



FINANCIAL SERVICES BOARD
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

**EXPLANATORY MEMORANDUM FOR PROPOSED AMENDMENTS OF FIT AND
PROPER REQUIREMENTS FOR FINANCIAL SERVICES PROVIDERS AND
REPRESENTATIVES, 2016**

1. INTRODUCTION

The Registrar of Financial Services Providers (Registrar), under section 6A of the Financial Advisory and Intermediary Services Act, 2002 (the Act), intends to amend the fit and proper requirements applicable to financial services providers, key individuals and representatives (fit and proper requirements) by-

- (a) repealing-
 - (i) the Determination of Fit and Proper Requirements for Financial Services Providers, 2008; and
 - (ii) the Notice on Determination of Qualifying Criteria and Qualifications for Financial Services Providers, Number 1 of 2008; and
- (b) determining new fit and proper requirements for financial services providers, key individuals and representatives.

2. BACKGROUND

- 2.1. The Registrar, previously on 17 December 2015, published proposed amendments to the fit and proper requirements (First Publication). Stakeholders were invited to submit their comments to the Registrar by 15 March 2016.
- 2.2. The Registrar considered the comments received and where appropriate incorporated these into the current proposed amendments to the fit and proper requirements. In this regard, please see the Registrar's response to the comments received set out in the Regulatory Response Matrix.
- 2.3. As indicated in the Explanatory Memorandum that accompanied the First Publication, the amendments proposed at the time did not address those aspects of the competency framework that were under review by the Registrar. The objective of

which was to build on the existing competency requirements by establishing an effective and proportionate regulatory framework to ensure financial services providers (FSPs) have the right levels of product related knowledge, meet appropriate standards of professionalism and undergo continuous professional development.

- 2.4. The Registrar has completed the review, the outcome of which is now incorporated into the current proposed amendments to the fit and proper requirements.

3. INVITATION TO COMMENT

- 3.1. Interested parties are invited to submit written submission on the proposed amendments to FAIS.Consultation@fsb.co.za by **15 December 2016**.
- 3.2. All information (including name and address details) contained in submissions will be made available to the public on the FSB's official web site.
- 3.3. Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details. For accessibility reasons, please email submission in a Word format. An additional PDF version may also be submitted.
- 3.4. The closing date for submissions is **15 December 2016**. No submission received after that date will be considered.

4. PURPOSE OF PROPOSED AMENDMENTS

As previously indicated, the proposed amendments are designed to meet the consumer protection objectives of the Act and to ensure clarification of applicable requirements.

The new requirements do not propose any amendment to the current categorisation of financial services providers as it is a matter that will be addressed through the Retail Distribution Review.

5. SIGNIFICANT AMENDMENTS

This explanatory memorandum is structured to address those requirements that are significantly different to the First Publication rather than to address each and every proposed change. For ease of reference, the changes will be dealt with under the proposed new Chapters.

The Explanatory Memorandum for Proposed Amendments of Fit and Proper Requirements for Financial Services Providers and Representatives, 2015, published with the First Publication must be read, where appropriate, as if incorporated herein.

5.1. Chapter 1 – Definitions

Definitions are proposed -

- (a) for existing subcategories of financial products, *inter alia*, to provide clarity that products -
 - (i) that are issued by foreign product suppliers that are similar in nature to such subcategories of products; and
 - (ii) with a foreign currency denomination, are included under those subcategories;
- (b) to provide for a participatory interest in a hedge fund as a new subcategory of financial product;
- (c) to provide for structured deposits as a new subcategory of financial product;
- (d) to provide for the concept of 'automated advice'; and
- (e) to define concepts relevant to the proposed new competency requirements.

5.2. Chapter 2 – Honesty, Integrity and Good Standing

The Registrar clarified that the honesty and integrity of a person that is not a natural person must be demonstrated through its corporate behaviour and through the personal behaviour of its directors and key individuals.

5.3. Chapter 3 and 4- Competency and CPD Requirements

Significant changes to the First Publication are proposed most of which are as a result of the review that was conducted in respect of the competency framework.

