

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED AMENDMENTS TO THE QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER AND THE EXEMPTION IN RESPECT OF SERVICES UNDER SUPERVISION RENDERED BY COMPLIANCE OFFICERS

[Proposed amendments published for comment on 14 April 2016]

Note:

- (a) The response of the Registrar of Financial Services Providers (“the Registrar”) to the comments received on the proposed amendments of the Notice on Qualifications, Experience and Criteria for Approval as Compliance Officer, 2016, is contained in **Annexure “A”**.
- (b) The Registrar’s response to the comments received on the proposed amendments of the Notice on Exemption in respect of Services under Supervision rendered by Compliance Officers, 2016, is contained in **Annexure “B”**.

LIST OF COMMENTATORS

1	The Association for Savings and Investment South Africa (ASISA)	9	Bowman Giffillan
2	I E Administrators	10	Europ Assistance South Africa
3	Les Trollip Services CC	11	Southern African Venture Capital and Private Equity Association (SAVCA)
4	MMI Holdings Limited	12	The Compliance Toolbox (Pty) Ltd
5	Peter Johnson (Saxo Markets)	13	Moonstone Compliance (Pty) Ltd
6	Stockill Financial Services	14	Gail Gibson
7	National Compliance Company	15	Liberty (Pieter le Roux)
8	Masthead (Pty) Ltd		

PROPOSED AMENDMENTS TO THE QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER

COMMENTATOR	PARAGRAPH	COMMENT / PROPOSED WORDING	REGISTRAR'S RESPONSE
1	1 and 10	<p>(1) The FAIS Act ("the Act") defines "fit and proper requirements" as the requirements published under section 6A. Board Notice 127 may however assign a different definition for the purposes of the Board Notice.</p> <p>A reference to a specific Board Notice without providing that it may be amended or replaced from time to time, may potentially render requirements obsolete or null and void if the specific referenced Board Notice is amended or replaced. As a rule, a reference to another set of requirements should be a reference to the legislative source of those requirements. For example, the reference should be to the fit and proper requirements as determined under section 6A of the Act. The reference will then always be to the current determined requirements, regardless of the Board Notice in which it was published.</p> <p>It is however problematic to refer to fit and proper requirements as determined under 6A of the Act in these amendments to Board Notice 127 as the current fit and proper requirements were determined under section 8(1) of the Act. The timing of the publication of the proposed new Fit and Proper Determination will thus have a bearing on the references in this Notice. The proposed new Fit and Proper Determination will for example repeal the Determination of Qualifying Criteria and Qualifications for Financial Services Providers, 2008.</p> <p>The requirements in Board Notice 127 were determined under section 17(1)(b) and (2)(a) of the Act. The Registrar should consider the re-determination of the fit and proper requirements for compliance officers under section 6A of the Act.</p> <p>It is suggested that the references to specific Board Notices of 2008 should be reconsidered in view of the expected repeal of those Notices.</p> <p>(10) If paragraph 10(2) of Board Notice 127 is substituted as proposed, the reference to "the commencement of this Notice" will be a reference to the commencement date of Board Notice 127, i.e. 9 September 2010, and not a reference to the date on which the amendment of Board Notice 127 will become effective. It is thus suggested that a specific date should be stipulated.</p> <p>Members are of the opinion that the proposed six month period within which compliance officers must pass the regulatory exam is unreasonable and even more so in the case of</p>	<p>Noted.</p> <p>The Registrar is reviewing Board Notice 127 of 2010 and the comment will be considered during that review.</p>
			<p>Agree Corrected.</p>
			<p>Noted.</p>

