

EXEMPTION OF INVESTMENT MANAGERS FROM FIT AND PROPER REQUIREMENTS, 1 OF 2003

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[with effect from 30 September 2004 *]

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), investment managers and linked investment services providers as defined in the Schedule, and their related functionaries, from the provisions of the Fit and Proper Requirements to the extent and subject to the provisions as set out in the Schedule.

1 Definitions

In this Schedule, **'the Act'** means the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates-

'authorised representative' means an authorised representative as defined in the Conditions applicable to Investment Managers and Linked Investment Services Providers determined under section 4 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), and section 5 of the Financial Markets Control Act, 1989(55 of 1989), and published as Board Notice 1584 of 2001 and Board Notice 1583 of 2001, respectively;

'Conditions' means the Conditions referred to in the definition of 'authorised representative' above;

'Financial Services Provider, Category II' means a financial services provider belonging to Category II as defined in paragraph 1(1) of the Fit and Proper Requirements;

'Financial Services Provider, Category III' means a financial services provider belonging to Category III as defined in paragraph 1(1) of the Fit and Proper Requirements;

'Fit and Proper Requirements' means the Determination of Fit and Proper Requirements for Financial Services Providers, 2003, published by Board Notice 91 of 2003 in *Gazette* 25446 of 10 September 2003;

'investment manager' means an investment manager approved on or before 30 October 2003 in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989(55 of 1989), in respect of the financial products to which the approval relates, and who cannot be licensed under the Act as a Financial Services Provider, Category II, due to inability to comply with paragraph 3(2) of the Fit and Proper Requirements;

'LISP' means a linked investment services provider as defined in the Conditions and approved on or before 30 October 2003 in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989(55 of 1989), and who cannot be licensed under the Act as a Financial Services Provider, Category III, due to inability to comply with paragraph 3(3) of the Fit and Proper Requirements.

2 Objectives of exemption

The objective of the exemption mentioned in paragraph 3 below is, firstly, to address a problem currently experienced in the investment management and LISP industry, namely, that not all investment managers (or persons connected with them as

* GN 270 in GG 26080 of 5 March 2004

authorised representatives and occupying posts that would qualify them as key individuals or representatives, respectively, for purposes of the Act), and LISPS (or persons connected to them and occupying posts that would qualify them as key individuals for purposes of the Act) will, on application being made for a licence in terms of the Act, comply with the requirements set out in paragraphs 3(2) and 3(3), respectively, of the Fit and Proper Requirements.

The exemption consequently facilitates transition by such persons to the new regime created by the Act which, in the public interest and for better consumer protection, modernises various features of their profession. The exemption is aimed at avoiding of financial or other hardship or prejudice to investment managers and LISPS and their related functionaries.

Secondly, it deals with a problem relating to representatives, namely that section 13(2) of the Act, which provides for the responsibilities of authorised financial services providers in respect of the qualifications of their representatives and key individuals of the latter, does not clearly include providers who are exempted from requirements mentioned in that section. It is necessary to indicate which 'similar' requirements must be applied to such persons. For the sake of promotion of legal certainty in this regard, this problem is addressed in this exemption.

The exemption is otherwise clearly of a temporary and restricted nature as after the date envisaged in section 7(1) of the Act, all new applicants for a licence as a Financial Services Provider, Category II and III, and their representatives and key individuals, must comply fully with the Act. The latter requirement will also apply to new key individuals or representatives in respect of the investment managers and LISPS that are exempted hereby, as authorised financial services providers under the Act.

Furthermore the provisions of paragraphs 2, 4 and 5 of the Fit and Proper Requirements will remain applicable to investment managers and LISPS (in terms of the Act referred to as discretionary and administrative FSPs, respectively).

3 Extent of exemption

The following persons are hereby, subject to paragraph 4 below, exempted to the extent indicated:

- (a) an investment manager, and any person appointed as an authorised representative of such an investment manager who stands on or before 30 October 2003 to the manager in a relationship which would qualify that person as a key individual when the manager is licensed under the Act as a Financial Services Provider, Category II, are exempted from the requirements set out in paragraph 3(2) of the Fit and Proper Requirements;
- (b) a LISP, and any person who stands on or before 30 October 2003 to the LISP in a relationship which would qualify that person as a key individual when the manager is licensed under the Act as a Financial Service Provider, Category III, are exempted from the requirements as set out in paragraph 3(3) of the Fit and Proper Requirements;
- (c) an investment manager, with regard to a person who on or before 30 October 2003, is an authorised representative of such an investment manager, and who would not qualify as a key individual when the manager is licensed under the Act, but who-
 - (i) stands to the investment manager in a relationship which will qualify that person as a representative when the manager is licensed; and
 - (ii) will not in terms of section 13(6) of the Act be regarded as a representative,

is exempted from the provisions of section 13(2)(a) of the Act as regards paragraph (b) of section 8(1) of the Act referred to therein with regard to such an authorised representative, but only to the extent that paragraph (b)

refers to the competency requirements set out in paragraph 3(2) of the Fit and Proper Requirements.

4 Conditions of exemption

The following conditions will apply to the exemptions mentioned in paragraph 3:

- (a) Where any investment manager or LISP, after the date determined by the Minister in terms of section 7(1) of the Act, wishes as an authorised financial services provider-
 - (i) to appoint a person other than a person contemplated in paragraph 3(a) or (b) above as a key individual, such person must comply with the requirements as set out in the Fit and Proper Requirements; or
 - (ii) to employ or mandate a person other than a person contemplated in paragraph 3(c) as a representative, including any key individual of that person, any such person must comply with requirements which are similar to the requirements contemplated in section 8(1)(a) and (b) of the Act; and
- (b) the Registrar may at any time by notice in the *Gazette* amend or withdraw a condition mentioned in paragraph (a), or any exemption.

5 Period for which exemptions will be valid

An exemption mentioned in paragraph 3 above remains operative until the date on which the exemption is withdrawn under paragraph 4(b) below, or the date on which the currency of the licence of the provider concerned is terminated by virtue of a provision of the Act, whichever date occurs first.

6 Short title and commencement

This Exemption is called the Exemption of Investment Managers from Fit and Proper Requirements, 1 of 2003, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.