

# FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002

## GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES

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I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under [section 15](#) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), publish a general code of conduct for authorised financial services providers, and their representatives, as contained in the Schedule hereto, which I have drafted after consultation with the Advisory Committee on Financial Services Providers.

This notice is called the Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister of Finance in terms of [section 7\(1\)](#) of the said Act.

(signed)

**J VAN ROOYEN**

**Registrar of Financial Services Providers**

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**PART I**  
**INTRODUCTORY PROVISIONS**

**1. Definitions, construction and application**

- (1) In this Code **“the Act”** means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act shall have that meaning, and, unless the context indicates otherwise-

**“advertisement”**, in relation to a provider, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such person, which is intended merely to call attention to the marketing or promotion of financial services offered by such person, and which does not purport to provide detailed information regarding any such financial services; and **“advertising”** or **“advertises”** has a corresponding meaning;

**“associate”** -

- (a) in relation to a natural person, means -
- (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
  - (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
  - (iii) a parent or stepparent of that person;

- (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
  - (v) a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (ii) to (iv);
  - (vi) a person who is in a commercial partnership with that person;
- (b) in relation to a juristic person -
- (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
  - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
  - (iii) which is not a company or a close corporation as referred to in subparagraphs (i) or (ii), means another juristic person which would have been a subsidiary or holding company of the first-mentioned juristic person-
    - (aa) had such first-mentioned juristic person been a company; or
    - (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
  - (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;
- (c) in relation to any person -
- (i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph;
  - (ii) includes any trust controlled or administered by that person.  
[Definition of “associate” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“company”** means a company under the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of “company” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“conflict of interest”** means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, -

- (a) influence the objective performance of his, her or its obligations to that client; or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,

including, but not limited to -

- (i) a financial interest;
- (ii) an ownership interest;
- (iii) any relationship with a third party;

[Definition of “conflict of interest” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“Direct marketing”**, means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirements.

**“Direct marketer”** means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing.

**“distribution channel”** means -

- (a) any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;
- (b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- (c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

[Definition of “distribution channel” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“fair value”** has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of “fair value” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“financial interest”** means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than -

- (a) an ownership interest;
- (b) training, that is not exclusively available to a selected group of providers or representatives, on -
  - (i) products and legal matters relating to those products;
  - (ii) general financial and industry information;
  - (iii) specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

[Definition of “financial interest” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“holding company”** means a holding company as defined in [section 1\(4\)](#) of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of “holding company” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“immaterial financial interest”** means any financial interest with a determinable monetary value, the aggregate of which does not exceed R 1 000 in any calendar year from the same third party in that calendar year received by -

- (a) a provider who is a sole proprietor; or
- (b) a representative for that representative’s direct benefit;
- (c) a provider, who for its benefit or that of some or ail of its representatives, aggregates the immaterial financial interest paid to its representatives;

[Definition of “immaterial financial interest” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“provider”** means an authorised financial services provider, and includes a representative;

**“ownership interest”** means -

- (a) any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or an proprietary interest held as an approved nominee on behalf of another person; and
- (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

[Definition of “ownership interest” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“subsidiary”** means a subsidiary as defined in [section 1\(3\)](#) of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of “subsidiary” by BN 58/2010 w.e.f. 19 April 2010]

**“third party”** means -

- (a) a product supplier;

- (b) another provider;
  - (c) an associate of a product supplier or a provider;
  - (d) a distribution channel;
  - (e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (a) to (d) above provides a financial interest to a provider or its representatives
- [Definition of “third party” inserted by BN 58/2010 w.e.f. 19 April 2010]

**“transaction requirement”** means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a product supplier by or on behalf of a client relating to the purchase of or investment in any financial product, including any amendment thereof or variation thereto;

**“writing”** includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and “written” has a corresponding meaning.

- (2)
  - (a) This Code must be construed -
    - (i) in conjunction with the provisions of the Act and in manner conducive to the promotion and achievement of the objectives of codes of conduct as stated in [section 16](#) of the Act; and
    - (ii) as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.
  - (b) In the case of any inconsistency or conflict between-
    - (i) a provision of this Code and a provision of any other specific Code drafted under [section 15](#) of the Act, the last mentioned provision shall prevail; and
    - (ii) a provision of this Code and a provision of any other law specifically regulating market conduct in the rendering of financial services in respect of one or more specific financial products, the last mentioned provision, unless inconsistent or in conflict with the Act, shall prevail.
- (3) The provisions of this Code apply, unless stated otherwise in this Code or otherwise by law, to all financial services providers and representatives.