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		<p>compliance officers that will be required to pass more than one regulatory exam. Compliance officers are in the midst of large volumes of rapidly changing regulatory requirements and fundamental shifts in supervisory expectations and these severe pressures are expected to only intensify in the near future. The experience with the introduction of regulatory exams for key individuals and representatives should not be repeated. An FSP's compliance risk may also potentially increase if compliance officers are under undue time pressure to pass the exams. ASISA members strongly propose that the time period should be increased to 12 months.</p> <p>Proposed wording for par 10:</p> <p>(1) Compliance officers approved by the Registrar before or on the date of commencement of this Notice -</p> <p>(a) do not have to comply with paragraph 3(1)(a);</p> <p>(b) who do not meet a requirement of paragraph 3(1)(b) and (c), have three years (ending 31 December of the third year) to comply with the requirement from the date of publication of this Notice in the Gazette.</p> <p>(2) A compliance practice approved by the Registrar before or on date of commencement of this Notice who do not comply with paragraph 2(2) have nine months to comply with the requirements from the date of publication of this Notice in the Gazette.</p> <p>(3) Compliance officers approved by the Registrar after commencement of this Notice until 31 December 2011 have two years (ending 31 December of the second year) to comply with paragraph 3(1)(b).</p> <p>(4) Must within three months from the commencement of this Notice comply with any other provisions thereof.</p> <p>(2) Persons who, at date of commencement of this Notice, are approved as compliance officers, have six months to comply with paragraph 3(1)(b) after commencement of this Notice.</p> <p><u>Persons who are approved as compliance officers on or before {a stipulated date} must comply with paragraph 3(1)(b) within twelve months from {that stipulated date}.</u></p>	<p>The period within which the requirement must be complied with has been extended to 12 months.</p>
2	3(1)(b)	<p>Is an Internal Compliance Officer, appointed in CAT 1 and 4 since 2004, with 12 years' experience expected to now write an exam?</p>	<p>Noted.</p> <p>The Registrar has not proposed a new requirement. BN127 of 2010 currently requires of compliance officers to pass a regulatory examination (to be determined by the Registrar). In terms of the proposed amendment the Registrar is merely determining which examination compliance officers must write. The Act further requires from all compliance officers to comply with the fit and proper requirements, irrespective of whether the compliance officer is an internal or</p>
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3	3(1)(b)	Many Sole Proprietors are entitled to be their own Compliance Officers. An exemption must be made for these people not to have to write another exam as a Compliance Officer as they already wrote the RE 1 and RE 5.	external compliance officer. Disagree. An exemption is not required because the regulatory examinations that have now been determined by the Registrar for compliance officers are the same examinations that sole proprietors and key individuals must complete. If a sole proprietor, who is also the compliance officer, has already passed the applicable examination, he/she would comply with the regulatory examination requirement applicable to compliance officers.
4	General comment	Will there be any exemptions for foreign FSPs? Also, where we have a SA and a foreign compliance officer on the same licence, do both have to hold the qualification or will the SA resident compliance officer holding the qualification suffice?	The Registrar does not intend to grant a general exemption to foreign FSPs in respect of their compliance officers that are domiciled in a foreign jurisdiction. The legislation further does not distinguish between a local and a foreign domiciled compliance officer. Therefore, irrespective of where a compliance officer is domiciled, he/she will have to complete the applicable regulatory examinations.
5	General comment and 3(1)(b)	Persons who hold a suitable compliance qualification or legal qualification (LLB) have the necessary knowledge and expertise to interpret, evaluate and implement the FAIS Act and accompanying Regulations so that they and the FSP for which they render compliance. It seems bizarre that legal qualified persons have to write further examinations in order to perform a compliance role. It is understandable that persons who do not have sufficient knowledge in law/compliance should be required to write the first level regulatory examination as they perhaps do not have the requisite experience to fulfil the role appropriately. The whole proposal should further be considered in light of the proposed changes to the financial landscape in that FAIS is going to come to an end and the role of compliance officers is going to change dramatically in any event (Omnibus Bill etc) – this proposal is concerned with FAIS, which is on its way out effectively.	Disagree. This Office, through its supervisory processes, has identified that not all compliance officers' have the required level of knowledge and understanding of the requirements of the FAIS Act in order to properly fulfil their functions. The amendments further do not impose a new requirement. It has always been a requirement that compliance officers will have to pass a regulatory examination once the Registrar has determined the examination (see paragraph 3(1)(b) read with the definition of "regulatory examination" in Board Notice 127 of 2010). The Registrar has now merely determined which examination compliance officers must write. Furthermore, legislative developments under the Twin Peaks framework will take into consideration the current requirements under the various sectoral laws.

