

**BOARD NOTICE 102 OF 2004****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002  
(ACT NO. 37 OF 2002)****NOTICE ON SPECIFIC CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES  
PROVIDERS AND REPRESENTATIVES CONDUCTING SHORT-TERM DEPOSIT BUSINESS,  
2004**

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 15(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002)-

- (a) repeal the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2003, as published by Board Notice 123 of 2003 in Gazette No. 25629 of 24 October 2003; and
- (b) replace the said Code with a new Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2004, as set out in the Schedule hereto.



**J. VAN ROOYEN,**

*Registrar of Financial Services Providers*

## SCHEDULE

### CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND THEIR REPRESENTATIVES CONDUCTING SHORT-TERM DEPOSIT BUSINESS, 2004

#### ARRANGEMENT OF PARTS

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#### PART I

#### INTRODUCTORY PROVISIONS

##### Definitions

- In this Code "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act shall have that meaning, and, unless the context indicates otherwise –

"advertisement", in relation to a provider, means any written, printed, electronic or oral communication (including a communication by means of a public radio service) which is directed to the general public, or any section thereof, or to any client on request, by a provider, which is intended merely to call attention to the marketing or promotion of short-term deposit business offered by the provider, and which does not purport to provide detailed information regarding any such business; and "advertising" or "advertises" has a corresponding meaning;

"client" means a client in respect of short-term deposit business;

"deposit" means a financial product referred to in the definition of "short-term deposit business";

"provider" means an authorised financial services provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), conducting short-term deposit business and includes, where appropriate, any representative of the provider;

“short-term deposit business”, in respect of a provider, means the rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of “financial product” in section 1(1) of the Act, with a term not exceeding 12 months;

“transaction requirement” means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a provider by or on behalf of a client, relating to the investment in any deposit, including any amendment or variation thereof;

“writing” includes communication by telefax or any appropriate electronic medium which is accurately and readily reducible to written or printed form; and “written” has a corresponding meaning.

#### **Application of Act**

2. The Act, including any measure or decision referred to in the definition of “this Act” in section 1(1) of the Act, but excluding any other code of conduct contemplated in that definition, than this Code, shall apply in respect of any provider, deposit, short-term deposit business and client.

#### **Construction**

3. This Code must, subject to section 2, be construed-
  - (a) in a manner conducive to the promotion and achievement of the objectives of codes of conduct as stated in section 16 of the Act; and
  - (b) as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.

#### **Application of Code**

4. The provisions of this Code apply to any provider when conducting short-term deposit business in relation to clients.

**PART II****GENERAL DUTIES OF PROVIDERS****Unsolicited contacting of client**

5. A provider must, in the event of unsolicited contacting of a client—
- (a) in making contact arrangements, and in all communications and dealings with a client, act honorably, professionally and with due regard to the convenience of the client; and
  - (b) at the commencement of any such contact, visit or call initiated by the provider, explain the purpose thereof.

**General duties of provider**

6. A provider must, subject to the provisions of this Code—
- (a) act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;
  - (b) ensure compliance with this Code in all communications and dealings with a client, and make copies of this Code available to clients on request;
  - (c) make relevant information available in plain language, avoid uncertainty or confusion and not be misleading;
  - (d) not request a client to sign any written or printed form or document or any transaction requirement unless all details required to be inserted thereon by the client or on behalf of the client have been completed and, where the client requested completion of documentation on the client's behalf, it is a true reflection of the information provided by the client;
  - (e) ensure that its relevant staff members comply with this Code;
  - (f) maintain adequate internal complaints procedures.

**Other information and explanations**

7. A provider must—
- (a) ensure that contractual terms and conditions are fair in substance, and clearly distinguishable from marketing or promotional material,

and set out the applicable rights and responsibilities of the client clearly;

- (b) when furnishing advice to a client, make reasonable enquiries to assess the client's financial needs and objectives, having regard to the circumstances of the client and the type of deposit on which advice is being given;
- (c) in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:
  - (i) The key features of the deposit, including recommended safety measures, in order to assist the client to make an informed choice, also including any applicable cooling-off periods;
  - (ii) how a relevant account with the provider will operate, including information on withdrawal of funds, and any applicable special procedures and safeguards;
  - (iii) applicable fees and charges, including whether they will be negotiable or not, and of any applicable additional charges or interest in case of early withdrawals or cancellation;
  - (iv) the manner in which funds may be dealt with at maturity;
  - (v) regarding required client identification and verification documents when opening an account or when transacting on an account, and availability of unique identification methods which may include PINS and passwords;
  - (vi) when account details may be passed to, or required checks may be made with, credit risk management services and other legally relevant entities;
  - (vii) closing of branches to clients of that branch;
  - (viii) closing of deposit accounts of clients, which must only be effected after reasonable prior written notice at the last address of the client furnished to the provider and without prejudice to any legal rights of a client in respect thereof: Provided that it will be permissible to effect closing of accounts without prior notice to the client, if and when so required by law.