## PART II

### GENERAL PROVISIONS

## **2. General duty of provider**

A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

## **3. Specific duties of provider**

- (1) When a provider renders a financial service-
  - (a) representations made and information provided to a client by the provider-
    - (i) must be factually correct;
    - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
    - (iii) must be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client;
    - (iv) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
    - (v) may, subject to the provisions of this Code, be provided orally and, at the client's request, confirmed in writing within a reasonable time after such request;
    - (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
    - (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
    - (viii) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made without delay;
  - (b) a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;

[Para. (b) substituted by BN 58/2010 w.e.f. 19 July 2010]

- (c) a provider or a representative must, in writing, at the earliest reasonable opportunity -
    - (i) disclose to a client any conflict of interest in respect of that client, including -
      - (aa) the measures taken, to avoid or mitigate the conflict;
      - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
      - (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
    - (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.  
[Para. (c) substituted by BN 58/2010 w.e.f. 19 July 2010]
  - (d) the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider;
  - (e) transactions of a client must be accurately accounted for; and
  - (f) the provider involved must not deal in any financial product for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients, or on any non-public information the disclosure of which would be expected to affect the prices of such product.
- (2)
- (a) A provider must have appropriate procedures and systems in place to-
    - (i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of [section 15](#) of the Act;
    - (ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and
    - (iii) keep such client records and documentation safe from destruction.
  - (b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.

- (c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request.
  - (d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
- (3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.

### 3A. Financial interest and conflict of interest management policy

#### (1)

- (a) A provider or its representatives may only receive or offer the following financial interest from or to a third party -
  - (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
  - (ii) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);
  - (iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;
  - (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees -
    - (aa) are specifically agreed to by a client in writing; and
    - (bb) may be stopped at the discretion of that client;
  - (v) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;
  - (vi) subject to any other law, an immaterial financial interest; and
  - (vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

[Para. (a) inserted by BN 58/2010 w.e.f. 19 October 2010]

- (b) A provider may not offer any financial interest to a representative of that provider for -
  - (i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
  - (ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
  - (iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.

[Para. (b) inserted by BN 58/2010 w.e.f. 19 April 2011]

- (c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to section 3A(1)(b), in respect of its representatives.

[Para. (c) inserted by BN 58/2010 w.e.f. 19 October 2010]

(2)

- (a) Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.
- (b) A conflict of interest management policy must -
  - (i) provide for the management of conflicts of interest as defined in section 1, and -
    - (aa) mechanisms for the identification of conflicts of interest;
    - (bb) measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
    - (cc) measures for the disclosure of conflicts of interest;
    - (dd) processes, procedures and internal controls to facilitate compliance with the policy; and
    - (ee) consequences of non-compliance with the policy by the provider's employees and representatives; and
  - (ii) specify the type of and the basis on which a representative will qualify for a financial interest that the provider will offer a representative and motivate how that financial interest complies with [section 3A\(1\)\(b\)](#);

- (iii) include a list of all its associates;
  - (v) include the names of any third parties in which the provider hold an ownership interest;
  - (vi) include the names of any third parties that holds an ownership interest in the provider; and
  - (vii) include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and
  - (viii) be drafted in an easily comprehensible form and manner.
- (c) A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.
  - (d) A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
  - (e) A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
  - (f) A provider must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.

[Subs. (2) inserted by BN 58/2010 w.e.f. 19 April 2011]

- (3) A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.