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6		6	General comment	In considering the introduction of these new requirements for compliance officers, please keep in mind the cost of implementing these requirements on the industry. Compliance officers will pass these costs directly onto the financial services providers.	Noted. See comment under item 5.
7		7	1	There was no annexure 1 for regulatory examinations nor was there an annexure for Services under Supervision referred to in the document. We respectfully suggest that an exemption should apply to- 1) approved external compliance officers with at least 5 years' experience; and 2) all compliance officers who have the CISA CPrac (SA) qualification.	Noted. The invitation to comment on the proposed amendments did not have any annexures. The annexures referred to by the commentator are the annexures attached to the Notices that the Registrar proposed to amend. See also comment under item 5.
8		8	1,3,9 and 10	(1) We are comfortable with the proposed changes to paragraph 1. (3) We agree with the amendment of paragraph 3(1)(b). (9) We are in favour of the objective of removing the administrative burden imposed on individuals in terms of paragraph 9(3) – the proposed amendment to paragraph 9, therefore, has our full support. (10) We have no objection to the timeframe in which approved compliance officers must successfully complete the applicable regulatory examination.	Noted.
9		9	5(2)	Our offshore clients (FSPs,) who have appointed in-house/internal compliance officers, are immensely concerned about the six month transitional period. Those clients have expressed to us that the six month transitional period will present difficulties from their perspective, as the regulatory examinations are offered in London only every six months, usually during March and September of each year. If an RE registrant writes an RE but is unsuccessful with the RE during, for instance, September, he/she will need to wait until the following March in order to write the RE again. We submit that a twelve-month period would be more reasonable, in particular for foreign FSPs. We accordingly propose that the six month transitional period be amended to twelve months, either across the board or in respect of foreign FSPs.	Noted. The period within which the requirement must be complied with has been extended to 12 months. In addition, if there is a need, more frequent examination sessions could be made available in London to ensure that foreign compliance officers have a fair and reasonable opportunity to write the examinations on a regular basis.
10		10	1, 3, 9, 10	(1) In our view the insertion of the various definitions pertaining to the categories of FSPs, "Fit and Proper Requirements" as well as the "Determination of Qualifying Criteria and Qualifications" are necessary, and therefore welcomed, due to the fact that more certainty is provided for these terms which are specifically referred to in the notice. The substitution of the definition of "Regulatory Examination" creates more certainty. The current definition, that this substitution proposes to amend, is, in our view, vague and cryptic and we therefore view this substitution as necessary. (3) The substitution of subparagraph 3(1)(b) by the words "successfully completed" instead of "passed", in our view, creates vagueness and uncertainty. We are of the opinion that, for instance, a course or a task can be "successfully completed", however, an exam should be "passed". It should be clearly stipulated that a particular standard is	Noted. Agree. Paragraph 3(1)(b) has been amended accordingly.

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11		<p>required and not a mere completion. If the words "successfully completed" are to be used, our suggestion would be to qualify the statement with the standard required for a pass, for example "...with an overall mark of at least ___%". This particular act of substitution would, in itself, create an impression of a decrease in the standard required. The current Notice has already set a particular standard (to pass) and the very act of substituting the word "passed" would create uncertainty as to the standard expected of compliance officers.</p> <p>(9) Due to the administrative burden placed on compliance officers in respect of re-application for Phase 1 approval, we concur with the omission of subparagraph 9(3) but respectfully suggest that alternative effective but less burdensome means are implemented and defined in the notice before final amendment in order to ensure that the core requirements of the Phase 1 approval is still met by the compliance officers after defined intervals. By removing this requirement entirely and providing no alternative, the financial industry is exposed to a risk.</p> <p>(10) We agree with the amendments made to paragraph 10 – it is paramount that approved compliance officers have extensive knowledge of the financial services industry and therefore agree that a period of 6 months is fair and sufficient to comply with the requirements of paragraph 3(1)(b).</p>	<p>Noted. The proposed amendment does not affect the requirement that the effected persons must at all times continue to comply with the Phase 1 approval requirements.</p> <p>Noted.</p>
11	General comment	<p>SAVCA will continue to engage with the Registrar to put in place a specific FSP licence category for the private equity industry and to ensure that the ongoing compliance requirements flowing from such FSP licence category is appropriate and suitable for its members.</p> <p>SAVCA anticipates that the ongoing compliance obligations imposed under a new specific private equity FSP licence category would include specific provisions relating to the compliance officers of private equity FSPs. In particular, SAVCA would expect that compliance officers of private equity FSPs would be required successfully complete a regulatory examination that is appropriate for the private equity industry. However, until such time, SAVCA respectfully submits that private equity FSPs should be excluded from the effect and impact of the Notice.</p> <p>SAVCA respectfully requests that the Notice be amended/amplified specifically to exclude private equity FSPs from its ambit.</p> <p>Should the Notice not be amended in this manner, compliance officers of private equity FSPs would be placed in an unenviable situation of having to complete successfully not one but two level one regulatory examinations. The first level regulatory examination would cover topics that are not directly relevant to the private equity industry and would achieve no real objective since it will only be overtaken and superseded by another, more specific, regulatory examination at a later stage.</p>	<p>Noted.</p> <p>This Office will interact with SAVCA regarding its application for a specific exemption.</p>

