balance sheet and notes thereon;
 - (ii) an income statement and notes thereon;
 - (iii) a statement of changes in equity and notes thereon; and

2 For the purposes of the Act full and proper accounting records are:

- (a) Accounting records as defined by the Companies Act, 1973 as amended for all providers registered as a company in terms of the Companies Act.
- (b) Accounting records as defined by the Close Corporations Act, 1984 for all providers incorporated as close corporations in terms of the Close Corporations Act.
- (c) Accounting records for providers not incorporated in terms of the Companies Act as amended or Close Corporations Act are to include at least the following in one of the official languages of South Africa:
 - (i) records showing assets and liabilities;
 - (ii) records of all purchases on credit, and services received and rendered on credit, in sufficient detail to enable the nature of the services and the parties to the transactions to be identified;
 - (iii) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions to be identified; and
 - (iv) vouchers supporting entries in the accounting records and the names of the parties to the transactions.

3 Refer to South African Practice Statement (SAAPS) 2, *Financial Reporting Frameworks and Audit Opinions*, for further guidance.

(iv) a cash flow statement.

09. The provider must submit the audited financial statements to the FSB within six months after the year-end. Note that non-submission of financial statements is seen in a serious light and may attract penalties and other remedial actions from the FSB.
10. Where the financial year is not determined in terms of the Companies Act or Close Corporations Act (i.e. where the provider is not a company or close corporation), the provider is to fix a date on which, in each year, its financial year will end. The financial year-end date may be changed, provided it is not changed more than once within any financial year.
11. The duration of any financial year is to be twelve months, except for the first financial year of the provider which may not be less than three months or more than 15 months from date of commencement of services in terms of a provider's licence. Where the financial year-end is changed, the financial year may not be less than three months or more than 18 months. The Provider must inform the registrar within 15 days of a change in the financial year end, in terms of the conditions to the provider's licence.
12. A Close Corporation that is a Category I Financial Services Provider (FSP) that does not receive client funds or premiums, must submit financial statements signed by the accounting officer. A Close Corporation that is a Category I FSP that receives client funds or premium, Category II and II FSP must submit audited financial statements. Companies must submit audited financial statements. (See the section in this guide on exemption from the application of the Act).
13. Application for an extension to submit financial statements can be submitted to the registrar in terms of Section 4(1) of the Act.
14. Section 19(3) of the Act requires providers who hold money and or assets on behalf of their clients to maintain full and proper accounting records on a continual basis in respect of such assets and monies and to cause the assets and monies held on behalf of clients to be audited by an auditor.
15. The limited assurance report, widely known as the Section 19(3) Report, referred to above, must be submitted to the registrar within six months after the year-end of the provider.
16. The aim of the Section 19(3) Report is to ensure that clients' assets and or monies held by a provider are protected from unauthorised use and kept separate from the provider's business funds and also, to detect any non-compliance with the Act in respect of those monies and assets.
17. Section 17(1) of the Act prescribes that 'a provider with more than one key individual or one or more representatives must appoint one or more compliance officers to monitor compliance with the Act'. This means that a provider with only one key individual and no representative is allowed to conduct business without appointing a compliance officer. Such provider is, however, not precluded from appointing compliance officer should it so wish. The provider who opts not to appoint a compliance officer as per Section 17(1) of the Act is expected to execute all the functions that would have been executed by a compliance officer if one was appointed. Section 17(1)(b) further prescribes that 'the compliance officer may be a director,

member, auditor, trustee, principal officer, public officer or company secretary or any other person with suitable qualifications and experience'. A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the Advisory Committee (Section 17(2)).

Exemptions from the application of the Act

18. In terms of Section 44 of the Act certain intermediaries providing financial services are exempt from the application of the Act, as their activities and responsibilities are governed by other statutes. These individuals and/ or entities are set out below:

Exemptions in terms of Section 44 of the Act

19. The provisions of the Act do not apply to the rendering of financial services where such services are regulated under another applicable Act as listed below:

- (a) any "authorised user", "clearing house", "central securities depository" or "participant" as defined in Section 1 of the Securities Services Act, 2002 or exchange licensed under Section 10 of that Act;
- (b) a manager as defined in Section 1 of the Collective Investment Schemes Control Act, 2002;
- (c) a person performing the functions referred to in Section 13B of the Pension Funds Act, No. 24 of 1956, if such person complies with the requirements and conditions contemplated in that Section; or
- (d) a person carrying on the business referred to in Section 58 of the Medical Schemes Act, No. 131 of 1998, if such person complies with the requirements contemplated in that Section, to the extent that the rendering of financial services is regulated by or under those Acts, respectively;
- (e) the executor, administrator or trustee of any deceased or insolvent estate, or a person acting on behalf of such executor, administrator or trustee,
- (f) the curator of a person under curatorship, or a person acting on behalf of such curator;
- (g) the liquidator or judicial manager of a company in liquidation or under judicial management, or a person acting on behalf of such liquidator or judicial manager;
- (h) the trustee of an inter *vivos* trust as defined in Section 1 of the Trust Property Control Act, No. 57 of 1988 not being a business trust created for the purpose of profit-making achieved through the combination of capital contributed by the beneficiaries of the trust and through the administration or management of the capital by trustees on behalf of and for the benefit of the beneficiaries, or a person acting on behalf of such first-mentioned trustee;
- (i) the parent, tutor or guardian of a minor, or a person acting on behalf of such parent, tutor or guardian, unless the financial services are rendered as a regular feature of any such person's business; or

- (j) any other trustee or custodian appointed under any law to the extent that the rendering of such services is regulated by or under such law.

Exemption from the requirements of Section 19 of the Act

20. Certain categories of providers which are exempted from the application of Section 19 of the Act by way of Board Notices gazetted by the FSB are categorised as follows:

- (a) Exemption from the requirement to appoint an auditor and consequently the requirement to submit audited financial statements to the registrar;
- (b) Exemption from the solvency requirements and the requirement to submit audited financial statements to the registrar;
- (c) Exemption regarding certain minimum qualifications of the provider;

(a) Exemption from requirement to appoint auditors and to submit audited financial statements

21. Certain authorised providers are exempted from requirements pertaining to audited financial statements in terms of Board Notice 96 of 2003. This exemption applies only to Category I providers who:

- (a) do not receive or hold clients' money and assets; or
- (b) do not receive or collect insurance premiums as per the Long-Term Insurance Act and the Short-Term Insurance Act, and
- (c) are not obliged by any other law to have financial statements audited and reported on by an external auditor or reported on by an accounting officer.

22. This exemption relieves Category I providers who meet the criteria stated above from the requirement that their annual financial statements be audited and reported on by external auditors. Such providers are also relieved from the obligation of appointing external auditors.

23. Note that a provider who is covered in terms of this exemption will still be required to:

- (a) Maintain full and proper accounting records which are brought up to date monthly,
- (b) Annually prepare financial statements reflecting the financial position of the business as at the year-end,
- (c) Submit the unaudited annual financial statements to the registrar within six months after the provider's financial year-end.

(b) Exemption from solvency requirements and submission of audited financial statements

24. The exemption further relieves Category I providers who comply with the above criteria from the solvency requirement that their assets (excluding intangible assets)

must exceed their liabilities. Financial statements of those providers will be accepted by the registrar even if reflecting an insolvent position. A provider whose financial statements reflect an insolvent position is required to certify to the satisfaction of the registrar that it shall at all times be able to meet any financial liability in respect of its business of rendering financial services. This certification must be submitted concurrently with the financial statements.

