

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED EXEMPTION OF COMPLIANCE OFFICERS FROM SECTION 4(4) OF THE NOTICE ON QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL OF COMPLIANCE OFFICER, 2010


[Proposed amendments published for comment on 22 February 2017]

LIST OF COMMENTATORS

1	Barclays Africa Group Limited	5	Standard Bank
2	SDK Compliance Consultants (Sue Liebenberg)	6	Moonstone Compliance (Pty) Ltd
3	Dale Nussey (GTC Pty Ltd, FSP 731)	7	Masthead (Pty) Ltd
4	Hellmann Worldwide Supply Chain Services SA (Pty) Ltd		

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

COMMENTATOR		PARAGRAPH	COMMENT / PROPOSED WORDING	REGISTRAR'S RESPONSE
1.	5	2(2)	We request the removal of words such as "activities" and "ancillary services" from all sections, as they are not defined in FAIS (and it is unclear if such activities are governed by FAIS) and only the words "financial services" and "financial product" used, as they are all encompassing of the products and services governed by FAIS.	Disagree. The ordinary grammatical meaning of the phrase "ancillary services" applies. The word 'activities' is used in the Act, see for example the use of that word in the definition of 'key individual'.
2.	1	2(2)(a)	<p>Since the inception of the Act in 2002, technology has advanced to allow off-site monitoring to occur. For example photographic evidence of licenses being displayed, approved marketing elements, video / teleconferencing with management and review of customer documentation. Although the exemption recognised the use of technology and off-site monitoring tools in paragraph 2(a)(iii) and (iv) it does not explicitly exempt visiting branches and it appears to still be a requirement to visit a number of branches in person</p> <p><u>Proposal:</u> The Registrar should consider the role and reliance placed on technology during monitoring activities. For example, customer files per branch can be reviewed centrally but issues/matters are still detectable and should also be considered to be equivalent to a branch visit. We suggest it is not necessary for compliance officers or delegates to visit branches in person as</p>	<p>Noted.</p> <p>Branches were included in the Exemption, but to provide more clarity, "business premises" is now defined in the Exemption to make it clear that it includes premises of the business units and/or branches of the provider (including the representatives of the provider). It is important to note that a compliance officer is not exempted from having to visit branches. They are exempted from having to conduct a prescribed number of visits, subject to the conditions set out in the Exemption.</p>

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		monitoring can occur fully automated off-site.	 See new definition for "business premises".
3.	2	<p>2(2)(a)</p> <p>I do believe however that if there is a branch that the registered compliance officer (and not a clerk) themselves should visit it at least once per annum to ensure that the office is running in a professional and compliant manner.</p> <p>Where it is only a representative who is working without an office it could be possible to use technology, such as Skype or video call, to "see" the representative should this requirement remain in place.</p>	<p>Disagree. The Registrar is of the view that given the reasons set out in paragraph 3 of the Invitation to Comment on the Proposed Exemption of Compliance Officers from Section 4(4) of the Notice on Compliance Officers dated 22 February 2017, it is not necessary to prescribe a minimum number of visits. It is the responsibility of the Compliance Officer to determine the frequency and number of visits to business premises having regard to paragraph 2(2)(a) of the Exemption.</p>
4.	5	<p>2(2)(a)</p> <p>Recommend the removal of the words "sufficient" and "number", and rather say "conduct visits to the business premises of the provider, the frequency and number of which must be determined by having regard to..." - this means that each FSP will need to document and justify the number of visits they do make and therefore it is not necessary to use the word "sufficient" which we believe will cause confusion and detract from the risk based approach being encourage.</p>	<p>Disagree.</p> <p>The principle requirement is that a compliance officer must conduct sufficient visits to a provider's business premises. What would be regarded as sufficient will be determined by the factors set out in subparagraphs (1)(to (iv) of paragraph 2(2)(a) of the Exemption.</p>
5.	6	<p>2(2)(a)</p> <p>It is noted that the exemption only applies to the frequency of visits and reporting and that it does not extend to the requirement that all branches, business premises and business units be visited by the compliance officer.</p> <p>In our experience, it is the requirement to attend to all branches, business premises and/or business units of an FSP that drives the cost of delivery of compliance services, and ultimately, the associated costs to the FSP.</p> <p>The frequency of visits is less of a factor when a compliance practice determines its fees to an FSP. It is where all branches need to be visited, that it follows that travel time, travel expenses, accommodation and subsistence of compliance officers all contribute to the cost passed on to the FSP client. We also believe that very little additional compliance risk management is achieved at great cost to the FSP.</p> <p>We respectfully submit that the exemption should rather focus on this aspect, as many FSPs with a geographically distributed footprint already have systems in place whereby monitoring at a central point is possible. These are generally larger type FSPs with well-developed regional sales management teams, rules and procedures that can easily be monitored and reported on.</p> <p>Another example of where the geographical spread of an FSP becomes very problematic is in the assistance business space where typically, an administrator or an insurer with an FSP license,</p>	<p>Noted.</p> <p>The Exemption in its current form will result in a reduction of costs for FSPs due to the removal of the prescribed number of visits.</p> <p>Although the requirement that a compliance officer must still conduct visits remains, it is for the compliance officer to determine the frequency and number of those visits. Therefore, depending on the circumstances a compliance officer could only visit the branches of a provider eg. once in a three year cycle if he/she is satisfied that such frequency and number of visits is sufficient having regard to the factors set out in subparagraph 2(2) of the Exemption.</p> <p>The Registrar is reviewing the requirements applicable to compliance officers (Board Notice</p>



