

(31 July 2015 - to date)

## **FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002**

*(Government Notice 1453 in Government Gazette 24079 dated 15 November 2002. Various commencement dates – See Act for details)*

### **EXEMPTION OF ELIGIBLE FSPs AND ELIGIBLE FSPs LIMITED BY PRODUCT FROM REQUIREMENTS PERTAINING TO AUDITED FINANCIAL STATEMENTS, 2015**

*FAIS Notice 82 of 2015 dated 21 July 2015. Commencement date: 31 July 2015. (This notice can be found on the Financial Services Board website: [www.fsb.co.za](http://www.fsb.co.za))*

I, Caroline Dey da Silva, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, eligible FSPs and eligible FSPs limited by product from requirements pertaining to audited financial statements as set out in the Schedule.

(Signed)

**CD Da Silva**

**Deputy Registrar of Financial Services Providers**

**DATE OF NOTICE: 21 JULY 2015**

## **SCHEDULE**

### **EXEMPTION OF ELIGIBLE FSPs AND ELIGIBLE FSPs LIMITED BY PRODUCT FROM REQUIREMENTS PERTAINING TO AUDITED FINANCIAL STATEMENTS, 2015**

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**ANNEXURE A**

## 1. Definitions

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 is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

**"accounting officer"** means a person contemplated in section 60 of the Close Corporations Act;

**"audit"** has the meaning set out in the Auditing Profession Act, 2005 (Act No. 26 of 2005);

**"Close Corporations Act"** means the Close Corporations Act, 1984 (Act No. 64 of 1984);

**"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008);

**"Fit and Proper Requirements"** means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

**"friendly society benefit"** has the meaning assigned to it in section 1(1) of the Fit and Proper Requirements;

**"eligible FSP"** means an authorised Category I FSP who does not receive or hold premiums (contemplated in the Short-term Insurance Act, 1998, and the Long-term Insurance Act, 1998) or otherwise receive or hold clients' money or other assets; or

**"eligible FSP limited by product"** means a Category I FSP authorised to render financial services in respect of financial products belonging to Long-term Insurance subcategory A and/or friendly society benefits only and who receives or holds premiums as contemplated in the Long-term Insurance Act, 1998, or otherwise receive or hold clients' money or other assets;

**"independent reviewer"** means a person referred to in regulation 29(4) of the Companies Regulations, 2011;

**"Long-term Insurance subcategory A"** has the meaning assigned to it in section 1(1) of the Fit and Proper Requirements;

**"Registrar"** means the Registrar of Financial Services Providers.

## 2. Objective of exemption

- (1) Section 19(1) of the Act requires financial services providers to maintain proper accounting records and prepare annual financial statements.

- (2) Section 19(2)(a) provides that the financial statements prepared in terms of section 19(1) must be audited. Section 19(4) to (6) deals with irregularity reporting, the appointment and termination of an auditor.
- (3) The Registrar is satisfied that in the case of eligible FSPs and eligible FSPs limited by product that certain of the requirements are capable of causing financial or other hardship or prejudice (section 44(1)(b) of the Act) in so far as an auditor's involvement is required. Relaxation of the requirements, subject to certain conditions, would satisfy the requirements of section 44(1)(c).
- (4) The Companies Act and Close Corporations Act have different requirements regarding the submission of financial statements. The extent to which annual financial statements of companies and close corporations will have to be reviewed or audited depends on various criteria.
- (5) In view of the aforesaid the Registrar is satisfied that there are reasonable grounds for relaxation of the application of the audit requirements to eligible FSPs and eligible FSPs limited by product and they are therefore relieved from the obligation to cause annual financial statements to be audited and reported on by an external auditor.

However, the eligible FSPs and eligible FSPs limited by product remains responsible for the accounting and reporting obligations detailed in section 19 of the Act.

- (6) Where the eligible FSPs and eligible FSPs limited by product are otherwise obliged by law to have financial statements reviewed, audited and reported on, or otherwise prepared, such statements must be submitted to the Registrar.

