

**BOARD NOTICE 124 OF 2009
FINANCIAL SERVICES BOARD**

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)**

**DETERMINATION OF COMPLIANCE REPORT FOR AUTHORISED FOREIGN
FINANCIAL SERVICES PROVIDERS, 2009**

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of foreign financial services providers must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

- (a) A written report for the reporting period, conforming to the schedule attached hereto, or in the prescribed electronic format determined by the Registrar, must be submitted by 31 October 2009.
- (b) Answers should not be provided in columns that are shaded in grey in the schedule.
- (c) In this Notice and the schedule, unless the context indicates otherwise –
- (i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);
 - (ii) "Code of Conduct" means any Code published under section 15 of the Act;
 - (iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
 - (iv) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
 - (v) "Foreign FSP or foreign financial services provider" means a financial services provider that is not domiciled in the Republic of South Africa;
 - (vi) "Forex Investment Business Code of Conduct" means the Code of Conduct for Authorised Financial Service Providers, and their Representatives, involved in Forex Investment Business, 2004;

- (vii) "FSP" or "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;
- (viii) "General Code of Conduct" or "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;
- (ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
- (x) "reporting date" means 31 August 2009;
- (xi) "reporting period" means the period from-
 - (aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or
 - (bb) the first day of the month following the reporting period for the 2008 compliance report,whichever is the later date, until the reporting date.

This Determination is called the Determination of Compliance Report for Foreign Financial Services Providers, 2009, and comes into operation on the date of publication thereof.

D P TSHIDI

D P TSHIDI,
Registrar of Financial Services Providers

SCHEDULE

Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) ("the Act") by Foreign Financial Services Providers for reporting period ended 31 August 2009

Scope

In accordance with section 17(4) of the Act, I/we (the approved compliance officer(s) of the financial services provider) ("the FSP") or the sole proprietor or key individual of the FSP if no compliance officer(s) is required hereby report as follows as regards compliance with the Act by (full name of the FSP and the FSP Number) and any representatives of the FSP, for the reporting period (date reporting period started) to 31 August 2009

Question		Column				
		1	2	3	4	5
		Yes	No	Not Applicable	Developed/Partial/Other	Note No. Comment/Amendment
SECTION 1: GENERAL						
1	Conditions and restrictions imposed, made, given or issued by Registrar Section 3(1) (a) and 3(3) (b) of the Act					
1.1	Does the FSP have procedures in place to ensure that it can comply with condition 1 of the licensing conditions?					
1.2	Does the FSP verify in all instances that any other FSP that it gives an instruction to, or receives an instruction from, is authorised to render the specific financial services in South Africa without any restrictions in its licence in relation to the specific financial product?					
1.3. Financial products in respect of which FSP renders financial services						
<i>Condition imposed by the Registrar in terms of section 3(4) of the Act</i>						
1.3.1.	Is the FSP regulated in terms of any other Act (locally or in its home jurisdiction)? (Please note that this does not include membership of professional bodies.)					

1.3.2.	<i>If the answer to Question 1.3.1 is YES -</i> Provide details of the Regulators (Name of Regulator and registration and/or licensing number with Regulator, if applicable) in a separate annexure and indicate the annexure number in column 5.					
1.3.3.	Does the FSP render financial service on any financial product in South Africa that is not specifically defined in the Act or regulated in terms of any other legislation?					
1.3.4.	<i>If the answer to Question 1.3.3 is YES -</i> Provide details of the financial products concerned in a separate annexure and indicate the annexure number in column 5.					
1.4.	Financial products in respect of which FSP renders financial services <i>Authorisation in terms of the licence of the FSP</i>					
1.4.1.	Does the FSP have procedures in place to ensure that the rendering of financial services are done within the limitation on categories and sub-categories for which the licence is issued?					
1.4.2.	Did any non-compliance occur in respect of the limitation on categories and sub-categories during the reporting period?					
1.4.3.	<i>If the answer to Question 1.4.2 is YES -</i> Provide details of any non-compliance in a separate annexure and indicate the annexure number in column 5.					
2.	Group structure					
2.1	Does the FSP form part of a group of companies and/or have service level agreements with other financial services providers within the group? Provide full details of the group (organogram or diagram as well as relation to one another) in a separate annexure and indicate the annexure number in column 5.					
3.	Key individuals <i>Section 8(1) and 8(4)(b) of Act and Determination of Fit and Proper Requirements for Financial Services Providers</i>					
3.1	Are the people involved in a managing/overseeing function in relation to the rendering of financial services in South Africa, appointed as key individuals?					
3.2	In a separate annexure, provide information on the organogram/structure with regards to key individuals (what position they have in the organisation, where they are situated). Indicate the annexure number 5.					
3.3	Does the FSP have procedures in place to ensure that it complies with section 8(4) (b) of the Act in the case of replacement of key individuals?					

