



**FINANCIAL SECTOR CONDUCT
AUTHORITY**

CONSULTATION PAPER:

**EXEMPTION OF SERVICES
UNDER SUPERVISION**

31 July 2018

**THE CONSULTATION PAPER IS PUBLISHED UNDER THE FINANCIAL ADVISORY AND
INTERMEDIARY SERVICES ACT, 2002**



CONSULTATION PAPER: EXEMPTION ON SERVICES UNDER SUPERVISION

1. PURPOSE OF THIS CONSULTATION PAPER

The Consultation Paper relates to the Financial Sector Conduct Authority's (Authority) proposed –

- withdrawal of the Notice on the Exemption of Services under Supervision in terms of Requirements and Conditions, 2008 (2008 Exemption), and
- replacement of the 2008 Exemption with the exemption set out in **Annexure A** (Draft Exemption).

2. INVITATION TO MAKE SUBMISSIONS

Interested parties are invited to submit written submissions on the withdrawal of the 2008 Exemption and the Draft Exemption to **FAIS.Consultation@fscs.co.za**.

All information (including name and address details) contained in the submission will be made available to the public on the Authority's web site.

Submissions must 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.

The closing date for submissions is **31 August 2018**. No submissions received after that date will be considered.

3. PROPOSED WITHDRAWAL AND PURPOSE OF DRAFT EXEMPTION

It is necessary to replace the 2008 Exemption with the Draft Exemption (the replacement) to achieve the objective of the exemption which is to facilitate the entry of new participants into the financial services industry without compromising the fair treatment of and good outcomes for clients.

The Draft Exemption, similar to the 2008 Exemption, allows a representative who does not meet all the competency requirements to work under supervision subject to compliance with certain conditions.

The Draft Exemption extends the relief granted under the 2008 Exemption to the new competency requirements prescribed under the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (Fit and Proper Requirements), that came into effect on 1 April 2018. It further addresses certain abuses identified with the implementation of the 2008 Exemption and provides for conditions that are more principle in nature and outcomes focused.

The Authority is satisfied that the Draft Exemption meets the requirements of section 44 of the Financial Advisory and Intermediary Services Act, 2002 (the Act) read with section 281(3) of the Financial Sector Regulation Act, 2017.

4. SUBSTANCE OF DRAFT EXEMPTION

The discussion on the substance of the Draft Exemption is structured to highlight the significant differences between the 2008 Exemption and the Draft Exemption rather than to address each and every difference or new requirement.

4.1. Definition of “date of appointment” and compliance periods

The definition of “date of appointment” has been changed to remove the link between the appointment date and particular categories of financial services or particular financial products. This means that a person’s date of appointment is the date on which that person was first appointed as a representative of a financial services provider.

The reason for the change is to limit the overall period a representative may work under supervision as it has come to the attention of the Authority that a practice has developed whereby certain representatives extend their supervision periods or perpetually work under supervision by merely changing the financial products for which they are appointed.

The limitation does not apply to the experience requirement - see paragraphs 4 and 5 of Condition 3.

In addition, a further exception has been made for specific representatives as defined in Condition 2. This exception allows a representative of a Category I FSP who only has a date of appointment -

- to render financial services in respect of a Tier 2 financial product; or
- to perform only the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements,

additional time to work under supervision where they are subsequently appointed for a Tier 1 financial product (other than the execution of sales referred to above). The Authority is of the view that the exception is necessary to achieve the objects of the Draft Exemption.

The provisions relating to the compliance periods in Condition 2 must be read with the representative's "date of appointment" and no longer provides for a general mid-year compliance date for qualifications and regulatory examinations. The Authority is of the view that the general mid-year compliance date created an advantage for certain representatives in that it extended their compliance periods, in some instances by a year. It further defeated the purpose of the prescribed maximum periods.

The Authority is satisfied that the removal of the mid-year compliance date will result in minimal impact on industry in light of the requirement that came into effect on 1 May 2018 that obliges an FSP to establish, maintain and update on a regular basis the competency register contemplated in section 13(5) of the Fit and Proper Requirements.