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		<p>appoints funeral parlours as juristic representatives on its license. Many of these juristic representatives run into the 100's and are located in inaccessible, very remote rural areas. This makes it economically and logistically impossible for compliance officers to visit these representatives. The result of this is that the compliance practices decline to contract with the administrator or insurer because of its inability to comply with the regulatory requirements at a realistic fee.</p> <p>The financial services being rendered at these parlours are very basic, and in many instances all transactions are centrally recorded and submitted. We have long held the view and have made many submissions to the office of the regulator that in these instances we believe that some form of exemption to the visitation requirement should be considered.</p> <p>We believe that a more desirable result will be achieved in exempting compliance officers from having to visit all branches, irrespective of the financial services being rendered there, and allowing the compliance practice to decide based on its own client risk rating and monitoring plan, which branches and premises need to be visited and at what frequency.</p> <p><u>Proposal:</u> We believe that Section 4(4) of the notice assists greatly in maintaining a minimum operational ability standard vis-à-vis the size and scope of FSPs with which a compliance practice may contract. Our proposal is therefore that:</p> <ul style="list-style-type: none"> • a minimum of a quarterly visit to the main business premises of any category of FSP remains a regulatory requirement; and • that the exemption in respect of the frequency of visits is only extended where the notice currently requires monthly visits, and then only on the basis as proposed in the exemption and on the same strict conditions; and • that compliance practices/officers are exempted from having to attend to all business premises, business units and/or branches, subject to the conditions proposed in the exemption and based on the compliance practice/officer's documented client risk rating methodology and monitoring plan. <p><u>Conclusion:</u> We are concerned that the provision of a blanket exemption will undo much of the good work that has been done since the inception of the notice. We believe that by implementing our proposals as contained above, the following results will be achieved:</p> <ul style="list-style-type: none"> ▪ the maintenance of a proper standard; ▪ ease of oversight; ▪ reduced supervisory oversight required by FSB resources; ▪ flexibility to deal with exceptions; 	<p>127 of 2010) and the requirements applicable to a provider insofar it relates to the establishment of a compliance function. The Registrar will consider to what extent the issues raised by the commentator can be considered without frustrating the achievement of the purpose of the requirement and good outcomes for clients.</p> <p>In addition to the above, see response under item 6.</p>