[Subs. (3) inserted by BN 58/2010 w.e.f. 19 October 2010]

- (4)
  - (a) A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.
  - (b) The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

[Subs. (4) inserted by BN 58/2010 w.e.f. 19 April 2010]

### **PART III**

#### **INFORMATION ON PRODUCT SUPPLIERS**

4.

- (1) A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following information about the relevant product supplier and, where such information is provided orally, must confirm such information within 30 days in writing:
  - (a) Name, physical location, and postal and telephone contact details of the product supplier;
  - (b)
    - (i) the contractual relationship with the product supplier (if any), and whether the provider has contractual relationships with other product suppliers;
    - (ii) names and contact details of the relevant compliance and complaints departments of the product supplier.
  - (c) the existence of any conditions or restrictions imposed by the product supplier with regard to the types of financial products or services that may be provided or rendered by the provider; and
  - (d) where applicable, the fact that the provider -
    - (i) directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier;
    - (ii) during the preceding 12 month period received more than 30% of total remuneration, including commission, from the product supplier,and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.
- (2) A product supplier which is an authorised financial services provider, and which has entered into an intermediary contract or similar contractual relationship with another provider (not being a representative) for the purpose of rendering a financial service in respect of its financial products, must within a reasonable time after being requested to do so by such other provider, provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements of this Code relating to the furnishing of details of the product supplier and the product in question.
- (3) A provider must, where the relevant licence, terms of employment or mandate enables such provider to provide clients with financial services in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned.
- (4) A provider may not, in dealing with a client, compare different financial products, product suppliers, providers or representatives, unless the differing characteristics

of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representative.

## **PART IV**

### **INFORMATION ON PROVIDERS**

5. Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing:
- (a) Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices;
  - (b) concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the extent to which the client will have to accept such responsibility;
  - (c) names and contact details of the relevant compliance department or, in the case of a representative, such detail concerning the provider to which the representative is contracted;
  - (d) details of the financial services which the provider is authorised to provide in terms of the relevant licence and of any conditions or restrictions applicable thereto;
  - (e) whether the provider holds guarantees or professional indemnity or fidelity insurance cover or not.
  - (f) whether a representative of a provider is rendering services under supervision as defined in the Determination of Fit and Proper Requirements; and
  - (g) the existence of a specific exemption that the Registrar may have granted to the provider with regard to any matter covered by the Act.

## **PART V**

### **CONTACTING OF CLIENT**

6. A provider must-

- (a) in making contact arrangements, and in all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client; and
- (b) at the commencement of any contact, visit or call initiated by the provider, explain the purpose thereof and at the earliest opportunity, provide the information referred to in section 5.

## **PART VI**

### **INFORMATION ABOUT FINANCIAL SERVICE**

#### **7.**

- (1) Subject to the provisions of this Code, a provider other than a direct marketer, must-
  - (a) provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision;
  - (b) whenever reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;
  - (c) in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:
    - (i) Name, class or type of financial product concerned;
    - (ii) nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;
    - (iii) where the financial product is marketed or positioned as an investment or as having an investment component-
      - (aa) concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;
      - (bb) separate disclosure (and not mere disclosure of an all inclusive fee or charge) of any charges and fees to be levied against the product, including-
        - (A) the amount and frequency thereof;
        - (B) the identity of the recipient;

- (C) the services or other purpose for which each fee or charge is levied;
- (D) where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and
- (E) where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and

[Subpara. (bb) substituted by BN 43/2008 with effect from 14 August 2008]

- (cc) on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances;
- (dd) any rebate arrangements and thereafter on a regular basis (but not less frequently than annually): Provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition;

[Subpara. (dd) inserted by BN 43/2008 with effect from 14 August 2008]

- (ee) any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative financial services provider concerned, rather than disclosing the actual monetary amount: Provided that for the purposes of this sub-paragraph, "platform fee" means a payment by a product supplier to an administrative financial services provider for the administration and/or distribution and/or marketing cost savings represented by the distribution opportunity presented by the administrative platform, and may be structured as a stipulated monetary amount or a volume

based percentage of assets held on the platform, and that the term “platform fee” must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition.