4.2. Intensity of supervision and direct and on-going supervision

The 2008 Exemption distinguished, for purposes of Category I and IV FSPs, between direct and on-going supervision and prescribed the minimum periods that a representative must work under direct supervision. The only distinguishing factor between direct and on-going supervision was that for direct supervision the supervision must have occurred on a regular basis ranging between daily and weekly whilst for on-going supervision it had to occur on a bi-weekly or monthly basis.

As regards representatives of Categories II and IIA FSPs, they were required to obtain prior approval of all transactions. Representatives of Category III FSPs, on a purposive interpretation of the requirements, required approval prior to the finalisation of a transaction or where such approval is not feasible, within a reasonable period thereafter.

The Authority, in line with principle based and outcomes focused regulation, removed the distinction between direct and on-going supervision and the requirements relating to prior approval of transactions. It is proposed that the FSP must determine the supervision arrangements and the level of intensity of supervision that must apply to a particular representative having regard to –

- the nature, scale and complexity of the financial services and financial products to be rendered by the representative;
- the representative's assessed level of competency; and
- the risk to clients and the FSP.

The FSP further must, at regular intervals, review the appropriateness, effectiveness and adequacy of the supervision arrangements and the level of intensity of the supervision and must determine criteria and procedures to assess whether it is appropriate for a representative to work under a reduced level of supervision.

The Draft Exemption also replaces the definitions of “*direct supervision*” and “*ongoing level of supervision*” with a definition of “*supervision*” that provides for rendering of financial services by a representative under the guidance, instruction and oversight of a supervisor using a variety of assessment, observation and oversight methods that are appropriate for the assessed level of competence of the representative.

4.3. Entry level requirements

No changes were affected to the entry level requirements other than to –

- provide for a different entry level requirement for representatives appointed only to perform the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements in view of the lower qualification requirement applicable to those representatives; and
- remove the entry level requirements for representatives rendering financial services in respect of the Financial Products Long-term Insurance Category A and/or Friendly Society Benefits.

The changes referred to above are necessary to ensure alignment with the new qualification requirements in the Fit and Proper Requirements.

4.4. Supervision agreement

The 2008 Exemption merely required that “*there must be a written agreement, ..., that details the procedures regarding the rendering of services under supervision*”. As a result, the Authority found that what was contained in the supervision agreements varied significantly amongst FSPs. In some instances, the agreement had no real purpose or value, did not address the representative's specific training needs having regard to the representative's level of competency and did not provide for criteria and procedures to assess whether it is appropriate for the representative to work under a

reduced level of intensity of supervision. In order to address the aforementioned, the Draft Exemption now prescribes what must be set out in the supervision agreement

4.5. Duties of FSP and Supervisor

The Draft Exemption imposes additional duties on the FSP mainly to ensure that the FSP has the operational ability to appoint representatives to work under supervision and that it is able to monitor and supervise those representatives without –

- materially increasing any risk to the FSP or the fair treatment of clients;
- materially impairing the quality of the governance framework of the FSP; and
- compromising the protection of or continuous and satisfactory service to clients.

The Draft Exemption further clarifies that the FSP is responsible for ensuring that the supervisor has the necessary skills and operational ability to supervise the representative, including meeting the minimum prescribed competency requirements applicable to the representative working under supervision.

The Draft Exemption, as opposed to the 2008 Exemption, does not prescribe what supervision arrangements must be applied or what the intensity of that supervision must be. It is for the FSP to determine what supervision arrangements will be most appropriate having regard to the factors set out in Condition 7 and referred to in paragraph 4.2 above. The proposed changes ensure that the requirements are proportionate and that a one-size fits all approach is not applied.

4.6. Duties of Representative

A significant difference from the 2008 Exemption is that a representative who is not meeting the qualification requirements is required to enrol for a qualification within two years of date of appointment. The Authority, through the exemption process, has identified a trend with representatives (with the assistance, and in some instances as a result, of the FSPs) to only commence with a qualification close the expiry of the supervision period. The requirement, therefore, is proposed to ensure that representatives timeously commence with a qualification thereby reducing the instances of non-compliance at the expiry of the supervision period.