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		<ul style="list-style-type: none"> ▪ proper records of why exceptions were made; ▪ service commitments to which compliance practices can be kept; ▪ simplicity of process. <p>In this way we are convinced that the correct approach is followed as the regulator will be regulating for the rule and dealing with the exceptions.</p>	
6.	7	<p>2(2)(a)</p> <p>In light of the proposed exemption, we understand why the term '<i>sufficient visits</i>' is not defined. We therefore take it that the intent is for Compliance Officers or Practices to decide for themselves what is sufficient? However, we would like to reiterate our request for guidelines by the Regulator.</p> <p>It is not entirely clear how this proposal links in with the proposed Conduct of Business Report. In our view, smaller FSPs would need help from their compliance officers on a regular basis to ensure the Conduct of Business Report is understood and implemented, irrespective of the risk of the FSP.</p> <p>There is, in some sense, a disconnection between the size of an FSP and the level of compliance oversight and support required. From experience, it is often the smaller FSPs that rely most on the support from their compliance officers as they do not always have the same infrastructure and resources at their disposal that the larger FSPs have. Even if the level of risk related to size, complexity, etc, is less in the smaller FSP, which may allow for less frequent visits, reducing time spent with these FSPs will reduce coaching, education and awareness of these FSPs, which may in the long term compromise the level of compliance and, in turn, potentially increase the risk to customers.</p>	<p>Correct, a compliance officer will have to decide what is sufficient having regard to the factors set out in the conditions of the Exemption. If deemed necessary, the Registrar may issue guidelines. However, the Registrar does not intend to replace the on-site visit requirement or impose minimum on-site visit requirements through guidelines. It will defeat the purpose of the principle.</p> <p>It is important to note that the Registrar did not propose a decrease in the level of monitoring by a compliance officer of a provider's activities. The exemption merely removes the prescribed number of visits and frequency of such visits.</p> <p>The compliance officer will have to determine, based on the factors set out in the conditions, the number of visits that must be conducted on a particular FSP to ensure compliance with its responsibilities under the Act. The factors that must be considered do not only refer to the compliance risks of an FSP.</p> <p>It is important to understand that legislation is shifting from a rules based approach to a principle and outcomes based approach that is supported by rules mainly because –</p> <ul style="list-style-type: none"> • a one-size fits all approach is not appropriate in all circumstances; • it can cope with rapid changes in the business environment; • it prevents the development of a mechanistic, "box-ticking" approach; and • it can be applied to infinite variations in

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			<p>circumstances that arise in practice.</p> <p>In addition, the proposed new Fit and Proper Requirements specifically requires of an FSP to establish maintain, and apply adequate policies, internal systems, control and monitoring mechanisms to ensure that it and its key individuals and representatives are, <i>inter alia</i>, appropriately trained regarding the requirements of the Act and are aware of the procedures which must be followed for the proper discharge of their responsibilities in the performance of their functions.</p>	
7.	7	2(2)(a)(i)	<p>As mentioned, we would like to see guidance provided by the Regulator in respect of the <i>nature, scale and complexity</i> of financial services products, services, activities and markets. By way of example, in our view, FSPs licenced for subcategories 1.1 and 1.19 only, often have greater inherent risks in their practices as opposed to more complex, larger FSPs.</p> <p>We suggest that the FSB could help with data analysis from all the reports collected so that possible risk themes or hotspots can be identified and focused on.</p>	<p>See response under item 6.</p> <p>The commentator's suggestion is noted and will be considered.</p>
8.	7	2(2)(a)(ii)	<p>Linked to our comment above, the <i>market</i> in which these types of FSPs (those licenced for subcategories 1.1 and 1.19 only) typically operate may also be more vulnerable to undesirable practices.</p>	<p>See response under item 6.</p>
9.	7	2(2)(a)(iii)	<p>The term '<i>adequacy</i>' is not defined. Is it the intention that the Compliance Officers/Practices decide for themselves what is adequate? We request a guideline regarding what is viewed as 'adequate' by the Regulator.</p> <p>In addition, off-site monitoring sounds easy, but there are a number of variables that need to be considered. Again, linking to comments above, if "adequacy" were left to individual interpretation, we are concerned that acceptable standards could be compromised.</p>	<p>Correct.</p> <p>The ordinary grammatical meaning of the phrase applies. See further response under item 6.</p>
10.	7	2(2)(a)(iv)	<p>The way we read this, the Regulator's intention appears to allow for <i>off-site</i> monitoring to be conducted, where this is available, and a report provided to the FSPs.</p> <p>While we accept that the decision relating to the level of compliance monitoring, visitation, reporting etc. (based on the risk in the FSP) rests with the Compliance Officer/Practice, there may be situations where there is disagreement between the Compliance Officer and the FSP, and in this respect, we would suggest that the FSB considers a mechanism to help resolve an <i>impasse</i>.</p>	<p>The exemption does not remove the requirement that a compliance officer must conduct <i>on-site</i> visits. A compliance officer is only exempted from the prescribed number and frequency of on-site visits (subject to conditions). The Exemption allows the compliance officer only to determine the number and frequency of on-site visits that is sufficient having regard to the factors listed in paragraph 2 of the Exemption.</p> <p>It is important to note that it is the responsibility of the compliance officer who relies on the</p>

