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**CONTENTS • INHOUD**

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
<b>BOARD NOTICES</b>			
76	Financial Advisory and Intermediary Services Act (37/2002): Financial Services Board: Determination of Compliance Report for Category 1 Authorised Financial Services Providers without a Compliance Officer, 2010 .....	3	33238
77	do.: do.: Determination of Compliance Report for Category I Authorised Financial Services Providers with a Compliance Officer, 2010.....	24	33238
78	do.: do.: Determination of Compliance Report for Category II, IIA and Forex Authorised Financial Services Providers, 2010 .....	52	33238
79	do.: do.: Determination of Interim Compliance Report for Category IIA Financial Services Providers, 2010 .....	94	33238
80	do.: do.: Determination of Compliance Report for Category II and Forex Authorised Financial Services Providers, 2010 .....	107	33238
81	do.: do.: Determination of Compliance Report for Category III Authorised Financial Services Providers, 2010 .....	146	33238
82	do.: do.: Determination of Interim Report for Category III Authorised Financial Services Providers, 2010 .....	185	33238
83	do.: do.: Determination of Compliance Report for Category IV Authorised Financial Services Providers, 2010.....	198	33238
84	do.: do.: Determination of Compliance Report for Authorised Foreign Financial Services Providers, 2010.....	220	33238
85	do.: do.: Determination of Compliance Report for Financial Services Providers Changing or Appointing Compliance Officers, 2010.....	235	33238

**BOARD NOTICE 84 OF 2010****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, 2010**

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, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board ([www.fsb.co.za](http://www.fsb.co.za)), must be submitted by 31 October 2010.
- (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) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;
  - (v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

- (vi) "Foreign FSP or foreign financial services provider" means a financial services provider that is not domiciled in the Republic of South Africa;
- (vii) "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;
- (viii) "FSP" or "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;
- (ix) "General Code of Conduct" or "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;
- (x) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
- (xi) "reporting date" means 31 August 2010;
- (xii) "reporting period" means the period the latter of-
  - (aa) the date of authorisation as financial services provider in terms of section 8 of the Act;
  - (bb) the first day of the month following the reporting period for the 2009 compliance report; or
  - (cc) the date of appointment of the compliance officer of the FSP,until the reporting date.

This Determination is called the Determination of Compliance Report for Foreign Financial Services Providers, 2010, and comes into operation on the date of publication thereof.



**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 2010**

**Scope**

In accordance with section 17(4) of the Act, I/we ..... (the approved compliance officer(s) of the financial services provider) 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 2010

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Develop - mental area	Note No. Comment/ Annexure
<b>SECTION 1 – GENERAL</b>					
1. Conditions and restrictions imposed, made, given or issued by the Registrar <i>Section 8(4) (a) and (5) (b) of the Act</i>					
1.1 Does the FSP have procedures in place to ensure that it can comply with condition 1 of the licensing conditions requiring the FSP to update its business information as provided during the application stage within 15 days of any change/s occurring?.					
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/s?					
1.3 Financial products in respect of which FSP renders financial services <i>Condition 5 imposed by the Registrar in terms of section 8(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					

<p>this does not include membership of professional bodies.)</p>										
<p>1.3.2. <i>If the answer to Question 1.3.1 is YES -</i> Provide details of the Regulator/s (Name of Regulator/s and registration and/or licensing number/s with Regulator/s, if applicable) in a separate annexure and indicate the annexure number in column 5.</p>										
<p>1.3.3. Does the FSP render financial services on any financial product in South Africa that is not specifically defined in the Act or regulated in terms of any other legislation (i.e. hedge fund, depending on the structure)?</p>										
<p>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.</p>										
<p>1.4 <b>Financial products in respect of which FSP renders financial services</b> <i>Authorisation in terms of the licence of the FSP</i></p>										
<p>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?</p>										
<p>1.4.2. Did any non-compliance occur in respect of the limitation on Categories and sub-categories during the reporting period?</p>										
<p>1.4.3. <i>If the answer to Question 1.4.2 is YES -</i> Provide details of any instances of non-compliance found as well as steps taken to reasonably ensure that such non-compliance does not occur again in a separate annexure and indicate the annexure number in column 5.</p>										
<p><b>2. Group structure</b></p>										
<p>2.1 Does the FSP form part of a group of companies and/or have service level agreements in place with other financial services providers within the group? If yes, provide full details of the group (including an organogram or diagram as well as such FSP's relation to one another) in a separate annexure and indicate the annexure number in column 5.</p>										
<p><b>3. Key individuals</b> Section 8(1) and 8(4)(b) of Act and <i>Determination of Fit and Proper Requirements</i></p>										
<p>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?</p>										