CD da Silva
For the Financial Sector Conduct Authority

ANNEXURE A



FSCA FAIS Notice --- of 2018

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)**

EXEMPTION OF SERVICES UNDER SUPERVISION, 2018

The Financial Sector Conduct Authority, under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) read with 281(3)(b) of the Financial Sector Regulation Act, 2017, hereby exempt certain financial services providers and representatives from provisions of the Act in respect of the requirements relating to representatives' competence set out in the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, to the extent and subject to the conditions set out in the Schedule.

CD da Silva
For the Financial Sector Conduct Authority

DATE OF PUBLICATION:

SCHEDULE

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 -

“**class of business training requirements**” means the requirements, insofar it applies to representatives, relating to the class of business training as set out in Part 5 of Chapter 3 of the Fit and Proper Requirements;

“**competency requirements**” means the-

- (a) experience requirements;
- (b) qualification requirements;
- (c) regulatory examination requirements; and
- (d) class of business training requirements;

“**CPD requirements**” means, insofar it applies to representatives, the requirements relating to continuous professional development as set out in Chapter 4 of the Fit and Proper Requirements;

“**date of first appointment**” means the date on which a person was first appointed as a representative of a financial services provider;

“**execution of sales**” has the meaning assigned to it in section 1(1) of the Fit and Proper Requirements;

“**experience requirements**” means, insofar it applies to representatives, the requirements relating to experience as set out in Part 2 of Chapter 3 of the Fit and Proper Requirements;

“**Fit and Proper Requirements**” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017;

“**FSP**” means an authorised financial services provider as defined in section 1 of the Act;

“minimum experience periods” means, insofar it applies to representatives, the period of experience contemplated in sections 19(1), 20(1) and 21(a) of the Fit and Proper Requirements and the minimum experience contemplated in Tables 1 and 2 of Annexure One of the Fit and Proper Requirements;

“qualification requirements” means, insofar it applies to representatives, the requirements relating to qualifications as set out in Part 3 of Chapter 3 of the Fit and Proper Requirements;

“regulatory examination requirements” means, insofar it applies to representatives, the requirements relating to regulatory examinations as set out in Part 4 of Chapter 3 of the Fit and Proper Requirements;

“representative” means a representative who does not meet the competency requirements and who renders services under supervision;

“supervision” means financial services rendered by a representative under the guidance, instruction and oversight of a supervisor using a variety of assessment, observation and oversight methods that are appropriate for the assessed level of competence of the representative.

2. Extent of exemption

- (1) An FSP is exempted from section 13(2)(a) of the Act insofar it relates to the competency requirements applicable to a representative as set out in sections 12 and 29(1)(a), Parts 2, 3 and 4 of Chapter 3 and Chapter 4, of the Determination of Fit and Proper Requirements.
- (2) A representative is exempted from sections 12 and 29(1)(a), Parts 2, 3 and 4 of Chapter 3 and Chapter 4, of the Determination of Fit and Proper Requirements.
- (3) The exemptions referred to in subparagraphs (1) and (2) are subject to –
 - (a) the representative rendering financial services under supervision; and
 - (b) compliance with the conditions set out in Annexure A to the Schedule.

3. Amendment or withdrawal

This Exemption is subject to-

- (a) amendment thereof published by the Authority by notice on the official web site of

- the Authority; and
- (b) withdrawal in a like manner.

4. Transitional requirements and Repeals

Withdrawal

- (1) The Notice on Exemption of Services under Supervision in terms of Requirements and Conditions, 2008, published by Board Notice 104 of 2008 in Government Gazette No 31514 of 15 October 2008, is hereby withdrawn.

Transitional arrangements

- (2) Notwithstanding the withdrawal of the Notice referred to in subparagraph (1), the provisions of that Notice relating to –
 - (a) the maximum period of supervision;
 - (b) the period in which the representative must comply with the applicable experience requirement, regulatory examination requirement and qualification requirement,will continue to apply to the persons to which they had applied immediately before the repeal of the Notice for the financial products and categories of financial services for which they were working under supervision.
- (3) Representatives working under supervision, appointed prior to the commencement of this Exemption, must complete the applicable class of business training within 6 months from the date referred to in paragraph 5.