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			Exemption to ensure compliance with the requirements of the conditions of the Exemption. Failure to do so could result in regulatory action against that compliance officer.
11.	1	2(2)(b) The exemption introduces the term "relevant ancillary services". It is unclear what is meant with the term as it is not defined in the Notice on Compliance Officers or the Act. <u>Proposal:</u> We suggest "Relevant ancillary services" be defined to provide clarity.	Disagree. The ordinary grammatical meaning of the phrase applies.
12.	7	2(2)(b) We are comfortable with this condition. However, where there is additional work required in order to determine, based on the agreed compliance monitoring programme, the frequency of reporting and visits, this may incur extra costs in the set-up phase.	Noted.
13.	7	2(2)(c) We have no objection to this condition.	Noted.
14.	1	2(2)(d) The requirement that reporting should occur on a regular basis is left to the discretion of the Compliance Officer. <u>Proposal:</u> We suggest that the frequency of reporting is made explicit i.e. at least quarterly or twice a year	Disagree. The purpose of the Exemption is, <i>inter alia</i> , to provide for a regulatory framework that is proportionate, principles based and outcomes focused, in order to be in line with Government's stated objectives. To prescribe the frequency of the reporting will be in conflict with that purpose. What will constitute "regular" will be determined having regard to a particular FSP's circumstances (see factors listed under paragraph 2(2) of the Exemption) and the level and frequency of monitoring conducted by the compliance officer. It is important to understand that the reporting is not linked to the frequency of the on-site visits and that the Exemption does not reduce or propose to reduce the level of monitoring by a compliance officer.
15.	2	2(2)(d) With regard to the reporting I believe that the quarterly report should include the monitoring done for all sections of the FSP whether by accessing the FSP system for documents or receiving emailed copies of communications or voice log recordings on a regular basis.	Noted.
16.	5	2(2)(d) As the frequency of the visits will be determined by the nature and scale of the business, etc – the beginning of this section should be reword as follows - " (d) Submit reports to the provider in line with the frequency of monitoring exercises conducted, either through a visit or off-site, on at least the following:....."	Disagree. See response under item 14.

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17.	7	2(2)(d) We seek clarity on whether reporting should accompany all types of monitoring conducted, whether off-site or on-site at the same frequency as such monitoring, or whether reporting may be less frequent than the frequency of monitoring conducted. For example, if monitoring is conducted monthly via a mix of on-site and off-site monitoring, would it be sufficient to then only report quarterly, consolidating the findings?	See response under item 14.
18.	1	2(2)(e) <u>Proposal:</u> We suggest clarification be provided that this paragraph is only applicable to external compliance officers.	Disagree. The provision applies to all compliance officers that makes use of or relies on the exemption. In terms of Regulation 5 of the Financial Advisory and Intermediary Services Regulations, 2003, the FSP is responsible for the establishing of the compliance function as part of its risk management framework and must therefore be made aware that the compliance officer's activities will be based on this Exemption.
19.	5	2(2)(e) It is assumed that the notification of this exemption to the providers will be an once off exercise. Please confirm this is the correct interpretation. We note that the word "services" is used in this section, but has not been defined. We recommend that the word "compliance services" being used as that is defined in BN 127.	Correct, unless circumstances change. Disagree. Services used in the context of paragraph 2(2)(e) of the Exemption refers back to compliance services which is defined in the Exemption.
20.	7	2(2)(e) We have no objection to this requirement. However, we do wish to point out that in our view, Compliance Officers will face pressure from FSPs to reduce the frequency of monitoring and reporting in order to reduce the cost of compliance in their businesses. In our opinion, it will be the smaller FSPs, who are more price sensitive, who will be more likely to attempt to reduce these costs. It is also the smaller FSPs that may not have adequate systems available to enable off-site monitoring, if this is allowable, to be conducted. We have some concern that price sensitive FSPs may source a lower 'standard' of compliance services which will not, in our view, serve the objective of the Regulator. In our experience, all small FSPs are concerned about risk and the potential liabilities they face. Still, in our view the FSB needs to be able to regulate this in a way that ensures that the objectives are met without it becoming a free-for-all – eg. what if there is a difference of opinion between a Compliance Officer and an FSP regarding the level of risk and the number of visits? Where does the ultimate responsibility lie?	Noted. The compliance officer that makes use of the Exemption is responsible for ensuring compliance with the requirements of the conditions of the Exemption. Failure to do so could result in regulatory action against that compliance officer.

