

BOARD NOTICE OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****DETERMINATION OF CRITERIA AND GUIDELINES FOR THE APPROVAL
OF COMPLIANCE OFFICERS**

I,, Registrar of Financial Services Providers, acting on authority of the Advisory Committee on Financial Services Providers, hereby make known for general information that the said Advisory Committee has under section 17(2) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determined the criteria and guidelines for the approval under the said section of compliance officers, as set out in the Schedule.

J VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

CRITERIA AND GUIDELINES FOR THE APPROVAL OF COMPLIANCE OFFICERS BY THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Definitions

1. In this Schedule “the Act” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning has been assigned in the Act, read with the definition of “this Act” in section 1(1) of the Act, shall have that meaning and, unless the context otherwise indicates –

“**applicant**” means the authorised financial services provider applying to the registrar for approval of an appointee;

“**appointee**” means a natural person or a person envisaged in the definition of “compliance officer” in paragraph 1 of the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2002, to be approved by the registrar as compliance officer to monitor, as envisaged in section 17(1)(a) of the Act, compliance with the Act by the applicant and any representative of the applicant, and includes any co-appointee to be so approved.

Criteria and guidelines for approval

2. The registrar must, on receipt of an application by an authorised financial services provider for the approval of a compliance officer, submitted in accordance with the provisions of Chapter IV of the Financial Advisory and Intermediary Services Regulations, 2002, consider the application on the basis of all information disclosed in the application, or otherwise obtained in terms of the Act, relating to the proposed appointee, with due regard to the provisions of the said Chapter IV, and the following criteria and guidelines:
 - (a) Whether the business of the applicant concerned complies with any requirements for the compliance function as prescribed in the Chapter IV of the said Regulations;
 - (b) whether the applicant will be able to comply with section 17(3) of the Act as regards establishment of compliance procedures;
 - (c) whether the appointee–
 - (i) (where applicable) has the qualifications and experience determined under section 17(1)(b) of the Act;

- (ii) complies with the same fit and proper requirements as regards personal character qualities of honesty and integrity as those determined under section 8(1)(i) of the Act for financial services providers;
- (iii) has sufficient and appropriate knowledge of the provisions of the Act, and particularly of all duties and obligations imposed on the applicant in terms of the Act, and of duties and obligations to be discharged by the applicant in the enforcement of any rights granted by the Act;
- (iv) will, as regards the relevant business, have adequate resources available to ensure proper compliance monitoring, including as regards the activities of any representative, and have and be permitted direct access to, and demonstrable support from, the senior management of the business and in respect of any representative;
- (v) will be able to function adequately independently or objectively;
- (vi) will be able to function, as regards the internal organisational structure of the business, in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees and, in particular the internal audit and control functions, and as regards the functions of any representative;
- (vii) will be able and enabled to keep written records of all activities undertaken in the course of compliance monitoring, to provide the provider concerned with written reports on at least a quarterly basis on the course of, and progress achieved with, such monitoring duties and to make recommendations to the applicant as regards any aspect of the required compliance or the monitoring functions; and
- (viii) will be able to liaise directly with the registrar particularly as regards reporting required in terms of section 17(4) of the Act.

Discretions of registrar

3. In the exercise of the approval function, the registrar is vested with a discretion and may grant an approval in a particular case notwithstanding

that the registrar is not satisfied that any particular criterium or guideline set out in paragraph 2 is fully met in any such case: Provided –

- (a) that the registrar shall not grant an approval where non-compliance with paragraph 2(a), (b) or (c)(i), (ii), (iii) or (vii) is found;
- (b) that the registrar may refer any other particular application, or any aspect thereof, to the Advisory Committee for advice; and
- (c) that the registrar may at any time submit a proposal to the Advisory Committee for consideration of any so proposed deletion, amendment, addition or substitution of a provision of this Schedule.

Short title

4. This Determination is called the Determination of Criteria and Guidelines for the Approval of Compliance Officers, 2002, and comes into operation on the date determined by the Minister under section 7(1) of the Act.