5. Short title and commencement

This Exemption is called the Exemption of Services under Supervision, 2018, and comes into operation on publication on the website of the Financial Sector Conduct Authority.

ANNEXURE A

Conditions of Exemption

Condition 1: Entry level requirements

- (1) At date of first appointment a representative of a –
 - (a) Category I or IV FSP, other than a representative referred to in subparagraph (b) and paragraph (2), must have –
 - (i) a Grade 12 National Certificate; or
 - (ii) a qualification equivalent to a Grade 12 National Certificate.
 - (b) Category I FSP that is appointed only to perform the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements must have –
 - (i) a Grade 10; or
 - (ii) an academic achievement equivalent to Grade 10.
 - (c) Category II, IIA or III FSP must have a recognised qualification.
- (2) Condition 1 does not apply to a representative of a Category I FSP that is appointed only to render financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits.

Condition 2: Specific compliance periods

Definitions

- (1) For purposes of paragraph 3 of this Condition –

“specific representative” means a representative of a Category I FSP who –

 - (a) only has a date of appointment to –
 - (i) render financial services in respect of a Tier 2 financial product; or
 - (ii) perform the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements in respect of a Tier 1 financial product; and
 - (b) complies with the qualification requirements applicable to the financial services and financial products referred to in paragraph (a).

Examination, class of business and qualifications requirements

- (2) A representative, other than a specific representative, must –

- (a) within 6 months from date of first appointment comply with the applicable class of business training requirements;
 - (b) within 2 years from date of first appointment comply with the applicable examination requirements;
 - (c) within 6 years from date of first appointment comply with the applicable qualification requirements.
- (3) A specific representative must from the date on which it was first appointed as a representative to render financial services in respect of a Tier 1 financial product, other than the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements, comply –
 - (a) within 6 months with the class of business training requirements;
 - (b) within 2 years with the applicable examination requirements; and
 - (c) within 6 years with the qualification requirements applicable to the Tier 1 financial products for which it is appointed.

CPD requirements

- (4) A representative must comply with the applicable CPD requirements from the date on which the representative meets the class of business training requirements, examination requirements and qualification requirements.

Experience requirements

- (5) A representative, insofar it relates to the experience requirements –
 - (a) must work under supervision for at least the minimum experience periods applicable to the categories of FSPs and financial products for which it is appointed to work under supervision;
 - (b) subject to paragraph (c), must remain under supervision until being assessed as having the required experience in respect of the particular category of FSP and categories of financial products for which it is appointed;
 - (c) may not work under supervision for a period longer than six years from date of appointment in respect of a particular category of FSP or financial product.
- (6) The minimum experience periods referred to in paragraph (5)(a) –
 - (a) may run concurrently where a representative is appointed for multiple categories of FSPs and/or financial products; and
 - (b) commences on the date the representative was first appointed as a

representative in respect of the particular category of FSP or financial product.

Condition 3: Supervision agreement

- (1) The FSP and representative, prior to the rendering of services under supervision, must enter into a written supervision agreement.
- (2) The supervision agreement must –
 - (a) record the name of the supervisor;
 - (b) set out the tasks and functions the representative performs on behalf of the FSP, including the categories of financial services and financial products in respect of which the supervision agreement applies;
 - (c) set out the appropriate and relevant knowledge, skills and expertise required to competently perform the tasks and functions referred to in (b);
 - (d) set out the training needs of the representative and the training programme that will be implemented to address those needs;
 - (e) set out the supervision arrangements, including the –
 - (i) duties and responsibilities of the supervisor and representative;
 - (ii) supervision methodology, processes and procedures, including the oversight, monitoring and assessment methodologies, processes and procedures; and
 - (iii) criteria and procedures to assess whether it is appropriate for the representative to work under a reduced level of intensity of supervision; and
 - (iii) criteria against which the representative will be assessed and the intervals of the assessments; and
 - (iv) sign-off criteria by the supervisor.

