

FINANCIAL SERVICES BOARD

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CLARIFICATION IN RESPECT OF THE APPROVAL OF FOREIGN-BASED ENTITIES PROVIDING INVESTMENT ADMINISTRATION SERVICES OR GIVING ADVICE TO SOUTH AFRICAN PENSION FUNDS

Background

Prior to the promulgation of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 ("FAIS Act"), foreign investment manager entities were approved to conduct business in South Africa in terms of the Stock Exchanges Control Act, 1985 ("SECA") and the Financial Markets Control Act, 1989, 1989 ("FMCA").

When the FAIS Act came into operation on 30 September 2004, SECA and FMCA were repealed and all foreign investment managers were advised that they had to reapply for approval in terms of the FAIS Act.

Applicability of the FAIS Act relating to foreign investment managers

The FAIS Act regulates the rendering of financial services (advice and intermediary services).

In terms of Section 7(1) of the FAIS Act "... a person may not act or offer to act as a financial services provider unless such a person has been issued with a licence under section 8". Section 8(1) provides: "An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar ...".

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Regulation 3 of the FAIS Regulations, 2003 provides that:

“No person –

- (a) may in any manner or by any means, whether within or outside the Republic, canvass for, market or advertise any business related to the rendering of financial services by any person who is not an authorised financial services provider or a representative of such a provider;*
- (b) who is not an authorised financial services provider or a representative of such a provider, may in any manner or by any means –
 - i. publish any advertisement, communication or announcement directed to clients; or*
 - ii. use any name, title or designation, which implies that such person is an authorised financial services provider or a representative of such a provider.”**

Approval in terms of section 13B of the Pension Funds Act, 1956 (“the PFA”)

In terms of section 13B:

- “(1) No person shall administer on behalf of a pension fund the investments of such a pension fund, or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto ...”*

Where direct foreign investments are made by a foreign investment manager in terms of an investment mandate from a pension fund, the investment manager must obtain approval in terms of section 13B prior to accepting any pension fund investments. Where foreign investments are held through an investment product managed by a locally approved investment manager, long-term insurer or collective investment scheme, no prior approval in terms of section 13B is required in respect of the foreign investment manager.

Applicability of provisions to investment managers (“administrators”)

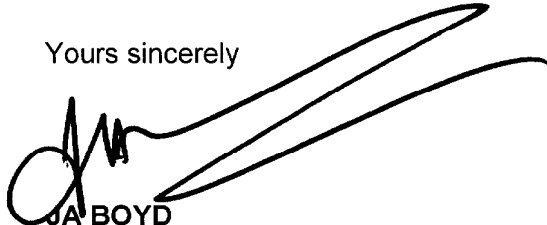
Where a foreign based investment manager renders or intends to render financial or investment services or in anyway canvases for such business directly or through the services of a consultant or advisor, the manager must be authorised as a financial services provider or a representative of a provider in terms of the FAIS Act. Approval as an investment administrator in terms of the PFA will be automatically granted following the FAIS authorisation outlined above.

Application for foreign investment managers not previously approved

As there appears to have been some misunderstanding whether foreign investment managers were required to obtain approval in terms of FAIS and Section 13B of the PFA, investment administrators are required to submit the relevant applications to the Registrar on or before 31 March 2010.

Failure to comply with the abovementioned could be referred to the Enforcement Committee for the appropriate sanction.

Yours sincerely



J.A. BOYD
FOR: REGISTRAR OF
PENSION FUNDS



G. ANDERSON
FOR: REGISTRAR OF FINANCIAL
SERVICES PROVIDERS