### 3. Extent of exemption

- (1) An **eligible FSP** and **eligible FSP limited by product** are exempted from section 19(2)(a) of the Act unless it is obliged by any law or agreement in terms of which the eligible FSP is a party, to cause financial statements to be audited and reported on.
- (2) The exemption referred to in subparagraph (1) does not apply to an eligible FSP and eligible FSP limited by product in respect of financial statements that had to be submitted to the Registrar on or before 30 April 2015 in terms of section 19(2)(b)(iii).

### 4. Conditions of exemption

The exemption referred to in paragraph 3 above is subject to the following conditions:

- (1) An **eligible FSP**, where obliged by any law, must cause the financial statements referred to in section 19(1) of the Act-

- (a) to be independently reviewed by an independent reviewer in accordance with the Companies Act; or
  - (b) to be certified and reported on by an accounting officer in accordance with the Close Corporations Act.
- (2) An **eligible FSP limited by product** must-
- (a) where obliged by any law, cause the financial statements referred to in section 19(1) of the Act to be independently reviewed by an independent reviewer in accordance with the Companies Act; or
  - (b) in the absence of an obligation referred to in subparagraph (a), cause the financial statements referred to in section 19(1) of the Act to be certified and reported on by an accounting officer in accordance with the Close Corporations Act.
- (3) In the case of an **eligible FSP**, sections 19(4) to (6) of the Act applies with the necessary changes to the independent reviewer, accounting officer, any review, report or certification by that reviewer or officer and termination of appointment.
- (4) In the case of an **eligible FSP limited by product**, sections 19(3) to (6) applies with the necessary changes to the independent reviewer, accounting officer, any review, report or certification by that reviewer or officer and termination of appointment.
- (5) An **eligible FSP and eligible FSP limited by product** must annually submit to the Registrar, in addition and simultaneously with its financial statements, the annual return referred to in Annexure A.
- (6) The condition referred to in subparagraph (5) does not apply to an **eligible FSP and an eligible FSP limited by product** in respect of the financial statements for the 2015 financial year-end where those statements were submitted to the Registrar on or before 31 July 2015.

## 5. Amendment and withdrawal of exemption and conditions

The exemption and conditions referred to in paragraph 3 and 4 above are subject to-

- (a) amendment thereof published by the Registrar by notice on the official web site; and
- (b) withdrawal in like manner.

## **6. Repeal**

The Exemption of FSPs and FSPs limited by products from Audit Requirements, 2011, published by Board Notice 193 of 2011 in Government Gazette 34794, is repealed.

## **7. Short title and Commencement**

This Notice is called the Exemption of Eligible FSPs and Eligible FSPs limited by product from Requirements pertaining to Audited Financial Statements, 2015, and comes into effect on 31 July 2015.

## ANNEXURE A

## ANNUAL RETURN FOR EXEMPTION OF ELIGIBLE FSPs AND ELIGIBLE FSPs LIMITED BY PRODUCT FROM REQUIREMENTS PERTAINING TO AUDITED FINANCIAL STATEMENTS

Name of FSP

FSP number

### 1. DEFINITIONS

**"Exemption Notice"** means the Notice on the Exemption of Eligible FSPs and Eligible FSPs limited by product from Requirements pertaining to Audited Financial Statements, 2015, published by FAIS Notice No. 82 of 2015; and

**"the Exemption"** means the exemption granted in terms of the Exemption Notice.

### 2. IMPORTANT NOTE

- 2.1. Failure by a financial services provider (provider) to meet the requirements and conditions of the Exemption will result in the Exemption not being applicable to that provider.
- 2.2. Acceptance by the Registrar's Office of unaudited financial statements based on the information contained in this return is not a confirmation or validation that the Exemption applies to the provider or that the provider meets the requirements and conditions of the Exemption. It is the duty and responsibility of the provider to ensure that it meets and continues to meet the requirements and conditions of the Exemption.

### 3. FREQUENCY OF SUBMISSION

A provider must annually, in addition and simultaneously with its financial statements, submit this return to the Registrar in order for the Exemption to be applicable.