(c) Exemption of certain authorised Financial Services Providers from requirements pertaining to audited financial statements⁴

25. This exemption applies to Category I Providers who render intermediary services to clients on Long-Term Insurance Category-A (funeral policies) only. The exemption however does not apply to Category I Providers who are responsible for payment of policyholders' claims and the set off of such claims against premiums received from policy holders for remittal to the Long-Term Insurer.
26. Generally, Category I Providers who render intermediary services in respect of Long-Term Insurance Category-A (funeral policies) and who collect premiums on behalf of the insurer will be required to appoint an auditor and to have audited financial statements. The exemption relieves Category I Providers, who collect premiums and are authorised for intermediary services in respect of Long-Term Insurance Category-A, from appointing an auditor and preparing audited financial statements. In terms of this exemption such providers must:
- (a) Appoint an accounting officer, who must be approved by the FSB,
 - (b) Have financial statements which must be reported on by an accounting officer.
27. This exemption does not apply to providers who are required in terms of other laws to prepare audited financial statements. For example: Private companies ((Pty) Ltd) and Public companies (Ltd).

Where financial services providers are required to appoint an auditor

28. It follows from the above discussion that the following providers must appoint an auditor and submit audited financial statements reflecting their solvent financial position to the registrar:
- (a) All Category II (discretionary) Providers;
 - (b) All Category III (administrative) Providers;
 - (c) All Category I Providers who collect premiums or hold clients' funds; and
 - (d) All Category 1 Providers who are required in terms of other laws to maintain audited financial statements. The solvency requirement is dispensed with provided the provider can submit a certification that they will be able to meet their liabilities for the year.

⁴ See Notice 85 in Government Gazette No. 26628 dated 06 August 2004.

29. The exemptions are based on the premise that providers who do not handle clients' funds pose a lesser degree of risk to their clients. The risk is further minimised in cases where the provider does not have discretion over clients' funds.

Appointment of an approved auditor

30. In terms of Board Notice 96 of 2003, all providers receiving client funds are required to appoint an external auditor⁵. The provider appoints an auditor to audit the financial statements (this is the case even where the entity does not require an audit in terms of its founding document unless any exemption applies) and to prepare a report regarding money and assets held on behalf of clients.
31. Auditors of providers must be approved by the registrar to act as such. Upon application to seek approval to act as an auditor of a provider the registrar requires the auditor to confirm the following:
- (a) details of the audit firm and the office that will be responsible for the audit if the audit firm has more than one area of operation;
 - (b) details of the individual auditor responsible for the audit;
 - (c) whether the audit firm/individual auditor is organisationally independent from the provider, or the group of which it is a part of, and able to maintain an objective frame of mind in accomplishing its responsibilities;
 - (d) whether the audit firm/individual auditor ensures that the audit approach is kept up to date with regard to developments in the auditing profession and within the financial services industry;
 - (e) whether the individual auditor has sufficient and relevant knowledge of the industry for the engagement;
 - (f) whether the individual auditor responsible for the audit is registered with the IRBA as required by the Auditing Profession Act, 2005 ("the APA");
 - (g) whether the firm has access to a library with up-to date sources of relevant statements, standards, legislation, regulation, literature, trends and developments within the financial services industry
 - (h) the date of appointment of the audit firm/individual auditor.
32. The registrar also considers the auditor's reputation as a result of prior dealings with the registrar.

⁵ *Form FSP 9, External Auditor* – Refer Board Notice 98 of 2003, *Application by Financial Services for Authorisation by the Financial Services Board*, (Gazette No. 25523 of 3 October 2003)

Duties of the auditor

33. The auditor of the provider is required in terms of the Act to perform the following duties:
- (a) the audit of the financial statements of the provider (Section 19(2));
 - (b) a limited assurance engagement in respect of money and assets held on behalf of clients or held in the name of the provider as described in Section 10 of the General Code of Conduct and report thereon to the registrar (Section 19(3)) as set out in Annexure 1 to this Guide;
 - (c) report any irregularities or suspected irregularities identified in the course of the audit to the registrar (Section 19(4));
 - (d) in the event of the auditor's services being terminated by the provider, submit a statement to the registrar setting out what the auditor believes to be the reasons for the termination of the auditor's appointment; and
 - (e) enquire of the FSB whether the provider is exempt from the provisions of Section 19 or exempt from the Act in terms of Section 44.

Conducting the audit as required by Section 19(2)

34. The auditor should conduct the audit of the annual financial statements, in terms of the ISAs and the APA. The auditor shall:
- (a) plan and perform the audit, in accordance with ISA, to obtain reasonable assurance that the financial statements taken as a whole are free of material misstatement;
 - (b) evaluate the overall presentation of the financial statements, in order to ascertain whether they have been prepared in accordance with the stated financial reporting framework and statutory requirements;
 - (c) consider whether the accounting framework⁶ applied is appropriate;
 - (d) issue an audit report containing a clear expression of opinion on the financial statements taken as a whole; and
 - (e) comply with all requirements of the APA and any other statutory and regulatory requirements applicable to the auditor in the audit of the entity.

⁶ Auditors' should refer to South African Practice Statement (SAAPS) 2 (Revised), *Financial Reporting Frameworks and Audit Opinions*, issued in May 2008 for guidance.

Conducting the limited assurance engagement and reporting to the registrar as required by Section 19(3)

35. Section 15 of the Act provides for the publication of a General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 10 of the General Code of Conduct, relating to the 'custody of financial products and funds', details the records which a provider who receives or holds financial products or funds of, or on behalf of clients is required to maintain to account for such products or funds properly and promptly.
36. The provider must maintain full and proper accounting records on a continual basis, brought up to date monthly in respect of money and assets (financial products) held for, or on behalf of clients (hereafter referred to as "trust accounts"). A provider who receives or holds such funds or assets on behalf of clients is required to open and maintain a separate bank account/s, in the name of the provider, designated "for client funds".
37. While Trust accounts do not form part of the assets of the provider and as such are not disclosed on the balance sheet of the provider, however these records are to be maintained separately, disclosed in the annual financial statements of the provider and are to be subject to a limited assurance engagement in terms of Section 19(3) of the Act.
38. The auditor informs the provider that the report required in terms of Section 19(3) is a separate regulatory requirement in addition to the audit of the financial statements, which does not form part of the engagement to audit the financial statements. The auditor is engaged separately to provide a limited assurance engagement in terms of the International Standard on Assurance Engagement (ISAE) 3000, *Assurance Engagements other than Audits or Reviews of Historical Financial Information* to enable the auditor to issue the Section 19(3) report. The auditor may obtain a separate engagement letter from the provider or include the additional regulatory requirements in the engagement letter for the external audit. (An illustrative engagement letter is set out in Appendix B).
39. The Section 19(3) engagement comprises a limited assurance engagement to be performed on money and assets held on behalf of clients in accordance with ISAE 3000. The auditor assesses the risks of material misstatement, and considers the risk of fraud and of non-compliance with the specific requirements of Section 10 of the General Code of Conduct during the performance of the limited assurance engagement and relies on audit evidence obtained during the course of the annual financial statement audit in order to express a conclusion on the money and assets held on behalf of clients in terms of Section 19(3).
40. The auditor gains an understanding of the design and implementation of assertion level controls, and where reliance on specific controls is planned, tests their operating effectiveness. Substantive procedures are also applied in gathering evidence in respect of all material trust account balances and material transactions affecting the trust accounts during the financial period.
41. Audit evidence obtained during the course of the financial statement audit may be used for the purpose of this engagement, provided that the audit evidence obtained is relevant to the limited assurance engagement performed on the trust account balances and transactions, and which supports the auditor's report in terms of Section 19(3).

42. The auditor shall obtain the compliance officer's reports to the registrar and shall consider the impact of any instances of non-compliance with the requirements of Section 19(3), Section 10 of the General Code of Conduct and Section 45 of the APA.
43. Section 19(3) requires the provider to submit to the registrar a report prepared by the auditor who also performed the audit of the financial statements. The format of the auditor's report is contained in Appendix A.
44. The report must be submitted at the same time as the audited financial statements, namely within six months of the end of the financial year of the provider.