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21.	1	2(3)	<p>Due to the nature of the notification and the fact that it is open-ended this requirement seems very harsh without a dispute resolution process in place.</p> <p><u>Proposal:</u> We suggest that a consultative process be followed should the Registrar believe that insufficient monitoring and site visits have occurred.</p>	<p>Noted.</p> <p>This Office follows fair administrative process that includes affording impacted persons the <i>audi</i>. In addition, failure by a compliance officer to comply with the conditions of the Exemption could result in regulatory action against that compliance officer for failing to conduct the prescribed number of visits. During that process the compliance officer will also be given the opportunity to state its case.</p> <p> See amended wording of subparagraph 2(3) to clarify that exemption only lapse in respect of a particular compliance officer who does not comply with the conditions of the Exemption.</p>
22.	5	2(3)	<p>We kindly request that should the FSB find that an FSP is not meeting the conditions, that it follows the current processes to allow the FSP to rectify the deficiency before declaring that this exemption lapses for the affected FSPs.</p>	<p>Disagree. It is the compliance officer that must comply with the conditions of the exemption and not the FSP. See also response under item 21.</p>
23.	7	2(3)	<p>If an exemption were to lapse, would this mean that the frequency of compliance visits and reports required would <i>revert</i> to current requirements? If so, and with reference to our point above about a possible <i>impasse</i> between FSP and Compliance Officer, we believe there should be a mechanism or means (with the involvement of the FSB) to resolve this.</p>	<p>Correct.</p> <p>See responses under items 10 and 21</p>
24.	1	2(4)	<p>We seek clarification on why the exemption is in place only until 2018.</p> <p><u>Proposal:</u> We suggest the exemption be ongoing until the new regulatory framework is introduced.</p>	<p>Agree. The intention is that the exemption will only be in place until finalisation of the review of the requirements applicable to compliance officers. The Registrar intends to incorporate the principles set out in the Exemption into the new compliance officer framework.</p> <p> See amended expiry date.</p>
25.	5	2(4)	<p>We do understand that this is a temporary exemption but humbly request that the Registrar consider making this a permanent change to BN127. This will remove any concerns compliance officers have (as we do) in terms of needing to change monitoring programmes; process, systems and resources when this exemption expires.</p>	<p>See response under item 24.</p>
26.	7	2(4)	<p>While we understand that an exemption requires an 'end' date which can then be further extended, given the change in approach, we are of the view that a longer period of time should be allowed for the initial exemption period.</p> <p>Our comment here should also be read together with our comment above regarding the implementation date.</p>	<p>See response under item 24.</p>

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27.	1	General We thank you for the opportunity to comment on the Exemption of Compliance Officers from minimum prescribed intervals of site visits and reports. We are supportive of the exemption and the risk-based approach that is to be adopted in terms of the frequency of the monitoring visits to be done.	Noted.
28.	2	General I believe that the exemption will be of benefit to the Financial Services Providers in that they will not have to cover the costs of travel for Compliance Officers to see only one representative in a town away from their main office. This is a frequent occurrence for my compliance practice where the FSP who may be situated in Johannesburg may have one representative in places such as Cape Town, White River, Schweizer Reneke but whose communications and work is done on the central in-house electronic systems. This includes voice logging. The current requirement is not truly practical as the documentation, calls and other communications are generally monitored from the main branch and such visits can frequently turn into a time consuming and costly exercise to merely be able to state that a representative has been physically seen.	Noted.
29.	3	General From the annexed extract of minutes it will be noted that the topic under discussion has been debated as far back as 2015 with the Regulator. It must be emphasized that GTC has a national footprint with offices in Johannesburg, Cape Town, Durban and Kuruman. GTC is a centralized web – based business presently based in Johannesburg. All records are thus stored on a server at this location for the entire country. Uniformity across the entire country is ensured in that all new business proposals are prepared by GTC's Advisory Services Team which is also centralized and applied to all GTC advisors wherever they are based throughout the country to ensure consistency. We therefore submit that the proposed exemption does not go far enough in that it does not recognize the advancement of technology and the evolution of the way business is conducted in the modern era. Failure to recognize the application of technology merely increases the cost of doing business which will ultimately be passed on to the end user, i.e. the customer/client. In our view, therefore, the proposed exemption does not go far enough. We trust that our submission will enjoy your favourable consideration.	Noted. The comment of the commentator is not fully understood as the purpose of the Exemption is to recognise off-site access to data.
30.	4	General I have no objection and no further comments to the proposed exemption of Compliance Officers from section 4.4 of Notice on Compliance Officers.	Noted.