**Account operations****8. A provider must-**

- (a) where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client, unless otherwise agreed;
- (b) inform a client that there are-
  - (i) charges to be levied on furnishing of account statements (if any);
  - (ii) procedures to be followed by a client in case of statement errors;
  - (iii) procedures to be followed by a client whenever changes in personal identification or addresses occur; and
  - (iv) safeguards and essential precautions to be implemented, followed and taken in connection with telephonic and electronic banking services in respect of deposit accounts.

**PART III****CONFIDENTIALITY AND PRIVACY****9. A provider-**

- (a) may not disclose private information on a client to any other person, except-
  - (i) under compulsion of law;
  - (ii) where it would be in the public interest;
  - (iii) where the interests of the provider require disclosure; or
  - (iv) where disclosure is made at the client's request or with the client's written consent;
- (b) must inform a client of recording of telephonic conversations with the client (if any), and of the reasons therefore; and

- (c) must keep documents relating to transactions with clients for a period of not less than five years from the date the transaction is concluded.

#### PART IV

#### ADVERTISING

10. (1) An advertisement by any provider regarding a deposit must-
- (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
  - (b) if it contains-
    - (i) performance data (including awards and rankings), include references to their source and date;
    - (ii) illustrations, forecasts or hypothetical data-
      - (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
      - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
      - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
    - (iii) a warning statement about risks involved in buying or investing in a deposit, prominently display such statement;
    - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
  - (c) if the investment value of a deposit mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

- (2) Where a provider advertises a deposit by telephone-
- (a) an electronic, voiceloggged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;
  - (b) a copy of all such records must be provided on request by the client or the registrar within seven days of the request;
  - (c) the client must be provided with basic details (such as business name and telephone number or address) of the provider, and of its relevant compliance department.
- (3) Where a provider advertises a financial service or product by means of a public radio service, the advertisement must include the business name of the provider.

## PART V

### COMPLAINT RESOLUTION

#### General

11. (1) In this Part-

“complaint” means a complaint as defined in section 1(1) of the Act (excluding the reference to section 26(1)(a)(iii) thereof), submitted by a client to a provider for purposes of resolution by the provider;

“internal complaint resolution system and procedures”, in relation to a provider and a client, means the system and procedures established and maintained by the provider in accordance with this Code for the resolution of complaints by clients;

“Ombud” means the Ombud for Financial Services Providers referred to in section 20(2) of the Act;

“resolution”, or “internal resolution”, in relation to a complaint and a provider, means the process of the resolving of a complaint through and in accordance with the internal complaint resolution system and procedures of the provider;

"Rules" means the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, as published in the *Gazette*.

- (2) A provider must-
- (a) request that any client who has a complaint against the provider must lodge such complaint in writing;
  - (b) maintain a record of such complaints for a period of five years;
  - (c) handle complaints from clients in a timely and fair manner;
  - (d) take steps to investigate and respond promptly to such complaints; and
  - (e) where such a complaint is not resolved to the client's satisfaction, advise the client in terms of the Act or any other law.

#### **Basic principles of systems and procedures**

12. A provider, excluding a representative, must maintain an internal complaint resolution system and procedures based on the following:
- (a) Maintenance of a comprehensive complaints policy outlining the provider's commitment to, and system and procedures for, internal resolution of complaints;
  - (b) transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;
  - (c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephonic or electronic helpdesk support; and
  - (d) fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.

#### **Resolution of complaints**

13. The internal complaint resolution system and procedures of the provider, excluding a representative, must be designed to ensure the existence and

maintenance of at least the following for purposes of effective and fair resolution of complaints:

- (a) Availability of adequate manpower and other resources;
- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, the Rules and this Code with regard to resolution of complaints;
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary; and
- (f) no levying of any fee on any client for the utilisation by the client of the internal complaint resolution system and procedures of the provider, nor for any efforts of the provider to facilitate and resolve any complaint.

#### **Specific obligations**

14. (1) Subject to the other provisions of this Part, the internal complaint resolution system and procedures of a provider, excluding a representative, must contain arrangements -
- (a) which-
    - (i) reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;
    - (ii) provide that access to the procedures is at all times available to clients at any relevant office or branch of the provider, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;
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- (iii) include in the details envisaged in subparagraph (i), a reference to the duties of the provider and the rights of a client set out in Rule 6(a) and (b) of the Rules;
  - (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and
  - (v) include in such details the name, address and other contact particulars of the Ombud;
- (b) stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
- (c) provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and is properly internally recorded by the relevant staff for purposes of compliance with section 18(b) and (d) of the Act;
- (d) make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-
- (i) the complaint receives proper consideration;
  - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
  - (iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
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- (2) In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.

## **PART VI**

### **MISCELLANEOUS**

#### **Waiver of rights**

15. No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

#### **Short title and commencement**

16. This Code is called the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposit Business, 2004, and comes into operation on the date determined by the Minister under section 7(1) of the Act.
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