Reporting irregularities in terms of Section 19(4)

45. In terms of Section 19(4), the auditor must report to, and inform the registrar in writing of any irregularity or suspected irregularity in the conduct of the affairs of the provider concerned, of which the auditor became aware in performing functions as auditor and which, in the opinion of the auditor, is material.
46. The Act imposes a duty on the auditor to report in writing directly to the registrar, any irregularities or suspected irregularities of which the auditor became aware in performing his or her functions as auditor and which, in the opinion of the auditor, is material. A report in terms of Section 19(4) is made regardless of steps taken by management to correct the irregularity and, unlike Section 45 of the Auditing Profession Act No 26 of 2005 (the APA), Section 19(4) does not allow a 30 day period within which members of the management board are allowed to make representations in respect of the report.
47. The auditor should also consider whether the irregularity reported in accordance with Section 19.4, is also a reportable irregularity in terms of Section 45 of the APA and if so, consider the auditor's responsibilities in terms of this Section. Further guidance in this regard is provided *in Reportable Irregularities: A Guide for Auditors issued by the Independent Regulatory Board for Auditors*.
48. The introductory wording of Section 19(4) states that "*despite anything to the contrary contained in any law*". The registrar requires the auditor to report all instances of irregularities, which in the auditor's opinion are material, in terms of the Act irrespective of whether the provider has rectified the problem or not. Accordingly, when a Section 45 report is issued to the provider, the report informs the provider of the auditor's responsibility in terms of the Act to report to the registrar in terms of Section 19(4) of the Act as well, and the auditor simultaneously dispatches a Section 19(4) report to the registrar containing details of the irregularity and informing the registrar that the auditor has also issued a Section 45 report to the provider.

"As auditor"

49. The auditor is to report irregularities identified while performing the functions as auditor of the provider as soon as practicably possible after the facts have been confirmed. For purposes of the Act the "functions as auditor" include the performance of the audit of the financial statements of the provider; the engagement in terms of

Section 19.3 to report on client monies; and the performance of the auditor's duties as compliance officer of the provider, in addition to being the auditor (where applicable).

50. The registrar requires the auditor to report Section 19(4) irregularities as and when they are identified in the course of the auditor's relationship with the provider.

"Irregularity" – in terms of Section 19(4)

51. Conduct contravening or not complying with any provision of the Act, the General Code of Conduct or of any other subordinate measure promulgated under the Act will constitute an "irregularity" and includes matters pertaining to internal financial administration of the provider, where these appear irregular or improper in relation to industry practice.
52. The Act, by exclusion of any reference to financial loss, recognises that an irregularity may not always lead to financial loss to the provider or an outsider but might, amongst others, represent a serious regulatory breach of which the regulator must become aware. Section 19(4) states *"in the conduct or the affairs of"* which is understood to mean "in the conduct of the affairs of the provider or the provider's personal business affairs". The Act is concerned with regulating professional persons who render financial advice to the public strictly and exhaustively even as regards personal professional conduct.
53. The irregularity does not need to be a proven occurrence as indicated by *"any irregularity or suspected irregularity"*. Where the auditor suspects an irregularity that would have been reported had sufficient proof been available to conclude that it was a reportable irregularity, the auditor will report that suspected irregularity and provide the registrar with the basis for the suspicion. It is advisable in circumstances of uncertainty to obtain legal advice.
54. Following from this, any reportable irregularity reported in terms of Section 45 of the APA would constitute an irregularity in terms of Section 19(4) of the Act. However, an irregularity in terms of Section 19(4) of the Act is not necessarily a reportable irregularity in terms of Section 45 of the APA. Where the auditor comes across a Section 19(4) irregularity the auditor shall, however, also consider whether Section 45 of the APA may also apply.

"Material"

55. The Act leaves the determination of whether an irregularity is material or not up to the auditor, i.e. *"in the opinion of the auditor, is material."* The underlying intention of Section 19(4) is to direct the auditor's attention to -
- (a) matters on which an auditor is particularly qualified to exercise judgment and in regard to which it can be accepted that the registrar requires the auditor's assistance, and which represent matters which cannot be tolerated in the conduct of or in the affairs of a provider acting under the Act if all the objectives of the Act as a law are taken into consideration; and
 - (b) matters which in particular, constitute contraventions of provisions of the Act which directly threatens the continued maintenance of the provider's licence, or

constitute conduct contrary to the public interest in the proper exercise of the rights granted by a FAIS licence.

56. The materiality factors that are to be taken into account for the purposes of the fair presentation of the financial statements may not be relevant when determining the materiality factors for the purpose of Section 19(4). Materiality, in the context of Section 19(4), is unlikely to exceed materiality for financial statement purposes, and in most instances will be a lesser value or may be qualitative by nature.
57. Appendix C sets out examples of irregularities that would be reported to the registrar by the auditor, together with an illustrative report set out in Appendix E.
58. Auditors shall consider any other reporting responsibilities and shall comply with all of them.
59. Where applicable, auditors shall consider whether providers must also adhere to the provisions of other laws and legislation governing assets held on behalf of clients. The list of accountable institutions in Schedule 1 of the Financial Intelligence Centre Act ("FICA") includes in paragraph 2 *"A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988"*. Providers providing the services of trustees, other than an executor or administrator of a deceased estate, are considered an accountable institution if the provider falls within the definition of paragraph 2 of Schedule 1 of FICA. This paragraph can be interpreted to mean that acceptance of even a single trusteeship will bring a person within the ambit of an *"accountable institution"*, as contemplated by paragraph 2 of Schedule 1. However, the Financial Intelligence Centre ("FIC") is of the view that acting as a trustee must be a regular feature of one's business before a person or business will be classified as an *"accountable institution"*.
60. Other laws and regulations that might be applicable include, for example, the Pension Funds Act 1956, the Long-term Insurance Act 1998, the Short-term Insurance Act 1998 and the Securities Services Act 2004. Where securities are held for clients by the provider in the STRATE⁷ environment, the STRATE rules must be adhered to. (Refer to Board Notice 63 of 2007, Requirements Imposed by the Financial Services Board for Nominees to Operate in South Africa, Gazette No. 29911 of 25 May 2007). Also refer to the section dealing with exemptions in this guide.

The relationship between the right and the duty to report

61. The legal duty to report directly to the registrar in terms of Section 19(4) applies only in respect of material matters. In contrast, the legal right to report to the FSB applies to any of its functions and the right to report to other regulators applies to any matters relating to a regulated entity's compliance with that regulator's rules.
62. Auditors might take legal advice before deciding whether, and in what form, to report an irregularity direct to the regulator in order to ensure, for example, that only

⁷ Strate is the authorised Central Securities Depository for the electronic settlement of all financial instruments in South Africa.

relevant information is disclosed and that the form and content of the report has regard to Section 43 of the Act.

Limitation of liability in terms of Section 43 of the Act

63. 'The Minister, the Board or a member thereof, any officer or employee assisting the Board, the registrar, the Advisory Committee or any member, the Ombud and any employee of the Ombud, or any other body or person performing any function in terms of the Act, is not liable for any loss sustained by, or damage caused to, any person as a result of anything done or omitted by any of them in the bona fide exercise of any power or carrying out of any duty or performance of any function under, or in terms of a provision of this Act.'

Professional work, professional services and professional business in relation to the Act

64. The auditor should consider any other professional guidance issued by professional bodies of which the auditor is a member of in performing the duties in terms of the Act.

Statement to registrar relating to termination of appointment

65. Section 19(5) requires the auditor to submit to the registrar a statement of what the auditor believes to be the reason for the auditor's termination. In addition, if the auditor would, but for the termination of the auditor's appointment, have reported an irregularity in terms of Section 19(4), *"the auditor is required to submit such report to the registrar"*.