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31.	5	<p>General</p> <p>Standard Bank Group welcomes the proposed changes to the monitoring and reporting requirements under BN 127 of 2010. We support the principles and risk based approach being taken, which we believe aligns with the market conduct framework being developed. The reduction of costs and time spent on travelling to monitor will be significant, especially where off-site monitoring tools and data from the business premises are accessible remotely, is welcomed by compliance officers and business alike.</p> <p>We welcome an opportunity to be included in any workshop to be held with compliance officers, once all comments are received, to discuss and finalise the amendments.</p>	Noted.
32.	6	<p>General</p> <p>Moonstone Compliance has been involved in the provision of outsourced compliance services to Financial Services Providers ("FSPs") since the inception of the Financial Advisory and Intermediary Services Act ("FAIS Act") in 2004.</p> <p>Presently we employ 47 approved Compliance Officers and are contracted to render compliance services to approximately 1550 FSPs. In practice this relates to having oversight over the compliance function of approximately 9000 financial services intermediaries at various levels within our contracted client base.</p> <p>Moonstone Compliance is the only approved compliance practice that renders compliance services across all categories of FSPs and we have accumulated a vast amount of experience from interacting with the entire spectrum of FSPs in the South African context.</p> <p>It is for these reasons that we believe that we are uniquely positioned to provide comment on the day-to-day practicalities faced by the financial services compliance industry.</p> <p>We are grateful for the opportunity to provide comment and would like to thank the regulator for its ongoing interactions and consultations with the compliance industry.</p> <p>We commend the regulator in making concessions for greater flexibility for compliance officers in determining the monitoring requirements that they need to apply when performing their statutory duties.</p> <p>We agree that the compliance industry has reached a level of maturity where compliance officers can formulate their own risk-based approach when providing compliance services to FSPs. However, we believe that regulatory supervision and oversight of these activities remains paramount.</p> <p>We are mindful of the reasoning behind why the requirement to establish a compliance function and the compliance officer's role in this regard, was specifically provided for in the FAIS Act. That reason is and remains the protection of the consumers of financial products.</p> <p>Our main concern with the proposal is that in its current form, the blanket application of the exemption may have a negative impact on the very aspect of consumer protection.</p>	<p>Noted.</p> <p>Noted. See response under item 6. The Registrar will monitor the application of this Exemption by compliance officers and will take</p>