Condition 4: Duties of the FSP

- (1) An FSP that appoints a representative to work under supervision must –
 - (a) have the operational ability, including adequate and appropriate human, technical and technological resources, controls and procedures and an adequate and effective governance framework to –
 - (i) appoint representatives to work under supervision;
 - (ii) monitor and supervise representatives that work under supervision, including monitoring and supervising compliance with the conditions of this Exemption and the supervision agreement referred to in

Condition 3;

- (b) ensure that such appointment does not –
 - (i) materially increase any risk to the FSP or the fair treatment of clients;
 - (ii) materially impair the quality of the governance framework of the FSP, including the FSP's ability to manage its risks and meet its legal and regulatory obligations;
 - (iii) compromise the fair treatment and protection of or continuous and satisfactory service to clients;
 - (iv) prevent the FSP from acting in the best interests of its clients;
- (c) assign a supervisor to the representative that –
 - (i) has adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that the representative performs;
 - (ii) meets the prescribed minimum competency requirements applicable to a representative appointed for the categories of financial services and financial products for which the representative will be working under supervision;
 - (iii) has the required coaching and assessment skills;
 - (iv) has the operational ability to adequately and effectively monitor and supervise the representative; and
- (d) ensure that –
 - (i) a working relationship exist between the supervisor and representative that enables the supervisor to have oversight of the activities performed by the representative and that enables the transfer of skills;
 - (ii) the supervisor complies with the Conditions of this Exemption; and
 - (iii) the representative is at all times supervised when performing its functions;
- (e) at regular intervals review the appropriateness, effectiveness and adequacy of the supervision arrangements;
- (f) reflect on its register of representatives and the central register as contemplated in sections 13(3) and 13(5) of the Act respectively, whether a representative is rendering financial services under supervision;
- (g) update the registers referred to in paragraph (f) within 15 days after a representative ceases to render financial services under supervision;

Condition 5: Duties of supervisor

- (4) A supervisor must-
- (a) implement and ensure compliance with the supervision agreement;
 - (b) mentor and coach the representative in respect of all the categories of financial services and financial products for which it is appointed in order for the representative to acquire the required skills, knowledge and competencies to perform its functions;
 - (c) at regular intervals review and assess the learning activities and progress of the representative, including recording observations and aspects of further development;
 - (d) immediately report to the FSP any unfair treatment of a client as a result of the representative's actions or where the representative's actions may not have been in the best interest of the client;
 - (e) record and document the method, frequency and level of intensity of supervision and any changes to the aforementioned;
 - (f) create a supervision file containing all records relating to the supervision, including information and documentation relating to –
 - (i) development and training;
 - (ii) supervision activities;
 - (iii) assessments;
 - (iv) proof of enrolment as contemplated in paragraph (1) of Condition 6; and
 - (iv) decisions to implement a reduced level of supervision.

Condition 6: Duties of representative

- (1) A representative that does not meet the qualification requirement, other than a representative referred to in paragraph (2), must within 2 years from date of appointment provide the supervisor with proof of enrolment for a relevant recognised qualification.
- (2) A specific representative as defined in Condition 2 that does not meet the qualification requirement must within 2 years from the date on which it was first appointed as a representative to render financial services in respect of a Tier 1 financial product, other than the execution of sales in accordance with section 22(b)(ii) of the Fit and Proper Requirements, provide the supervisor with proof of enrolment for a relevant recognised qualification.

- (4) A representative must
 - (a) actively pursue the completion of the recognised qualification within the prescribed time limits;
 - (b) at all times adhere to the provisions of the supervision agreement;
 - (c) disclose to clients that it is rendering financial services under supervision.

Condition 7: Intensity of supervision

- (1) The FSP must –
 - (a) determine the supervision arrangements and the level of intensity of supervision that must apply to the representative having regard to –
 - (i) the nature, scale and complexity of the financial services and financial products to be rendered by the representative;
 - (ii) the representative's assessed level of competency; and
 - (iii) the risk to clients and the FSP;
 - (b) at regular intervals review the appropriateness, effectiveness and adequacy of the supervision arrangements and the level of intensity of the supervision referred to in paragraph (a);
 - (c) determine the criteria and procedures to assess whether it is appropriate for a representative to work under a reduced level of intensity of supervision.