Auditors in the capacity of compliance officers⁸

Appointment as compliance officer

66. An auditor may accept appointment as compliance officer of a provider. Where an auditor is considering the acceptance of an appointment as compliance officer of a provider which will result in the auditor being both the auditor and the compliance officer for that provider, the auditor shall consider other statutory and professional responsibilities before accepting such an appointment and for this purpose shall refer to the IRBA Code of Professional Conduct regarding the auditor's independence.
67. The auditor has a professional responsibility to be independent, in fact and appearance, from the provider for which the auditor is performing the external audit.

⁸ Refer to Chapter IV, *Compliance Arrangements* of the Financial Advisory and Intermediary Services Regulations, 2003, (*Gazette* No. 25092 of 13 June 2003).

68. As with the provision of bookkeeping services, it may be appropriate to provide the services of the compliance officer, particularly for smaller providers who do not have the capacity to perform the functions of, or have the resources, to employ a compliance officer. In such cases the auditor may accept appointment as compliance officer in addition to performing the audit and possibly other services provided that:
- (a) independence and objectivity are not impaired by any relationship or combination of relationships with the provider;
 - (b) the auditor does not perform management functions or make management decisions; and;
 - (c) responsibility for compliance is accepted by management who must oversee and take responsibility for all compliance with laws and regulations.
69. In such cases, it is suggested that the following principles be adhered to:
- (a) The compliance work is performed by staff not involved in the audit of the provider.
 - (b) The auditor agrees separate terms of engagement where the appointment as compliance officer is accepted in addition to being the auditor of the provider. A separate engagement letter is obtained and the auditor ensures that the provider is aware that the auditor's role as compliance officer does not affect the auditor's responsibilities in terms of conducting the audit, i.e. the auditor's duties as compliance officer do not remove the need for the auditor to perform the audit, nor form a basis for a reduction in the audit fee.

Responsibilities imposed by the Act

70. In order to fulfil the responsibilities imposed by the Act the auditors who are compliance officer will be required to:
- (a) comply with the fit and proper requirements of personal character qualities of honesty and integrity as determined by Section 8(1) of the Act;
 - (b) have the qualifications and experience as specified by the registrar;
 - (c) have sufficient knowledge of all his/her duties as stipulated in the Act;
 - (d) have adequate resources available to ensure proper compliance monitoring;
 - (e) have direct access to senior management in respect of any representative;
 - (f) have the support of senior management;
 - (g) function independently and objectively;
 - (h) function within the organisation structure in such a way that there are no conflicts of interests regarding other employees' functions and duties;

- (i) ensure that systems of internal control are in place which adequately monitor and manage the provider's compliance with the provisions of the Act;
 - (j) advise and train the provider and the representatives of the provider as to the provisions of the Act and any developments in this regard and the internal controls implemented to ensure compliance with the Act provisions;
 - (k) keep written records of all activities during the course of the compliance monitoring;
 - (l) provide the provider and the registrar with timely written reports on the monitoring course and progress achieved;
 - (m) make recommendations to the provider regarding any aspect of compliance or monitoring functions;
 - (n) liaise directly with the registrar especially regarding the compliance report;
 - (o) comply with sections 19(5) and 19(6) of the act with in respect of the termination of appointment⁹; and
 - (p) comply with any additional duties and responsibilities imposed by the regulations of the Act.
71. Guidance on the duties and responsibilities of compliance officers is issued by the Compliance Institute of South Africa (www.compliancesa.com).

Professional duties¹⁰

72. Auditors performing the role of compliance officers are still required to comply with the APA, the IRBA Code of Professional Conduct and any other laws or regulations as required.
73. The auditor fulfilling the role of the compliance officer is reminded of his professional duty to report on suspicious or unusual transactions in terms of FICA as amended. Guidance on reporting on suspicious or unusual transactions in terms of FICA is available in the Money Laundering Control: A Guide for Accountants and Auditors, issued June 2003, read together with the Reportable Irregularities: A Guide for Auditors, issued by the IRBA in June 2006.

⁹ The provisions of Section 19(5) and 19(6), relating to an auditor of an authorized financial services FSP, apply with the necessary changes to a compliance officer as per Section 17(1)(c)

¹⁰ In acting as compliance officer, the auditor serves a monitoring function and considers, and responds appropriately, to any possible threat to the auditor's independence.

APPENDICES

Appendix A – Section 19(3) Report

<The members / partners / directors>

<Insert name of financial services provider>

<Insert address of financial services provider>

The Registrar of Financial Services Providers

Financial Services Board

P O Box 35655

Menlo Park

Pretoria

0102

Dear Sirs,

Limited Assurance Report of the Independent Auditor to the Provider/Members/Partners/Directors¹¹ of [Name of Financial Services Provider] and the Registrar of Financial Services Providers (the “registrar”) in compliance with Section 19(3) of the Financial Advisory and Intermediary Services Act (the “Act”)

Introduction

We have completed our limited assurance engagement of [insert Name of Financial Services Provider] (“the provider”) for the year ended [insert year end date] in order to report to the provider and the registrar in accordance with Section 19(3) of the *Financial Advisory and Intermediary Services Act, 2002* (Act No 37 of 2002) (the “Act”):

- Regarding the amount of money and assets at year end held by the provider on behalf of, clients¹²;
- That such money and assets were throughout the financial year kept separate from those of the business of the provider, and in the case of non-compliance, the extent thereof; and
- Any other information required by the registrar¹³.

Schedule A sets out money and assets at year end held by the provider on behalf of clients. **Schedule B** sets out work performed and our findings in respect the provider’s key controls and procedures to meet the objectives of Section 19(3) and

11 Delete whichever is “Not Applicable”

12 The Registrar requires money and assets held on behalf of clients by the Provider and related liabilities or obligations at the financial year end, to be disclosed in the annual financial statements of the provider, whether included in the Notes to the Financial Statements or by way of a separate Annexure.

13 This requirement is addressed in the form of **Schedule A** and **Schedule B** attached to this Report to be submitted by the auditor of the entity in providing the Section 19(3) report.

Section 10 of the *General Code of Conduct for Authorised Financial Services Providers and Representatives* (the “Code”). We have initialed both schedules for identification purposes.

Provider’s Responsibilities

The provider who receives or holds money and assets, including financial products, for or on behalf of clients is required in terms of Section 19 (1)(a) to “*maintain full and proper accounting records on a continual basis, brought up to date monthly*” and in accordance with Section 10 of the Code, “*must account for such products or funds properly and promptly*” as at < insert year end date> and throughout the financial year then ended. Section 19 of the Act, Section 10 of the Code and client mandates set out specific responsibilities of the provider. Consequently the provider is responsible for designing, implementing and maintaining internal financial controls relevant to the administration of such funds that will facilitate the prevention and detection of fraud and error, and establish policies and procedures to achieve compliance with the requirements of the Act.

Auditor’s responsibility

Our responsibility is to express our limited assurance conclusion and to report on instances of non-compliance based on our work performed. We conducted our limited assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000 *International Standard on Assurance Engagements other than Audits or Reviews of Historical Financial Information*. This standard requires us to comply with ethical requirements and to plan and perform our assurance engagement to obtain sufficient appropriate evidence to support our limited assurance conclusion, expressed below.

The objectives specified in **Schedule B** are those contained in Section 19(3) of the Act and Section 10 of the Code and form the criteria to evaluate the provider’s compliance. The Act and the Code do not specify an internal control framework, which provides objective criteria for assessing the design or operation of internal controls to evaluate the provider’s compliance.