The following principles, *inter alia*, informed the proposed amendments to the competency requirements:

(a) *Principle based requirements focused on outcomes*

The Registrar, in line with Government's stated objective to provide for regulation that is outcomes focused, is proposing, in addition to the rules-based standards, requirements that are more principle in nature to ensure the right outcomes for consumers are achieved by doing away with a 'tick-box' compliance approach.

(b) *Product related knowledge and continuous professional development (CPD)*

Product knowledge requirements through the level 2 regulatory examinations and CPD requirements were originally introduced into law in 2008 with the publication of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008 (Board Notice 106 of 2008).

Subsequent to the effective date of the requirements referred to above, the Registrar granted general exemptions to industry from complying with those requirements to a date that had to be determined by the Registrar. This allowed the Registrar, in keeping with good regulatory practices and based on lessons learned from the introduction of the first level regulatory examination, to conduct a review of the competency framework. It remained an objective of the review that persons providing financial services to consumers must have adequate and appropriate knowledge of the financial products in respect of which they render financial services and that they must maintain their overall competence.

The Registrar, based on the outcome of the review, is proposing to replace the level 2 regulatory examinations with the following requirements:

- (i) class of business training (generic knowledge relevant to a particular product and market or particular business sector); and
- (ii) product specific training (specialist or specific knowledge of a particular product).

The Registrar is further proposing to replace the current prescriptive CPD requirements with requirements that are more principle based.

The Registrar is satisfied that the proposed requirements will achieve the required outcome, namely that persons who render financial services have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that those persons perform and that they maintain their competence.

(c) *Competency requirements that are proportionate and fit for purpose*

The proposed amendments further introduce proportionate requirements depending on the nature, scale and complexity of the financial services rendered and the financial products in respect of which those services are rendered.

In this regard see the proposed-

- (i) classification of Tier 1 and Tier 2 financial products and the differentiation of requirements applicable to persons rendering financial services in respect of those products; and
- (ii) definition of 'execution of sales' and the exclusions applicable to persons performing that activity from certain competency requirements.

Tier 2 financial products are generally simpler and better understood than Tier 1 products and, therefore, are subject to lighter competency standards but still subject to product specific training requirements.

(d) *Alignment with education, training and development practices and standards*

Where appropriate the proposed competency requirements have made provision for, and have been aligned with the standards and requirements of the South African Qualifications Authority (SAQA), the Quality Councils, Professional Bodies and the relevant Sector Education and Training Authorities insofar as CPD requirements and training and assessment practices are concerned. The Registrar, therefore, proposes that -

- (i) class of business training must be provided by an accredited provider to ensure appropriate oversight by SAQA of such providers thereby ensuring that training and training providers are of the appropriate quality; and
- (ii) CPD activities must be accredited and tracked by a Professional Body as the latter is recognised by SAQA for setting professional standards in respect of a specific sector or occupation and therefore possess the expertise required to set and maintain those standards.

The Registrar has carefully considered the regulatory and financial impact of the proposed new competency requirements and is satisfied that an appropriate balance has been achieved between the likely cost to industry in respect of the current requirements *viz-a viz* the costs likely to be incurred as a result of the proposed new requirements. This assumption will be tested through an impact analysis.

5.4. Chapter 5 – Operational ability

The requirements relating to the operational ability of an FSP have been enhanced to ensure the proper achievement of the objects of the Act. In particular, additional requirements are proposed relating to governance, outsourcing of functions to persons other than representatives, the appointment of representatives and automated advice.

5.5. Chapter 6 - Financial Soundness Requirements

The Registrar is proposing to extend the solvency requirement (assets must exceed liabilities) to juristic representatives of Category I FSPs. The Registrar is of the view that the requirements will mitigate the risk posed to the FSP by such juristic representative and it will mitigate the risk posed to clients of such arrangements.

FSPs will further be required to monitor its juristic representative's compliance with the liquidity requirements where those requirements apply.

5.6. Chapter 7 - Miscellaneous

The Chapter has been amended to provide for transitional arrangements to accommodate the proposed competency requirements.



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