[Subpara. (ee) inserted by BN 43/2008 with effect from 14 August 2008]

- (iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions;
- (v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance
- (vi) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages (“valuable consideration”), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(1)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate.;
- (vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
- (viii) any guaranteed minimum benefits or other guarantees;
- (ix) to what extent the product is readily realisable or the funds concerned are accessible;
- (x) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal;
- (xi) material tax considerations;
- (xii) whether cooling off rights are offered and, if so, procedures for the exercise of such rights;

(xiii) any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations; and

[Para. (xiii) substituted by BN 152/2008]

(xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years;

(d) fully inform a client in regard to the completion or submission of any transaction requirement-

(i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility;

(ii) that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;

(iii) of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and

(iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.

(2) No provider may in the course of the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.

(3) A provider must, where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client.

(4) A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually) provide the client with a written statement identifying such products where they are still in existence, and providing brief current details (where applicable), of -

(a) any ongoing monetary obligations of the client in respect of such products;

(b) the main benefits provided by the products;

- (c) where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value which is accessible to the client; and
- (d) any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products:

Provided that such a statement need not be provided where the client is aware, or ought reasonably to be aware, that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.

[Subsec. (4) inserted by BN 43/2008 with effect from 14 August 2008]

## **PART VII**

### **FURNISHING OF ADVICE**

#### **8. Suitability**

- (1) A provider other than a direct marketer, must, prior to providing a client with advice-
  - (a) take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;
  - (b) conduct an analysis, for purposes of the advice, based on the information obtained;
  - (c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and
  - (d) where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of-
    - (i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;  
[Subpara (i) substituted by BN 43/2008 with effect from 14 May 2008]
    - (ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;  
[Subpara (ii) substituted by BN 43/2008 with effect from 14 May 2008]

- (iii) in the case of an insurance product, the impact of age and health changes on the premium payable;
- (iv) differences between the tax implications of the replacement product and the terminated product;
- (v) material differences between the investment risk of the replacement product and the terminated product;
- (vi) penalties or unrecovered expenses deductible or payable due to termination of the terminated product;
- (vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;

[Subpara (vii) substituted by BN 43/2008 with effect from 14 May 2008]

- (viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and;

[Subpara (viii) substituted by BN 43/2008 with effect from 14 May 2008]

- (ix) any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.

[Subpara (ix) inserted by BN 43/2008 with effect from 14 May 2008]

- (e) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (d).

[Para (e) added by BN 43/2008 with effect from 14 May 2008]

- (2) The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.
- (3) A provider providing advice to a client to replace an existing long-term insurance contract or policy with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.  
[Subs (3) substituted by BN 43/2008 with effect from 14 May 2008]
- (4) Where a client-
  - (a) has not provided all information requested by a provider furnishing advice, as part of the analysis referred to in subsection (1)(b), or where the provider has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient

time to do so, the provider must fully inform the client thereof and ensure that the client clearly understands that-

- (i) a full analysis in respect of the client referred to in subsection (1)(b) could not be undertaken;
  - (ii) there may be limitations on the appropriateness of the advice provided; and
  - (iii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs; or
- (b) elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

## **9. Record of advice**

- (1) A provider must, subject to and in addition to the duties imposed by [section 18](#) of the Act and section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 8, which record must reflect the basis on which the advice was given, and in particular-
- (a) a brief summary of the information and material on which the advice was based;
  - (b) the financial product which were considered;  
[Para (b) substituted by BN 43/2008 with effect from 14 May 2008]
  - (c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and  
[Para (c) substituted by BN 43/2008 with effect from 14 May 2008]

Provided that such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client in accordance with section 8.

- (d) where the financial product or products recommended is a replacement product as contemplated in section 8(1)(d)-
  - (aa) the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses,

restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and

- (bb) the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product:.

[Para (d) inserted by BN 43/2008 with effect from 14 May 2008]

- (2) A provider, other than a direct marketer, must provide a client with a copy of the record contemplated in 9(1) in writing.