In order to report our findings on the design and implementation of key internal controls to meet the objectives of this engagement, we have exercised our professional judgement regarding the appropriateness of the internal financial controls implemented, based on our understanding of the provider and its environment, including its internal controls, obtained during our audit of the financial statements for the year ended <insert year end date>. Our audit of the financial statements was not, however, for the purpose of expressing an opinion on the provider’s internal controls. Our audit was completed in accordance with International Standards on Auditing and in our auditor’s report on those financial statements, dated <insert date>, we expressed an unmodified opinion¹⁴.

Summary of work performed¹⁵

We planned and performed our work to obtain all the information and explanations that we considered necessary to provide sufficient evidence for us to express our limited assurance conclusion expressed below. It should be appreciated that in a limited assurance engagement the evidence gathering procedures are more limited

14 If the auditor’s opinion on those financial statements was modified the auditor indicates whether the opinion was qualified, whether an adverse opinion was expressed or the opinion was disclaimed.

15 The auditor (assurance provider) should amend the *Summary of work performed* to reflect that actually performed. It is not intended to set out full audit programmes, but merely a “Summary”

than for a reasonable assurance engagement and therefore less assurance is obtained than in a reasonable assurance engagement.

Our summary of work performed and findings as set out more fully in the attached **Schedule B**, included:

- Inquiries, primarily of persons responsible for financial and accounting matters affecting client's money and assets held on behalf of clients throughout the year and inquiries of the provider's compliance officer/s regarding any instance of non-compliance reported to the registrar that may be material to the financial statements or to "trust funds" under management by the provider;
- Analytical and other evidence gathering procedures, inter alia:
 - Inspection of client mandates relating to a sample of transactions selected to determine that they were in accordance with such mandates;
 - Obtaining confirmations of trust account bank and asset balances as at the year end; re-performing bank reconciliations for material balances and tracing outstanding items to subsequent bank statements;
 - Physically inspecting other (non-cash) assets held on behalf of clients, and/or obtaining confirmations of such assets held in safe custody by third parties;
- Obtaining written representations from management regarding matters relevant to this engagement.

We believe that the evidence obtained as part of our limited assurance engagement is sufficient and appropriate to provide a basis for our findings and instances of non-compliance set out in **Schedules A** and/or **B** and our conclusion expressed below.

Conclusion

In our opinion, based on our work performed, nothing has come to our attention that causes us to believe that:

- money and assets held on behalf of clients of the provider at year end are not as reflected on Schedule A;
- such money and assets were not kept separate from those of the business of the provider throughout the financial year ending *<insert year end date>*; and
- any instances of material non-compliance with the requirements of the Act have arisen.

OR

- with the exception of the extent of any instances of non-compliance with the requirements of the Act identified during the course of our assurance engagement and reported in our findings in the attached Schedule A and / or Schedule B, any instances of material non-compliance with the requirements of the Act have arisen.

Restriction on use and distribution

Our report is presented solely for the purpose set out in the first paragraph of our report and for the information of the provider and the registrar and may not be suitable for another purpose and is not to be used for any other purpose, nor to be distributed to any other parties.

Name

Registered Auditor

Address & Date

Schedule A**1 Money and assets held on behalf of clients of the provider at year end**

Trust Account/s held	<Insert year end date>		
	Balances per provider's records	Balance per Bank statement	Differences (Note 1)
	R	R	R
<Insert details>			

Note 1:

Indicate whether outstanding deposits or withdrawals have been reconciled and dealt with in accordance with Section 10 of the Code and client mandates, and have been cleared to subsequent bank statements.

Report any instances of non-compliance identified.

2 Other assets held on behalf of clients of the provider at year end

Indicate nature of "Other Assets"	<Insert year end date>			
	Balances per provider's records	Assets Physically inspected	Confirmation received from 3 rd Parties holding assets in safe custody	Differences (Note 2)
	R	R	R	R
<Insert details>				

Note 2:

Indicate reason for differences / assets not found / confirmations not received or not dealt with in accordance with Section 10 of the Code and client mandates.

Report any instances of non-compliance identified.

Schedule B

Instructions to auditors:

- A. The objectives are derived from the requirements of Section 19(3) of the Act and Section 10 of the Code.
- B. Briefly document key controls implemented by the Provider to account for such products or trust funds of a client “*properly and promptly*”. (The FSB requires such records to be separately identifiable as “*clients’ trust funds*” from the Provider’s own business accounting records and assets and liabilities).
- C. Brief summary of work performed to assess the appropriateness of the design of the key controls implemented by management and determine that such controls have been implemented by inquiries, primarily of persons responsible for financial and accounting matters affecting client’s money and assets held on behalf of clients throughout the year, and performing walkthrough procedures. In addition to the key controls, work performed may also include substantive analytical and other evidence gathering procedures including samples selected for testing of transactions or balances to or from supporting documents, and obtaining confirmations from third parties, to identify instances of material non-compliance. **(Note: procedures indicated in Column C are examples which are not exhaustive and should be modified to reflect the actual work performed).**
- D. Report findings, including weaknesses in key controls and instances of non-compliance identified during our engagement and recommendations, based on work performed and evidence obtained, **or** that no exceptions or material weaknesses / non-compliance were identified.
- E. Insert provider’s management comments on weaknesses in internal controls and any instances of non-compliance identified by the auditor.

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
1	10(1): Subject to the provisions of any other applicable Act, a Provider who receives or holds financial products or funds of or on behalf of a client must	Indicate key controls implemented by the Provider to meet this objective	1 Enquire and observe whether the accounting systems of the Provider are structured in such a manner that the accounting records for the <i>trust accounts</i> are maintained separately from the		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
	account for such products or funds properly and promptly and -		<p>accounting records of the Provider.¹⁶</p> <p>2 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented - by inquiry and performing a walkthrough of the key controls.¹⁷</p>		
	AND				
2	10(1)(a) when documents of title are lodged with the Provider on behalf of the client, the Provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;	Indicate key controls implemented by the Provider to meet this objective including that written receipts issued to clients contain a description of the documents that is sufficient to identify them and that the receipts are issued immediately on receipt of funds from the client	<p>3 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls.</p> <p><u>In addition:</u></p> <p>4 Based on the auditor’s assessment of the risk of material misstatement of client funds under control of the</p>		

¹⁶ This is intended to be a high level observation regarding the accounting systems of the Provider.

¹⁷ Note throughout the annexure: where the auditor (assurance provider) intends placing reliance on specific controls designed to prevent or detect misappropriation or material misstatement of such client funds - the auditor considers performing tests of operating effectiveness of those controls and reports the findings.¹⁷

	A	B	C	D	E
	Objectives Section 10 of the "Code"	Controls implemented by management	Work performed	Auditor's "Findings and Instances of non-compliance" or indicate "No exceptions found"	Comments from the Provider's management
			Provider, select a sample of receipts issued and:		
3	10 (1) (b) when a Provider receives funds into safe custody without the mediation of a bank, the Provider must on receipt of the money, issue a written confirmation of receipt thereof;	Indicate key controls implemented by the Provider over funds held in safe custody.	For the sample selected in the preceding step: <ol style="list-style-type: none"> 5 Inspect deposits made into trust accounts and agree to details on supporting documentation (e.g. client mandate / correspondence from client etc.) to determine whether the deposit constitutes a valid receipt from a client; 6 Inspect evidence that the deposits are made within one business day of receipt of the funds (or comprise direct deposits or EFT transfers from the client to the Trust Account of the Provider); and 7 Agree receipts and payments on the Provider's business bank account with supporting documentation such as bank deposit books or slips or cheques confirming whether any trust monies have been erroneously dealt with as business monies. 8 Assess the appropriateness of 		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
			the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls.		
4	10 (1) (c) where the Provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;	Indicate key controls implemented by the Provider over financial products or funds controlled by the Provider or third party to ensure that they are adequately safeguarded.	<p><u>Non-monetary assets held on behalf of clients</u></p> <p>9 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls.</p> <p>10 Obtain a schedule of non-monetary assets held at year-end on behalf of clients, held in the name of the Provider and enquire about/test controls implemented to ensure assets are adequately safe guarded.</p> <p>11 Obtain confirmations from third parties at year end regarding such non-monetary assets.</p>		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
5	10 (1)(d)¹⁸ open and maintain a separate account, designated for client funds, at a bank and (d) (i – iv) below:	Provide evidence that separate account/s designated for client funds have been opened at a bank by the Provider	<p>12 Inspect evidence that separate account/s designated for client funds have been opened at a bank by the Provider</p> <p>13 Obtain bank confirmation letters for all trust accounts, reflected on Schedule A confirming whether:</p> <ul style="list-style-type: none"> the balance of the trust account agrees to the balance reflected in the Provider’s accounting records; any encumbrances over the trust accounts agree with those disclosed by the Provider. <p>14 Obtain the year-end bank reconciliations for all trust accounts, and for each reconciliation:</p> <ul style="list-style-type: none"> Enquire about any old or unusual reconciling items and agree these items to 		

¹⁸ Section 10(1) (d) is not applicable to a provider subject to section 45 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), if the provider complies with the requirements contemplated in that section.