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		<p>It is acknowledged that since 2004 many compliance practices, such as Moonstone Compliance, have built up the necessary professional resources, knowledge and most importantly, the operational ability to effectively perform oversight of their clients' compliance function. However, to suggest that all compliance practitioners and/or practices have the required resources or operational ability to perform this function would be naive.</p> <p>Our concern is that by providing a blanket exemption an undesirable opportunity, where compliance practices that simply do not have the necessary infrastructure or adequate resources to provide effective and adequate compliance oversight, will begin to present itself. This will undoubtedly result in a negative outcome for consumers.</p> <p>It is accepted that the exemption provides for strict requirements to be complied with by any person wishing to make use of the exemption and that it may be withdrawn in certain circumstances. However, our concern is a practical one. We are mindful of the FAIS Supervision Department's ability to effectively oversee compliance with these requirements due to the limited resources available to it. These same overburdened resources are already tasked with the oversight of approximately 11,000 FSPs.</p> <p>Moonstone maintains the view that it is appropriate for an external compliance officer to conduct regular visits to the business premises of an FSP at a minimum of a quarterly interval. In fact, in many instances it is quite evident that more frequent visits are required in order to effectively oversee the compliance function with some of our clients.</p> <p>The demonstrable ability of a compliance practice to meet this requirement should in our view remain part of the notice.</p>	<p>regulatory action against those compliance officers who do not meet the requirements or conditions of the Exemption.</p>
33.	7	<p>General</p> <p>The Masthead Financial Advisors Association ("the Association") is an association of ±4,500 independent financial advisors. What makes the members of Masthead independent is the fact that they work for themselves and they act under FSB issued licences. Independent financial advisors ("advisors") represent or are mandated to act for an authorised Financial Services Provider through which they provide advice and/or intermediary services to customers. A large percentage of the FSPs which form part of the Association are smaller in size and in some cases may consist only of an advisor and one or two staff members.</p> <p>Masthead (Pty) Ltd is a registered compliance practice and delivers compliance services to ±1'750 FSPs. As such, our inputs/commentary in relation to the proposed exemption from section 4(4) of the Notice of Compliance Officers comes primarily from that of a compliance practice.</p> <p>We therefore have two constituencies and in providing feedback, we have tried to present and balance our comments from a compliance practice and from the perspective of small independent FSPs. We have also tried to test/judge whether this exemption will achieve the objectives as set out in the Invitation to Comment.</p> <p>Masthead supports regulation that is appropriate, is cost effective to implement, and is easy to</p>	<p>Noted.</p>

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		<p>administer or follow. We are also in favour of amendments to regulation which result in fair outcomes to customers and contribute to the sustainability of the financial services industry as a whole.</p> <p>The objective of appointing a Compliance Officer is to ensure that there is oversight of an FSP's compliance function and to monitor compliance with the FAIS Act. In addition, we believe that having this compliance function delivered externally has advantages of being objective, neutral, and at arm's length.</p> <p>With this as the objective, and in light of the proposed exemption, we believe that it is inconsistent to continue to allow sole proprietors to be exempt from appointing a compliance officer in terms of s17(1)(a) of the FAIS Act. The proposal exempts compliance officers from a minimum number of visits, with the objective of being proportionate, principles-based and outcomes focused. The person charged with the assessment of risk and therefore recommending or justifying the number of visits (based on a risk assessment) is the compliance officer. We therefore find it inconsistent that sole proprietors can monitor, assess and report on their own FSP's risk. This, in our view, is a very conflicted position.</p> <p>We believe that the oversight objective can be met by the quality of the compliance service delivered/offered which should address all areas of the financial services activities of the FSP, rather than by the quantity of compliance visits undertaken. While we don't see quality as necessarily correlated to frequency of visits, we do believe that quantity/frequency adds some assurance, especially in the absence of guidelines as to what quality is. At the same time, we suggest that too little frequency can work against the regulatory objective of proactive risk management. Less frequent visits, even if the quantity or quality of work remains the same, will result in fewer opportunities for identifying issues and implementing corrective steps, thus limiting the opportunity to avoid risks and poor outcomes for customers.</p> <p>We are, however, in general, supportive of the proposed exemption but wish to highlight some areas of concern which we believe should receive careful consideration:</p> <p>Consistency</p> <p>We believe that in order to achieve the regulatory objectives, consistency and standardisation are important. The trick is to balance this with the regulatory intent of fewer rules and more principles. In our view, going too principle-based with not enough rules, or at the very least guidelines, creates the potential for vagueness and therefore greater openness to individual interpretation and a greater chance/risk for inconsistency. The more inconsistency, the more uncertainty and that, in our view, works against the regulatory objectives. One needs to strike a balance between rigid rules on the one hand/extreme and broad principles (which are open to subjective interpretation) on the other.</p> <p>Although currently, other than the frequency/interval of compliance visits, the manner in which monitoring is conducted is left to the individual Compliance Officers/Practices to determine, there is some concern that by allowing each Compliance Officer/Practice to also decide on the frequency of visits/monitoring and reporting to each FSP, will increase the potential for</p>	<p>Noted. The removal of the exclusion referred to in section 17(1)(a) of the Act will require an amendment to the Act.</p> <p>Noted. See response under item 6.</p> <p>The Registrar will monitor the application of the Exemption by compliance officers for abuse and, if deemed necessary, will issue guidelines and/or take regulatory action.</p>