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12		<p>An amendment of this nature would have the same effect as the effect achieved by the Notice on Exemption of Certain Persons from the Level 1 Regulatory Examination Requirements (Board Notice 102). In terms of Board Notice 102, the key individuals and representatives of private equity FSPs were exempted from the requirement to successfully complete a level 1 regulatory examination until a date to be determined by the Registrar, such date being, presumably, a date which would be determined shortly after the establishment of a specific FSP licence category for private equity FSPs. To the extent that the Registrar is not inclined to amend the Notice in line with SAVCA's submissions, SAVCA hereby applies for private equity FSPs to be exempted from the Notice when it enters into effect.</p>	
12	1, 3, 9 and 10	<p>We do not have any objections to the proposed changes.</p>	Noted.
13	10	<p>We recommend that the "or" in 5(b) should be changed to "with".</p>	Disagree.
14	General comment	<p>Section 17(1) of the FAIS Act prescribes that an FSP with more than one key individual or one or more representatives must appoint a compliance officer. This means that an FSP with only one key individual and no representative is allowed to conduct business without appointing a compliance officer. Would this requirement for a compliance officer to only complete the RE level one exams for key individuals not mean that a FSP does not need a key individual and a compliance officer since the compliance officer is now competent to fulfill the key individual role as well.</p> <p><i>"I am an ex compliance manager and an authority on compliance, having set both local international exams and study material on the subject. I have also trained material for RE1, 3 and 4 exams, having a 100% pass rate in the latter and a 96% in the former. I also have years of experience in the financial and banking services field. This means I am aware the skill sets vary considerably between a key individual and a compliance officer."</i></p> <p>A key individual has to manage and oversee the business of the FSP. In terms of the FAIS Act the following compliance officer roles are explicitly mentioned in the legislation:</p> <ul style="list-style-type: none"> • Monitor compliance with the FAIS Act; • Submit compliance reports and other compliance related reports to the Registrar; • Take responsibility for liaison with the Registrar; • Supervise the compliance function which is established by the FSP; • Act with diligence, care and degree of competency required from a compliance officer; 	<p>Noted.</p> <p>The purpose of the requirement is to ensure that compliance officers know and understand the requirements of the Act. It does not impact on the requirement that a FSP must appoint a compliance officer as set out in section 17 of the Act.</p>
			<p>Noted.</p> <p>The Registrar is of the view that this Office is not the best suited to develop an examination to test a compliance officer's knowledge and understanding of performing a compliance function. However, it remains the intention to ensure that compliance officers are competent to perform a compliance function. This Office is currently giving consideration to the development of a new competency framework for compliance officers</p>

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		<ul style="list-style-type: none"> Provide the FSP with written reports at least quarterly indicating the course of, and progress achieved with, compliance monitoring duties and make recommendations to the FSP. <p>While I appreciate the cost of development of a regulatory exam and this is a partial solution which addresses a long overdue requirement, I am saddened that the well thought out Annexure 1 of the qualifying criteria in Board Notice 127 of 2010 will not be used to test the requirements of this role. My humble opinion is that items 9 to 14 of this annexure 1 should be still applied.</p>	<p>that will ensure that compliance officers have the required skills in order to perform a compliance function.</p>