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
			<p>supporting documentation or subsequent resolution of the reconciling item.</p> <ul style="list-style-type: none"> • Cast the bank reconciliation. • Agree payments which appear on the bank statement 1 week after year-end to the outstanding cheque listing. Agree those payments which do not appear on the outstanding cheque listing to supporting documentation to confirm that they have been recorded in the correct period. • Agree cheques which appear on the outstanding cheques list to bank statements after year-end. 		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
6	10 (1) (d)(i) must within one business day of receipt pay into the account all funds held on behalf of clients;	Indicate key controls implemented by the Provider	15 Trace outstanding deposits to the next day’s bank statement <ul style="list-style-type: none"> Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls 		
7	10(1)(d)(ii) ensure that the separate account only contains funds of clients and not those of the Provider;	Indicate key controls implemented by the Provider	16 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls; and 17 Review transactions recorded for evidence that only client’s funds are in the separate account/s,		
8	10(1)(d)(iii) pay all bank charges in respect of the separate account except that bank charges specifically relating to a deposit or	Indicate key controls implemented by the Provider	18 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
	withdrawal of the funds of the client are for the client’s own account; and		<p>walkthrough of the key controls; and</p> <p>19 Inspect the trust account bank statements for evidence of banking charges. (Note: <i>Only fees relating to deposits and withdrawals of the client’s funds are for the client’s own account in terms of Section 10(1)(d)(iii) of the Code</i>).</p> <p>20 Confirm whether fees which are not for the Provider’s trust account are charged to the business account of the Provider by agreeing the fees identified in the trust account as being for the Provider’ account to the Provider’s business account.</p>		
9	10(1)(d)(iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;	Indicate key controls implemented by the Provider	<p>21 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls; and</p> <p>22 Inspect the trust account bank statements for interest accruing.</p>		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
			23 Confirm whether interest accruing is credited to the trust account and not the Provider’s business by agreeing interest earned to the trust account accounting records. (<i>Section 10(1)(d)(iv) and Section 10(3) of the Code</i>)		
10	10 (1)(e)(i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the Provider;	Indicate key controls implemented by the Provider	<p>24 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls; and</p> <p>25 Select a sample of transactions of financial products or funds processed by the provider during the year and inspect client mandates and other supporting documentation to determine that the transactions are dealt with strictly in accordance with those mandates.</p> <p>26 Enquire whether or not there are any restrictions on trust accounts and confirm whether these</p>		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
			restrictions were breached.		
11	10(1)(e)(ii) that client financial products or funds are readily discernible from private assets or funds of the Provider; and	Indicate key controls implemented by the Provider	27 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls.		
12	10(1)(e)(iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.	Indicate key controls implemented by the Provider	28 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls; and 29 Agree a sample of payments made during the year from trust accounts to supporting documentation confirming whether the payment was made in terms of a valid client instruction/mandate. 30 Agree a sample of payments made from the trust account into the Provider’s business bank account to supporting documentation, confirming		

	A	B	C	D	E
	Objectives Section 10 of the “Code”	Controls implemented by management	Work performed	Auditor’s “Findings and Instances of non-compliance” or indicate “No exceptions found”	Comments from the Provider’s management
			whether transfers which represent fees were made in terms of the contract with the client.		
13	10(2) Where a transaction or agreement has been recorded in writing, the Provider who dealt with the client, must ensure that the original agreement is delivered to the client for safe custody	Indicate key controls implemented by the Provider	<p>31 Assess the appropriateness of the design of the key controls and determine, whether they have been implemented by inquiry and performing a walkthrough of the key controls; and</p> <p>32 Select a sample of client correspondence files / records: trace current year movements referred to in the file to the transactions recorded, and inspect evidence that the original agreement (in terms of the client mandate) has been delivered to the client for safe custody.</p>		

Appendix B – Illustrative engagement letter

The following letter is for use as a guide and is not intended to be a standard letter. This illustrative engagement letter will need to be varied according to individual requirements and circumstances.

Addressee [the provider, members, partners or directors]¹⁹

Dear Sir(s)

Limited assurance engagement of the independent auditor of [Name of Financial Services Provider] in compliance with Section 19(3) of the Financial Advisory and Intermediary Services Act (the “Act”)

Introduction

We have agreed to perform our limited assurance engagement of (*insert the name of the financial services provider*), (“the provider”) for the year ended <*insert year end date*> in order to report to the [provider, members, partners or directors]²⁰ and the Registrar of Financial Services Providers (the “registrar”) in accordance with Section 19(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) (the “Act”):

- (a) Regarding the amount of money and assets at year end held by the provider on behalf of clients;²¹
- (b) that such money and assets were throughout the financial year kept separate from those of the business of the provider, and in the case of non-compliance, the extent thereof; and
- (c) Any other information required by the registrar²².

Provider’s Responsibility

As a provider who receives or holds money and assets, including financial products, for or on behalf of clients you are required in terms of Section 19(1)(a) to “*maintain full and proper accounting records on a continual basis, brought up to date monthly*” and in accordance with Section 10 of the *General Code of Conduct for Authorised Financial Services Providers* (the “Code”), “*must account for such products or funds properly and promptly*” as at <*insert year end date*> and throughout the financial year then ended. Section 19 of the Act, Section 10 of the Code and client mandates set out specific responsibilities of the provider. Consequently the [provider, members, partners or directors]²³ are responsible for designing, implementing and maintaining internal financial controls relevant to the administration of such funds that will facilitate the

19 Delete whichever is “Not Applicable”

20 Delete whichever is “Not Applicable”

21 The Registrar requires money and assets held on behalf of clients by the Provider and related liabilities or obligations at the financial year end, to be disclosed in the annual financial statements of the provider, whether included in the Notes to the Financial Statements or by way of a separate Annexure.

22 This requirement is addressed in the form of **Schedule A** and **Schedule B** attached to the Section 19(3) report to be submitted by the auditor of the provider.

23 Delete whichever is “Not Applicable”

prevention and detection of fraud and error, and establish policies and procedures to achieve compliance with the requirements of the Act.

Auditor's responsibility

We will conduct our limited assurance engagement in accordance with the International Standard on Assurance Engagements (ISAE) 3000, *Assurance Engagements other than Audits or Reviews of Historical Financial Information* in order to express our limited assurance conclusion and to report on instances of non-compliance based on our work performed. This standard requires that we comply with relevant ethical requirements and to plan and perform our engagement to obtain sufficient appropriate evidence to support our limited assurance conclusion and findings reported.