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		<p>inconsistency across the industry.</p> <p>External (financial) auditors subscribe to a set of accounting standards (International Financial Reporting Standards - IFRS) which were developed to be a global standard for the preparation of public company financial statements. This set of standards provides a benchmark to be able to assess and compare entities that are subject to audit - it is not left up to every auditor to interpret the requirements. They provide the rules or guidelines to ensure consistency.</p> <p>We would, therefore, suggest that the Regulator provide clear guidelines setting out the Regulator's view of risk across the different financial products, financial services activities and those customers which are, in the view of the FSB, more vulnerable to poor levels of compliance, in order to ensure that there is guidance on the interpretation of risk, nature, scale and complexity of a provider's business. This will ensure a more consistent application of the interpretation of risks across the different Compliance Officers/Practices and will also provide customers with confidence that similar types of entities are being measured against the same set of standards.</p> <p>Costs</p> <p>As already mentioned, we are in favour of regulation that is cost effective. However, as compliance is in many instances a '<i>grudge</i>' purchase, we are concerned that, although the exemption applies to compliance officers, there will be pressure by FSPs to lower/reduce the compliance monitoring conducted in order to drive down price, which is integral to the cost of doing business. This could, on the whole, result in a lower standard of compliance monitoring which should, in our view, be guarded against. We welcome ways to reduce costs of doing business, and while a reduction in the cost of compliance will be beneficial to FSPs, this must be balanced with the right level (and quality) of compliance monitoring to ultimately contribute to the necessary protection for customers.</p> <p>We fear that failure to do this creates an opportunity for regulatory arbitrage – FSPs may seek out the compliance shop that “sells them” what they want, which is the lowest number of visits with consequent lower/lowest cost. This, in our view, works against the regulatory objective of consumer protection. In this case price and not risk management become the driver of decisions. Therefore, we again, urge the Regulator to put clear standards/guidelines in place in order to ensure that increased competitiveness does not prejudice the quality of compliance services. These standards/guidelines could emanate from regulators experiences regarding the areas of risk (to TCF) that they see in the audit reports that are submitted annually by FSPs.</p> <p>In considering the cost impact of the proposed exemption, we would urge the regulator to also consider whether there may be any impact on the cost and/or level of cover offered by PI providers, particularly in the absence of clarity on prescribed compliance processes, consistency and the ability to compare like for like.</p> <p>Business models</p> <p>The regulator should take cognisance of the fact that compliance businesses have been modelled on the current regulatory requirements. A change in the manner in which compliance services can be delivered will require a strategic shift in the business' approach and will, in all likelihood,</p>	<p>Disagree. A compliance officer who is not able to comply with all conditions of the Exemption cannot make use of the Exemption until such time it is able to do so. Therefore, the commencement date of the Exemption should not have any unintended or unforeseen consequences.</p> <p>Noted. Linking of only a practice to an FSP is currently not allowed under the law. The Registrar is reviewing the compliance officer</p>

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		<p>impact on current income and cost structures. For consultation to take place now, with a view to implementing in the middle of 2017 feels like this is being rushed and we are concerned about unintended and/or unforeseen consequences.</p> <p>Further, as compliance practice business models will have to evolve to ensure the most efficient utilisation of resources, both on and off-site, we believe that the FSB's systems would need to change in order to accommodate linking a compliance practice to an FSP, rather than a specific compliance officer so that appropriate resources can be assigned, and changed, according to the changing needs of the FSP without additional cost to the compliance practice and the FSP. It is also our view that in an effort to ensure the compliance practice remains viable, the compliance practice, including back office staff should be provided with 'access' to the FSB's e-portal system.</p> <p>As already mentioned, we have no principle objection to this exemption as we believe it will allow proportionate, appropriate and cost effective delivery of the required compliance services to providers. We also welcome specific reference to facilities that relate to remote monitoring. However, we have concerns which have been highlighted in para 2 above and which we believe, should receive consideration by the Regulator.</p> <p>As a final comment, while we welcome the shift to principles-based and outcomes-focused regulation which is proportionate, we believe that one cannot make changes without carefully considering the full impact on all stakeholders within the industry and the potential impact of increased competition or compliance arbitrage on customer outcomes.</p>	<p>requirements and will consider the commentator's comments regarding the linking of only a practice as part of that review process.</p> <p>Noted.</p> <p>Noted.</p>