4. Representatives <i>Sections 13 and 14 of the Act</i>					
4.1	Does the FSP have representatives? If YES, questions 4.2 to 4.5 must be answered.				
4.2	Provide the number of representatives in column 5.				
4.3	Does the FSP have any juristic representatives?				
4.3.1	<i>If the answer Question 4.3 is YES-</i> Does the FSP have an agreement with each juristic representative?				
4.3.2	Are all employees of the juristic representative that are rendering financial services on behalf of the provider, appointed as representatives of the provider in terms of section 13 of the Act?				
4.4	Does the FSP have procedures in place (including documentation) to enable representatives to provide clients with confirmation, as certified by the provider, of their status as representative as provided for in section 13(1)(b)(i) of the Act?				
4.5. Debarment of representatives <i>Section 14 of the Act</i>					
4.5.1	Does the FSP have procedures in place to debar a representative, if necessary?				
5. Insurance cover <i>Sections 5(a) and 13 of the General Code of Conduct</i>					
5.1	Does the FSP have professional indemnity cover? If yes, provide the extent (numeric amount and currency) of the cover in column 5.				
5.2	Does the FSP have fidelity insurance cover? If yes, provide the extent (numeric amount and currency) of the cover in column 5.				
5.3	Does the FSP have guarantees in place? If yes, provide the extent (numeric amount and currency) of the guarantees in column 5				
5.4	Does the FSP disclose to clients whether it holds guarantees or professional indemnity or fidelity insurance cover?				
6. Compliance function <i>Section 17 of the Act and Chapter IV of the Regulations</i>					
6.1	Is the compliance function established as part of the risk management framework of the business of the FSP in compliance with section 17(3) of the Act and Regulation 5?				

7. Maintenance of records <i>Section 18 of the Act</i>							
7.1	Does the FSP have appropriate procedures and systems in place to record the information contemplated in section 18 of the Act?						
8. General Code of Conduct							
8.1. General provisions							
8.1.1.	Does the FSP have an internal policy/policies with regard to conflict of interest?						
8.1.2.	Did the FSP or any of its employees receive non-cash incentives and other indirect considerations in terms of the internal policy/policies from product suppliers?						
8.1.3.	Did the FSP disclose to its clients any non-cash incentives and other indirect considerations received where applicable in terms of the internal policy/policies?						
8.2. Disclosure requirements <i>Sections 4, 5 and 7 of the General Code of Conduct</i>							
8.2.1.	Does the FSP have procedures in place to ensure that the disclosure documentation complies with sections 4 and 5 of the General Code of Conduct?						
8.2.2.	Does the FSP have procedures in place to ensure that the disclosure documentation complies with section 7 of the General Code of Conduct?						
8.2.3.	Does the FSP disclose the following information to the client in writing:						
	8.2.3.1 The name, class or type of financial product concerned;						
	8.2.3.2 The nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerage which will or may become payable to the provider, directly or indirectly, by any product supplier or any other person as a result of the financial service concerned;						
	8.2.3.3 Any material or investment risk associated with the product concerned;						
	8.2.3.4 Extent of monetary obligations assumed by the client, the frequency thereof and consequences of non-compliance concerned.						

8.3. Furnishing of advice and record of advice Sections 8 and 9 of the General Code of Conduct						
8.3.1	Is the FSP licensed to furnish advice in South Africa?					
8.3.2	Did the FSP render advice in South Africa as a regular feature of its business during the reporting period?					
8.3.3 If the answer to question 8.3.2 is YES –						
8.3.3.1	Does the FSP have procedures in place to ensure that an analysis of the client's financial situation and objectives are performed before advice is furnished?					
8.3.3.2	<i>If the answer to Question 8.3.3.1 is NO -</i> In a separate annexure, provide details on how these procedures will be put in place. Indicate the annexure number in column 5.					
8.3.3.3	Does the FSP keep a record of advice and provide it to its clients in accordance with section 9 of the General Code of Conduct? Provide details of non-compliance in a separate annexure and indicate the annexure number in column 5.					
8.4. Custody of financial products and funds Section 10 of the General Code of Conduct						
8.4.1.	Does the FSP receive or hold financial products or funds of or on behalf of clients when rendering financial services in South Africa?					
8.4.2. If the answer to question 8.4.1 is YES –						
8.4.2.1.	Has the FSP notified the Registrar of the details of the approved auditor or accounting officer in terms of section 19 of the Act read with the exemptions published in Board Notice 96 of 2003 and/or Board Notice 85 of 2004?					
8.4.2.2.	Has the FSP changed auditors during the reporting period?					
8.4.2.3.	<i>If the answer to Question 8.4.2.2 is YES -</i> Did the FSP inform the Registrar of the change of auditors?					
8.4.2.4.	Does the FSP issue written confirmation of receipts to clients when funds and/or premiums are received from clients without the mediation of a bank?					
8.4.3.	Does the FSP have procedures in place to ensure that the client's financial products can be readily distinguished from private assets of the FSP?					