Our objectives are those contained in Section 19(3) of the Act and Section 10 of the Code and form the criteria to evaluate the provider's compliance. The Act and the Code do not specify an internal control framework, which provides objective criteria for assessing the design or operation of internal controls to evaluate the provider's compliance. In order to report our findings on the design and implementation of key internal controls to meet the objectives of this engagement, we will exercise our professional judgement regarding the appropriateness of the internal financial controls implemented, based on our understanding of the provider and its environment, including its internal controls, obtained during our audit of the financial statements for the year ended *<insert year end date>*. Our work performed is not for the purpose for expressing an opinion on the provider's internal controls.

Our limited assurance engagement is a separate regulatory requirement which does not form part of our audit of the financial statements. Consequently, we will perform such tests and procedures as we consider necessary in the circumstances to obtain sufficient appropriate evidence to express our limited assurance conclusion. It should be appreciated that in a limited assurance engagement our evidence gathering procedures are more limited than for a reasonable assurance engagement and therefore less assurance is obtained than in a reasonable assurance engagement.

Because of the nature of our limited assurance engagement, together with the inherent limitations in any accounting and internal control system, there is an unavoidable risk that some material misstatements and non-compliance with the Act and Section 10 of the Code may remain undiscovered.

Our limited assurance engagement is performed solely to assist the registrar in determining whether the amounts recorded with respect to monies and other assets held on behalf of the clients of the provider are in accordance with Section 19(3) of the Act and Section 10 of the Code.

We will request written confirmation from management concerning representations made to us in connection with our limited assurance engagement.

Other reporting responsibilities

We wish to draw your attention to Section 19(4) the Act which requires "*the auditor of a provider to report to and inform the registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the provider concerned of which*

the auditor became aware of in performing functions as auditor and which in the opinion of the auditor is material'.

Furthermore Section 45 of the Auditing Profession Act, No. 26 of 2005 requires us to report any reportable irregularity without delay to the Independent Regulatory Board for Auditors.

Restriction on use and distribution of our report

Our report is presented solely for the purpose set out in the first paragraph of our report and for the information of the provider and the registrar and may not be suitable for another purpose and is not to be used for any other purpose, nor to be distributed to any other parties.

Fees

[Insert additional information here regarding fee arrangements and billing, as appropriate]

Access to records

We look forward to full co-operation from your staff, and we trust that they will make available to us whatever records, documentation and other information are requested in connection with our limited assurance engagement.

Please sign and return the attached copy of this letter to indicate that it is in accordance with your understanding of the terms of the engagement.

Yours sincerely,

[Insert name of Registered Auditor]

[Insert name of the firm]

Acknowledged on behalf of provider:

(Signed)

Name and title

(Date)

Appendix C – Examples of irregularities in terms of Section 19(4)

The irregularities identified in this appendix are examples of irregularities, which would typically be reported to the registrar in terms of Section 19(4). However, the irregularities listed below are only examples of irregularities, which would be reported, and consequently the list is not necessarily complete. Furthermore, the auditor exercises professional judgement when considering whether irregularities identified are material and require a Section 19(4) report to the registrar.

The following matters if identified by the auditor in the conduct of the audit of the financial statements may constitute irregularities, which are to be reported to the registrar in terms of Section 19(4):

- The audit client is a provider as defined in the Act but is not licensed as required by Section 7(1).
- The provider has dealt in a financial product for own benefit, account or interest based on advance knowledge of pending transactions for its clients, or on any non- public information the disclosure of which would be expected to affect the prices of such product.
- The provider allows S-rated²⁴ persons to provide financial advice or intermediary services.
- The provider appoints key individuals and representatives who do not meet the fit and proper requirements or who do not hold the necessary qualifications.

For further guidance on the responsibilities of auditors in terms of the Act can be sought directly from the Financial Services Board or with regards to reporting irregularities in terms of Section 45 of the APA, refer to Reportable Irregularities: A guide for Registered Auditors, issued on 30 June 2006 by the Independent Regulatory Board for Auditors.

²⁴ "The S Reference system is a system of self-regulation within the long-term insurance industry, whereby the public at large, and the industry, are protected from persons who are not fit and proper to be engaged in the business of marketing the products of the industry, or in directly controlling or training those who are so engaged. An S reference can be imposed upon an intermediary for up to five years (or shorter as determined by the S Reference Panel). After the expiry of the five year (or shorter) period, the S reference will lapse", the Life Officers Association of South Africa, website www.loa.co.za. A list of s-rated person can be obtained from the website.

Appendix D – Illustrative management representation letter

The following letter is for use as a guide and is not intended to be a standard letter. This management representation letter will need to be varied according to individual requirements and circumstances.

(Entity Letterhead)

(To auditor) (Date)

This representation letter is provided in connection with your limited assurance engagement on the monies and other assets held on behalf of the clients of (*insert name of provider*) for the year ended *<insert date>* for the purpose of reporting to the registrar of Financial Services Providers in terms of Section 19(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"). We confirm, to the best of our knowledge and belief, the following representations:

- There have been no irregularities involving management or employees who have a significant role in the accounting and internal control systems dealing with the monies and other assets held on behalf of our clients.
- We have made available to you all clients' files, books of account and supporting documentation and all minutes of meetings of shareholders and the board of directors (namely those held on *<insert date>* and *<insert date>*, respectively).
- All client monies received have been promptly banked in the separate bank accounts disclosed to you.
- Money has only been transferred out of these accounts, to the firm's business accounts, in terms of fees and disbursements due to the firm in terms of the contracts signed by our clients.
- The firm has complied with all the requirements of the Act, as well as all regulations published by the Financial Services Board.
- The information provided to you with respect to the monies and other assets held on behalf of our clients is free of material misstatements, including omissions.
- We have not lodged any liens or encumbrances over the monies and other assets held on behalf of our clients.
- There are no formal or informal compensating balance arrangements with any of our cash and investment accounts containing monies and other assets held on behalf of our clients.
- We understand that your engagement was conducted in accordance with International Standards on Assurance Engagements (ISAE) 3000, *Assurance Engagements other than Audits or Reviews of Historical Financial Information*. We understand that your responsibility is to express a limited assurance conclusion on the monies and other assets held on behalf of our clients for the year ended (*insert date*) for the purpose of reporting to the registrar of Financial Services Providers in

terms of Section 19(3) of the Act and Section 10 - "Custody of Financial Products and Services" of the General Code of Conduct for Authorised Financial Services Providers and Representatives (the "Code").

- We understand that we are responsible for the implementation and operation of internal controls that are designed to prevent and detect fraud and error. There has been no fraud or possible irregularities involving management or employees who have a significant role in the system of internal control, dealing with the monies and other assets held on behalf of our clients. Based on our assessment, we believe the risk that the amounts recorded in terms of monies and other assets held on behalf of our clients are materially misstated as a result of fraud to be acceptably low.

The contents of this letter were considered by the provider/board/members/management of (*insert name of provider*) on (*insert date*) and the undersigned were authorised to sign this representation letter on behalf of the provider/board/members/management.

Appendix E – Illustrative report in terms of Section 19(4)

The following is an illustrative report of irregularities to the registrar in terms of Section 19(4):

The registrar of Financial Services Providers

The Financial Services Board

Rigel Park

446 Rigel Avenue South

Erasmusrand

Pretoria

Dear Sirs

REPORT TO THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS IN TERMS OF SECTION 19(4) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2002)

In our capacity as appointed auditors to (*insert name of the provider*) we are reporting to you in terms of Section 19(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (the "Act").

During the conduct of our audit for the year ended *<insert date>* we established that (*insert name of the provider*) is not maintaining records of complaints and/or dealing with complaints in the manner envisaged by part IX of the General Code of Conduct for Authorised Financial Services Providers and Representatives. As a consequence we have reason to believe that in the conduct of the affairs of (*insert name of the provider*) an irregularity is taking place which in our opinion is material.