### 4. CATEGORY OF EXEMPTION

Indicate by ticking the appropriate box in respect of which type of provider exemption is sought.		X
4.1	<b>"eligible FSP"</b> as defined in section 1 of the Exemption Notice <i>["eligible FSP" means an authorised Category I FSP who does not receive or holds premiums (contemplated in the Short-term Insurance Act, 1998, and the Long-term Insurance Act, 1998) or otherwise receive or hold clients' money or other assets.]</i>	

Prepared by:

4.2	An eligible FSP limited by product as defined in section 1 of the Exemption Notice  <i>["eligible FSP limited by product" means a Category I FSP authorised to render financial services in respect of financial products belonging to Long-term Insurance subcategory A and/or friendly society benefits only and who receives or holds premiums as contemplated in the Long-term Insurance Act, 1998, or otherwise receive or hold clients' money or other assets.]</i>	
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## 5. EXEMPTION CRITERIA

**Table A** must be completed by a provider referred to in paragraph 4(1) above.

TABLE A EXEMPTION APPLICABLE TO AN ELIGIBLE FSP			
Criteria		Yes	No
5.1	Is the provider authorised as a Category I FSP only?		
<b><i>If the answer to the above question is "no", the Exemption does not apply.</i></b>			
5.2	Does the provider receive or hold premiums (as contemplated in the Short-term Insurance Act, 1998, and/or the Long-term Insurance Act, 1998) or otherwise receive or hold clients' monies or other assets?		
<b><i>If the answer to the above question is "yes", the Exemption does not apply.</i></b>			

**Table B** must be completed by a provider referred to in paragraph 4(2) above.

TABLE B EXEMPTION APPLICABLE TO AN ELIGIBLE FSP LIMITED BY PRODUCT			
CRITERIA		Yes	No
5.4	Is the provider authorised as a Category I FSP only?		
<b><i>If the answer to the above question is "no", the Exemption does not apply.</i></b>			
5.5	Is the provider authorised to render financial services in respect of financial products belonging to Long-term Insurance subcategory A and/or friendly society benefits only?		
<b><i>If the answer to the above question is "no", the Exemption applicable to a FSP limited by product does not apply.</i></b>			
5.6	Does the provider receive or hold premiums or otherwise receive or hold clients' monies or other assets?		
<b><i>If the answer to the above question is "no", the Exemption applicable to a FSP limited by product does not apply.</i></b>			
<b><i>Note:</i></b> A provider authorised as a Category I FSP only and who renders financial services limited to financial products belonging to Long-term Insurance subcategory A or friendly society benefits and who does not hold or receive clients' money or assets is regarded, for purposes of the Exemption, as an eligible FSP as referred to in paragraph 5. 1 above.			

## 6. GENERAL

- 6.1. Is the provider required by any other law to have its financial statements audited, independently reviewed, or otherwise reported on?

Yes ☐ No ☐

- 6.2. If the answer to the question in paragraph 6.1 is "yes", please state the law in terms of which the provider must submit such financial statements.

- 6.3. If the answer to the question in paragraph 6.1 is "yes", please indicate whether the financial statements must be-

- |  |                          |
|--|--------------------------|
| (a) audited  | <input type="checkbox"/> |
| (b) reviewed by an independent reviewer                | <input type="checkbox"/> |
| (c) certified and reported on by an accounting officer | <input type="checkbox"/> |
| (d) other  | <input type="checkbox"/> |

***The exemption does not apply where the provider is required to have its financial statements audited.***

- 6.4. Is the provider required by an agreement in terms of which the provider is a party to cause its financial statements to be audited and reported on?