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?	
<b>4.</b>	<b>Representatives</b> <i>Sections 13 and 14 of the Act</i>	
4.1	Does the FSP have representatives? If YES, the Statistical Information Sheet (Section 3) must be answered.	
	If the answer to question 4.1 is YES, questions 4.2 to 4.4 must be answered.	
4.2	Does the FSP have any juristic representatives?	
4.2.1	If the answer Question 4.2 is YES- Does the FSP have an agreement with each juristic representative?	
4.2.2	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?	
4.2.3	Does the FSP have procedures in place to ensure that juristic representatives have the necessary operational ability to render financial services to its clients?	
4.3	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?	
4.4	<b>Debarment of representatives</b> <i>Section 14 of the Act</i>	
4.4.1.	Does the FSP have procedures in place to debar a representative, if necessary?	
<b>5.</b>	<b>Insurance cover</b> <i>Sections 5(e) and 13 of the General Code of Conduct</i>	
5.1	Does the FSP have professional indemnity cover? If yes, the Statistical Information Sheet (Section 3) must be completed.	
5.2	Does the FSP have fidelity insurance cover? If yes, the Statistical Information Sheet (Section 3) must be completed.	

<p>5.3 Does the FSP have guarantees in place? If yes, the Statistical Information Sheet (Section 3) must be completed.</p>				
<p>5.4 Does the FSP disclose to clients whether it holds guarantees or professional indemnity or fidelity insurance cover?</p>				
<p>5.5 If the FSP holds guarantees, professional indemnity cover or fidelity insurance cover, attach a copy/copies of the insurance schedule/s in a separate annexure and indicate the annexure number in column 5.</p>				
<p><b>6. Compliance function</b> <i>Section 17 of the Act and Chapter IV of the Regulations</i></p>				
<p>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 of the Regulations?</p>				
<p>6.2 Did you (compliance officer) indicate any aspect in this report as a "Developmental Area" (Column 4) that was also indicated as a developmental area in the previous compliance report?</p>				
<p>6.2.1. If the answer to question 6.2 is YES – In a separate annexure, provide details thereof, the reason for continued non-compliance and corrective actions to be taken. Indicate the annexure number in column 5.</p>				
<p><b>7. Maintenance of records</b> <i>Section 18 of the Act</i> <i>Section 22 of FICA</i></p>				
<p>7.1 Does the FSP have appropriate procedures and systems in place to record the information contemplated in section 18 of the Act?</p>				
<p><b>8. General Code of Conduct</b></p>				
<p><b>8.1 General provisions</b></p>				
<p>8.1.1. Does the FSP have an internal policy/policies with regard to conflict of interest?</p>				
<p>8.1.2 Did the FSP or any of its employees receive non-cash incentives and other indirect considerations from product suppliers in terms of the internal policy/policies of the FSP during the reporting period?</p>				



8.1.3	If applicable, 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 of the FSP?	
8.2	<b>Disclosure requirements</b> <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 risk and where applicable 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	<b>Furnishing of advice and record of advice</b> <i>Sections 8 and 9 of the General Code of Conduct</i>	
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	<i>If the answer to question 8.3.2 is YES –</i>	
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?	