8.5	Risk management						
8.5.1.	Does the FSP have and employ appropriate risk management resources, procedures, systems and controls?						
8.6	Advertising Section 14 of the General Code of Conduct						
8.6.1.	Does the FSP advertise its financial services in South Africa?						
8.6.2.	<i>If the answer to Question 8.6.1 is YES-</i>						
8.6.2.1.	Does the FSP have procedures in place to ensure that all advertisements and advertising communications and/or material comply with section 14 of the General Code of Conduct?						
8.6.2.2.	Is a reference to the fact that a license is held contained in all advertisements that were placed during the reporting period?						
8.7	Complaints Sections 10 to 19 of the General Code of Conduct						
8.7.1.	Does the FSP have a complaints policy and resolution system in place?						
8.7.2.	Provide the following details on complaints referred to the Ombud during the reporting period: number of complaints referred to the Ombud, type of complaint (what the complaint was about) as well as outcome of the complaint. Indicate the annexure number in column 5.						
9	Money laundering control procedures						
9.1	Is the FSP subject to anti-money laundering requirements in its home jurisdiction?						
10	Financial soundness						
10.1	Is the FSP required to comply with solvency requirements in its home jurisdiction?						
10.1.1	<i>If the answer to Question 10.1 is YES –</i> Did the FSP comply with these requirements at all times during the reporting period?						
10.2	Did the FSP comply with the solvency requirements as required in terms of paragraph 9 of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, at all times during the reporting period?						
10.3	Does the FSP prepare monthly accounting records in terms of section 19 of the Act?						

11. Monitoring				
Please indicate the type of monitoring that was conducted by the compliance function:				
11.1.1	Financial products in respect of which the FSP renders financial service.			
11.1.2	Representatives under supervision.			
11.1.3	Disclosure documents to check whether it complies with sections 4 and 5 of the General Code of Conduct.			
11.1.4	Disclosure documents to check whether it complies with section 7 of the General Code of Conduct.			
11.1.5	Furnishing of advice and record of advice.			
11.1.6	Receipt of funds and/or collection of premiums.			
11.1.7	Waiver of rights.			
11.1.8	Money laundering control procedures.			
11.1.9	Policies and procedures.			
11.1.10	Other. Please provide details on type of monitoring in a separate annexure and indicate the annexure number in column 5.			
11.2	In a separate annexure, provide an explanation as to how you did the monitoring. Please also include the extent of monitoring. Indicate the annexure number in column 5.			

To be completed and signed by the compliance officer

Name of compliance officer of FSP _____
ID number of the compliance officer _____
Name of the compliance practice (if applicable) _____
Reference number of compliance officer/practice _____
Signature of the compliance officer _____
Date _____
Address _____
Telephone number _____
Fax number _____
E-mail address _____

To be completed and signed by the sole proprietor or one of the key individuals of the FSP to acknowledge awareness that the report will be forwarded to the Registrar

Name of the FSP _____
FSP Number _____
Name of key individual _____
ID number of the key individual _____
Date appointed as key individual _____
Signature _____

Date _____
Please note that reports that have not been signed by BOTH the Compliance Officer and one of the Key Individuals will be regarded as "Not Submitted"

DECLARATION TO BE COMPLETED AND SIGNED BY THE COMPLIANCE OFFICER SUBMITTING REPORT**Name of compliance officer:** _____

Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Act, 2002 (Act No 37 of 2002) ("the Act") by Compliance Officers/Financial Services Providers for reporting period _____ (insert period) and _____ (insert period).

In accordance with section 17(4) of the Act, I/we _____ (being the approved Compliance Officer(s) of the Financial Services Provider ("the FSP") hereby report as follows as regards compliance by _____ (insert full names of FSP and FSP number) and any representatives and/Key Individuals of the FSP with the Act, for the period _____ (insert period).

Having completed the attached annual compliance report for the abovementioned FSP, I/we hereby confirm without any reservations that, to the best of my/our knowledge and ability all the information contained in the attached annual compliance report is both true and correct in all respects/aspects.

I/we are aware that the information contained in the attached annual compliance report may be subject to verification by the Registrar of Financial Services Providers (the Registrar) at any time, and should such information be found to be false, incorrect, misleading or in any manner not to be to the satisfaction of the Registrar, this may impact on my/our compliance with the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, with regard to personal character qualities of honesty and integrity as determined by section 8(1) of the Act.

Signed on this the _____ day of _____ (month) _____ (year).

Signature: _____