Yes ☐ No ☐

***If the answer to the above question is "yes", the exemption does not apply.***

### SECTIONS 7 TO 10 MUST ONLY BE COMPLETED BY A PROVIDER THAT IS A COMPANY OR A CLOSE CORPORATION (CC)

*[Sections 7 to 10 consist of certain indicators that, if present, may require a provider to prepare audited financial statements under the Companies Act. These sections should not be seen as an exhaustive list of indicators and it remains the responsibility of the provider to determine whether it is required to prepare audited financial statements or cause its financial statements to be independently reviewed and reported on in terms of the Companies Act.]*



**7.1. Please indicate the type of company / CC**

Profit company

☐

Profit CC

☐

Non-profit company

☐

Non-profit CC

☐

External company

☐

**7.2. If profit company, please indicate the type of profit company / CC**

State owned company / CC

☐

Public company

☐

Private company

☐

Personal liability company

☐

***The exemption does not apply if the provider is a state owned company, a state owned CC or a public company.***

**7.3. If non-profit company / CC, please indicate whether the company / CC was incorporated-**

- (a) Directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company.

☐

- (b) Primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function.

☐

***If any of the above is applicable to the provider, the exemption does not apply.***

**7.4. Is the company / CC (profit or non-profit) required by its Memorandum of Incorporation, Founding statement, a shareholder's / member's resolution, a determination by the company's board / CC's members or the Companies Act, to have its financial statements audited?**

Yes ☐ No ☐

*If the answer to the above question is "yes", the exemption does not apply.*

- 7.5. Please indicate whether the company / CC (profit or non-profit), in the ordinary course of its primary activities, holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds RS million.**

Yes ☐ No ☐

*If the answer to the above question is "yes", the exemption does not apply.*

## **8. PUBLIC INTEREST SCORE**

- 8.1. Please provide the provider's public interest score**

- 8.2. Calculation of public interest score**

Please provide the basis of the provider's calculation of its public interest score by completing the Table below. Every company / CC must calculate its public interest score (PIS) at the end of each financial year.

CALCULATION OF PUBLIC INTEREST SCORE		
PIS Criteria	Bases for Public interest points	Public interest points
Number of points equal to the average number of employees of the company / CC during the financial year		
One point for every R 1 million (or portion thereof) in third party liability of the company / CC, at the financial year end		
One point for every R 1 million (or portion thereof) in turnover during the financial year		
One point for every individual who, at the end of the financial year, is known by the company / CC- (i) in the case of a profit company / CC, to directly or indirectly have a beneficial interest in any of the company's issued securities; or (ii) in the case of a non-profit company / CC, to be a member of the company, or a member of an		

association that is a member of the company		
<b>Total Public Interest Score</b>		

**8.3. Does the company I CC have a public interest score-**

- (a) of 350 or more Yes ☐ No ☐
- (b) of between 100 and 349 and its annual financial statements for the particular financial year were internally compiled Yes ☐ No ☐

***If the answer to any of the above questions is "yes", the Exemption does not apply.***

**9. COMPILATION OF FINANCIAL STATEMENTS**

Please indicate whether the provider's financial statements were independently or internally compiled.  
(See definition of "independently compiled and reported" and meaning of internally compiled in regulation 26(1)(e) and regulation 27(2) of the Companies Regulations, 2011, respectively.)

Independently compiled ☐ Internally compiled ☐

***In terms of the Companies Act, if the PIS of the provider is between 100 and 349 and the financial statements were internally compiled, the financial statements must be audited.***

**10. COMPANIES ACT EXEMPTION**

*This paragraph must only be completed by a provider that is a company.*

**10.1. Is the provider exempted under section 30(2A) of the Companies Act from having to audit or independently review its financial statements?**

Yes ☐ No ☐

**10.2. If the answer to paragraph 10.1 is "yes", does the provider meet the requirements of the exemption referred to in section 30(2A) of the Companies Act?**

Yes ☐ No ☐

**11. DECLARATION**

*The declaration must be signed by the key individual of the provider or the provider in the case of a provider that is a sole proprietor.*

I, ....., (name of provider/key individual) declare that the information provided in this form is true and correct.

I am aware that the information provided may be subject to verification by the Registrar of Financial Services Providers, and should I submit false, incorrect or misleading information to the Registrar, this may impact on my compliance with the fit and proper requirements contemplated in section 6A of the Act.

.....  
Signature

.....  
Date