<p><b>8.3.3.2</b> <i>If the answer to Question 8.3.3.1 is NO -</i> In a separate annexure, provide details on how and when (specific time frame) such procedures will be put in place. Indicate the annexure number in column 5.</p>				
<p><b>8.3.3.3</b> 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.</p>				
<p><b>8.4</b> <b>Custody of financial products and funds</b> <i>Section 10 of the General Code of Conduct</i></p>				
<p><b>8.4.1.</b> Does the FSP receive or hold funds on behalf of clients in accounts other than separate bank accounts in the name of the clients, or receive or hold financial products other than financial products held in safe custody by a custodian appointed by the client?</p>				
<p><b>8.4.2.</b> <i>If the answer to question 8.4.1 is YES -</i></p>				
<p><b>8.4.2.1.</b> 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 Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness, 1 of 2003 and /or Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements (2), 2004?</p>				
<p><b>8.4.2.2.</b> Has the FSP changed auditors during the reporting period?</p>				
<p><b>8.4.2.3.</b> <i>If the answer to Question 8.4.2.2 is YES -</i> Did the FSP inform the Registrar of the change of auditors?</p>				
<p><b>8.4.2.4.</b> 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?</p>				
<p><b>8.4.3.</b> Does the FSP have procedures in place to ensure that the client's financial products can be readily /clearly distinguished from private assets of the FSP?</p>				
<p><b>8.5</b> <b>Risk management</b></p>				
<p><b>8.5.1.</b> Does the FSP have and effectively employ appropriate risk management resources, procedures, systems and controls?</p>				

8.6	<b>Advertising</b> Section 14 of the General Code of Conduct						
8.6.1.	Does the FSP advertise its financial services in South Africa?						
8.6.2.	If the answer to Question 8.6.1 is YES-						
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 licence is held contained in all advertisements that were placed during the reporting period?						
8.7	<b>Complaints</b> Sections 16 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.	<b>Money laundering control procedures</b>						
9.1	Is the FSP subject to anti-money laundering requirements in its home jurisdiction?						
10.	<b>Financial soundness</b>						
10.1	Is the FSP required to comply with solvency requirements in its home jurisdiction?						
10.1.1	If the answer to Question 10.1 is YES – 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 at all times during the reporting period?						
10.3	Does the FSP prepare monthly accounting records in terms of section 19 of the Act?						

<p><b>11. Monitoring</b></p>		<p><b>11.1 Please indicate the type of monitoring that was conducted by the compliance function:</b></p>																													
<p>11.1.1 Financial products in respect of which the FSP renders financial services.</p>		<p>11.1.2 Representatives under supervision.</p>		<p>11.1.3 Disclosure documents to check whether it complies with sections 4 and 5 of the General Code of Conduct.</p>		<p>11.1.4 Disclosure documents to check whether it complies with section 7 of the General Code of Conduct.</p>		<p>11.1.5 Furnishing of advice and record of advice.</p>		<p>11.1.6 Receipt of funds and/or collection of premiums.</p>		<p>11.1.7 Waiver of rights.</p>		<p>11.1.8 Money laundering control procedures.</p>		<p>11.1.9 Policies and procedures.</p>		<p>11.1.10 Other. Please provide details on type of monitoring in a separate annexure and indicate the annexure number in column 5.</p>		<p>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.</p>											



**SECTION 3 – STATISTICAL INFORMATION SHEET**

3.1 REPRESENTATIVES AT REPORTING DATE		
TYPE OF INFORMATION REQUIRED	QUESTION NUMBER IT RELATES TO	NUMERIC AMOUNT
Number of representatives	4.1	

  

3.2 TYPE OF INSURANCE COVER	QUESTION NUMBER IT RELATES TO	CURRENCY	EXTENT OF COVER (NUMERIC AMOUNT)
Professional Indemnity Cover as contemplated in section 5(e) and 13 of the General Code of Conduct	5.1		
Fidelity Insurance Cover as contemplated in sections 5(e) and 13 of the General Code of Conduct	5.2		
Guarantees as contemplated in section 13 of the General Code of Conduct	5.3		

**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 in the case of a juristic entity, or the sole proprietor in the case of a natural person 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 all reports that have not been signed by BOTH the Compliance Officer and one of the Key Individuals in the case of a juristic entity, or the sole proprietor in the case of a natural person 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) 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) 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 reporting period ended \_\_\_\_\_.

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 at any time, and should I/we in my/our capacity as compliance officer knowingly submit false, incorrect or misleading information to the Registrar, this may impact on my/our compliance with the Determination of Fit and Proper Requirements 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:** \_\_\_\_\_