Name of Firm

Name of Registered Auditor

Registered Auditor

Date

Cc: (provider)

Appendix F – Definitions

Term	Meaning
Advice	<p>"Any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients-</p> <ul style="list-style-type: none"> (a) in respect of the purchase of any financial product; or (b) in respect of the investment in any financial product; or (c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or (d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice- <ul style="list-style-type: none"> (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected". <p>Advice does not include:</p> <ul style="list-style-type: none"> (i) "Factual advice given merely <ul style="list-style-type: none"> (aa) on the procedure for entering into a transaction in respect of any financial product; (bb) in relation to the description of a financial product; (cc) in answer to routine administrative queries; (dd) in the form of objective information about a particular financial product; or (ee) by the display or distribution of promotional material (ii) an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client; (iii) advice given by- <ul style="list-style-type: none"> (aa) the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of "financial product" in subSection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or (bb) the board of trustees of any medical scheme referred

	to in paragraph (g) of the said definition of “financial product”, or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or any other advisory activity exempted from the provisions of this Act by the registrar; after consultation with the Advisory Committee, by notice in the Gazette”.
Accounting officer	“A person contemplated in Section 60 of the Close Corporations Act, 1984 (Act, No. 69 of 1984)”
Auditor	“An individual or firm as an auditor with the Independent Regulatory Board for Auditors (the “IRBA”) in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005)”
Authorised financial services provider	“A person who has been granted an authorisation as a financial services provider by the issue to that person of a licence under Section 8”
Category I	In relation to a financial services provider means, “all persons, other than persons referred to in Category II and III, who require licences to render the financial services (other than financial services mentioned in Category II and III) as set out in the relevant application”
Category II	In relation to a financial services provider means, “all persons who require licences as discretionary financial services providers as set out in the relevant application”
Category III	In relation to a financial services provider means, “all persons who require licences as set out in the relevant application”
Client	“A specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service”
Code of Conduct for Discretionary Providers	“The Code of Conduct for Discretionary Providers , 2003, contained in Chapter II of the Notice on Codes of Conduct for Administrative and Discretionary Providers , published by Notice 79 of 2003 in Gazette No. 25299 of 8 August 2003, as amended by Notice 3294 of 2003 in Gazette No. 25713 of 14 November 2003”
Compliance officer	“A compliance officer for an authorised financial services provider referred to in Section 17 of the Act”
Discretionary FSP	“A discretionary FSP – (i) 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’, but without implementing any bulking; and

	(ii) acting for that purpose specifically in accordance with the provisions of the Code set out in Chapter II of this Schedule ²⁵ , read with the Act, the General Code (where applicable) and any other applicable law”
Financial product	<p>(a) “securities and instruments, including-</p> <ul style="list-style-type: none"> (i) shares in a company other than a “share block company” as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980); (ii) debentures and securitised debt; (iii) any money-market instrument; (iv) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii); (v) any “securities” as defined in Section 1 of the Securities Services Act, 2005 <p>(b) a participatory interest in one or more collective investment schemes;</p> <p>(c) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No.52 of 1998), and the Short-term Insurance Act, 1998 (Act No.53 of 1998), respectively;</p> <p>(d) a benefit provided by –</p> <ul style="list-style-type: none"> (i) a pension fund organisation as defined in Section 1 (1) of the Pension Funds Act, 1956 (Act No.24 of 1956), to the members of the organisation by virtue of membership; or (ii) a friendly society referred to in the Friendly Societies Act, 1956(Act No.25 of 1956), to the members of the society by virtue of membership; <p>(e) a foreign currency denominated investment instrument, including a foreign currency deposit;</p> <p>(f) a deposit as defined in Section 1 (1) of the Banks Act, 1990 (Act No.94 of 1990);</p> <p>(g) a health service benefit provided by a medical scheme as defined in Section 1 (1) of the Medical Schemes Act, 1998 (Act No.131 of 1998);</p> <p>(h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;</p> <p>(i) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive;</p> <p>(j) any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and</p>

²⁵ Board Notice 79 of 2003, Codes of Conduct for Administrative and Discretionary FSPs, Government Gazette No. 25299

	character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (i), inclusive."
Financial service	"Any service contemplated in paragraph (a), (b) or (c) of the definition of financial services provider, including any category of such services"
Financial services business	In relation to a sole proprietor or partnership, means, "the rendering by any such proprietor or partnership of financial services under the Act in the capacity as an authorised financial services provider with more than one key individual or one or more representatives"
Financial services provider	"Any person, other than a representative, who as a regular feature of the business of such person – (a) furnish advice; or (b) furnishes advice and renders any intermediary service; or (c) renders an intermediary service"
Fit and Proper Requirements	"The Determination of Fit and Proper Requirements for Financial Services Providers, 2003, published by Board Notice No. 91 of 2006 in Gazette No. 29132, dated 16 August 2006".
FSP	"An authorised financial services provider"
General Code	"The General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, as published by Board Notice No. 80 of 2003 in Gazette No. 25299 of 8 August 2003"
Intermediary entity	"A financial services provider who belongs to Category I as defined in paragraph 1(1) of the Fit and Proper Requirements and who renders an intermediary service, excluding the offsetting of claims, in respect of financial products belonging to Long-term Insurance Category A, referred to in subcategory (1) in Column One of Table A of paragraph 3(1) of the Fit and Proper Requirements"
Intermediary service	"Any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or (b) with a view to- (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested; (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or (iii) receiving, submitting or processing the claims of a client

	<p>against a product supplier.”</p> <p>Intermediary Service does not include:</p> <p>“(i) the rendering by a bank or mutual bank of a service contemplated in paragraph (b) (ii) of the definition of “intermediary service” where the bank or mutual bank acts merely as a conduit between a client and another product supplier;</p> <p>(ii) an intermediary service rendered by a product supplier- (aa) who is authorised under a particular law to conduct business as a financial institution; and (bb) where the rendering of such service is regulated by or under such law;</p> <p>(iii) any other service exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.”</p>
Key individual	<p>“In relation to an authorised financial services provider, or a representative, carrying on business as –</p> <p>(a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or</p> <p>(b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person”</p>
Person	<p>“Any natural person, partnership or trust, and includes-</p> <p>(a) any organ of state as defined in Section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);</p> <p>(b) any company incorporated or as such under any law;</p> <p>(c) any body of persons corporate or unincorporated”</p>
Provider	<p>In relation to Board Notice 97 of 2004, Exemption In Respect Of Certain Office-Holders, means;</p> <p>(a) “An executor, administrator, trustee of an insolvent estate, curator, liquidator, judicial manager, parent, tutor or guardian referred to in Section 45(1)(b) of the Act;</p> <p>(b) Any trustee of a testamentary trust in a deceased estate, or trustee of an inter vivos trust, referred to in Section 45(1)(b),</p> <p>who renders intermediary services as a regular feature of business”</p>
Provider	<p>In relation to Board Notice 104 of 2004, Exemption Regarding Certain Minimum Qualifications, means, “a person belonging to Category I as defined in paragraph 1(1) of the Fit and Proper Determination who renders financial service in connection with:</p>

	<p>(a) financial products belonging to Long-term Insurance Category A, referred to in subcategory (1) in Column One of Table A of paragraph 3(1) of the Fit and Proper Determination; or</p> <p>(b) a benefit provided by a friendly society, referred to in subcategory (14) in column One of Table A of paragraph 3(1) of the Fit and Proper Determination, and who:</p> <p>(i) has submitted an application for authorisation in terms of Section 8(1) of the Act before or on 29 September 2004; or</p> <p>(ii) has submitted an application for authorisation in terms of Section 8(1) of the Act after 29 September 2004, but prior to 31 December 2004; and includes where applicable, any key individual of the provider"</p>
Representative	<p>"Any person who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -</p> <p>(a) does not require judgement on the part of the latter person; or</p> <p>(b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries"</p>