PROPOSED AMENDMENTS TO THE EXEMPTION IN RESPECT OF SERVICES UNDER SUPERVISION RENDERED BY COMPLIANCE OFFICERS

COMMENTATOR	PARAGRAPH	COMMENT / PROPOSED WORDING	REGISTRAR'S RESPONSE
1	1	<p>The proposed amendment appears to only provide for compliance officers who will commence rendering of services under supervision after Board Notice 126 has been amended. It is suggested that a transitional provision should be included for compliance officers that are currently approved to render services under supervision. For example, if a compliance officer is in his/her third year of rendering services under supervision, he/she will, on the date the amendment becomes effective, be in breach of the requirement to pass the regulatory exam within 2 years from the date of approval.</p> <p>Proposed wording: The following will apply to the period a supervisee renders services under supervision:</p> <p>(a) the maximum period any supervisee may render services under supervision is three years from date of approval;</p> <p>(b) the relevant period commences on the date the supervisee is approved to render services under supervision <u>a supervisee rendering services under supervision must successfully complete the applicable regulatory examination by 30 June after the expiry of 24 months from the date of approval;</u></p> <p>(bA) <u>supervisees approved on or before {a stipulated date} must successfully complete the applicable regulatory examination within 24 months from {that stipulated date};</u></p> <p>(c) any significant interruption (six consecutive weeks or longer) while obtaining the required experience and regulatory examination must be compensated for by arranging for an additional period for monitoring the rendering of services under supervision, equal to the period interrupted.</p>	Agree. The Notice has been amended to provide for a transitional period to allow persons currently working under supervision and who would be in breach of the 2 year requirement when the Notice comes into operation, additional time to pass the applicable regulatory examinations.
2	15	4	4
2	15	<p>Paragraph 4(4) refers to services under supervision, and subparagraph (b) to when supervision must start. In the proposed amendment paragraph (4)(b) must now be replaced by a subparagraph referring to the completion of the RE</p>	Disagree. Paragraph (4)(a), read with the definition of "approval" makes it clear that the period under supervision starts on the date a

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3		requirements. It is suggested to add this paragraph as paragraph 4)(d)	supervisee was first granted Phase I and Phase II approval. Paragraph 4)(b) was a duplication of paragraph 4)(a) hence the replacement.
8	4	It makes sense that the timeline for compliance officers rendering services under supervision to complete the relevant regulatory examination is aligned with the requirement for representatives under supervision to complete the examination. We, therefore, have no objection to the proposed amendment to paragraph 4.	Noted.
4	10	By substituting subparagraph 4(4)(b) there would be no indication as to the period of commencement of supervision. Alternatively by substituting subparagraph 4(4)(a), the period for completion of the regulatory examination would be defined, however, the maximum period of supervision will not be clarified. Subparagraph 4(4) deals in general with the period of supervision and we therefore respectfully suggest that the proposed subparagraph be included under subparagraph 4(3) which deals with the completion of the regulatory examination.	Disagree. See comment under item 2. In addition, the proposed new paragraph (b) relates to the period a person may work under supervision whilst completing the applicable regulatory examinations. Although a person can work under supervision for a maximum period of three years (eg. in order to meet the experience requirements) a person may only work under supervision for a period of two years in order to meet the regulatory examination requirements.
5	12	In our view, the insertion of this subparagraph is necessary as the period for completion of the exam is not addressed in the current notice. We consider the period awarded for completion of the regulatory examinations to be fair and sufficient and agree it creates uniformity when compared with the exemption granted to representatives.	Noted.
6	13	We do not have any objections to the proposed changes. Additional recommended changes to Board Notice 126 of 2010. The following recommendations do not form part of proposed amendments but as they form part of Board Notice 126 that is currently being reviewed, we thought it prudent to include our recommendations as part of this request for submissions. We recommend that the supervision requirement in paragraph 7(e) of Board Notice 126 of 2010 for compliance officers under supervision for Category 1 be changed from 3 to 2 years and that the Direct Supervision period, required in section 4(7)(e), be changed from 1 year to 6 months. The proposed regulatory examination requirements, and their proposed	Noted. Noted. The Registrar is reviewing Board Notice 127 and 126 of 2010 and the comment will be considered during that review.

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		<p>completion dates, will ensure that compliance officers under supervision have achieved the desired level of legislative knowledge before they apply for approval as compliance officer.</p> <p>It is submitted that the requirement that a compliance officer under supervision for Category 1 may not conduct unaccompanied monitoring during the first year for Category 1, provides a barrier for new entrants and deters Compliance Practices from appointing compliance officers under supervision. The requirement is also excessive and disproportionate when compared to other profession apprenticeships.</p>	