## **PART VIII**

### **CUSTODY OF FINANCIAL PRODUCTS AND FUNDS**

#### **10.**

- (1) Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds properly and promptly and-
  - (a) when documents of title are lodged with the provider on behalf of the client, the provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;
  - (b) when a provider receives funds into safe custody without the mediation of a bank, the provider must on receipt of the money, issue a written confirmation of receipt thereof;
  - (c) where the provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;
  - (d) open and maintain a separate account, designated for client funds, at a bank and-
    - (i) must within one business day of receipt pay into the account all funds held on behalf of clients;
    - (ii) ensure that the separate account only contains funds of clients and not those of the provider;
    - (iii) pay all bank charges in respect of the separate account except that bank charges specifically relating to a deposit or withdrawal of the funds of the client are for the client's own account; and
    - (iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;
  - (e) take reasonable steps to ensure-

- (i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the provider;
  - (ii) that client financial products or funds are readily discernible from private assets or funds of the provider; and
  - (iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.
- (2) Where a transaction or agreement has been recorded in writing, the provider who dealt with the client, must ensure that the original agreement is delivered to the client for safe custody.
- (3) [Section 10](#)(1)(d) is not applicable to a provider-
- (a) who receives, holds or in any other matter deals with premiums payable under a short-term reinsurance policy; or
  - (b) who is subject to [section 45](#) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), if the provider complies with the requirements contemplated in that section.

[Subs. (3) substituted by BN 171/2009]

## **PART IX**

### **RISK MANAGEMENT**

#### **11. Control measures**

A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

#### **12. Specific control objectives**

A provider, excluding a representative, must, without limiting the generality of section 11, structure the internal control procedures concerned so as to provide reasonable assurance that-

- (a) the relevant business can be carried on in an orderly and efficient manner;
- (b) financial and other information used or provided by the provider will be reliable; and
- (c) all applicable laws are complied with.

### **13. Insurance**

A provider, excluding a representative, must, if, and to the extent, required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

## **PART X**

### **ADVERTISING AND DIRECT MARKETING**

### **14.**

- (1) An advertisement by any provider must -
  - (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
  - (b) if it contains-
    - (i) performance data (including awards and rankings), include references to their source and date;
    - (ii) illustrations, forecasts or hypothetical data
      - (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
      - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
      - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
    - (iii) a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and
    - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
  - (c) if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.
- (2) Where a provider advertises a financial service by telephone-

- (a) an electronic, voicellogged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;
  - (b) a copy of all such records must be provided on request by the client or the registrar within seven days of the request;
  - (c) all the information required by sections 4(1)(a) and (c) and 5(a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.
- (3) Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.

**15.**

- (1) A direct marketer must, when rendering a financial service to or on behalf of a client, at the earliest reasonable opportunity furnish the client with the following particulars:
- (a) the business or trade name of the direct marketer;
  - (b) confirmation whether the direct marketer is a licensed financial service provider and details of the financial services which the direct marketer is authorised to provide in terms of the relevant license and any conditions or restrictions applicable thereto;
  - (c) telephone contact details of direct marketer (unless the contact was initiated by the client);
  - (d) telephone contact details of the compliance department of the direct marketer;
  - (e) whether the direct marketer holds professional and indemnity insurance;
- Provided that where the direct marketer is a representative, the information contemplated in sub-paragraphs (a) to (c) above must be provided in respect of the provider to which the representative is contracted.
- (2) When providing a client with advice in respect of a product, a direct marketer must at the earliest reasonable opportunity:
- (a) make enquiries to establish whether the financial product or products concerned will be appropriate, regard being had to the client's risk profile and financial needs, and circumstances;

- (b) furnish the client with the following particulars where appropriate:
  - (i) business or trade name of the product supplier;
  - (ii) legal status and relationship with product supplier;
  - (iii) the following details in respect of the product:
    - (aa) Name, class or type of financial product concerned;
    - (bb) Nature and extent of benefits to be provided;
    - (cc) Manner in which such benefits are derived or calculated, with specific reference to the underlying assets of any investment component and the manner in which the value of such investment component is determined;
    - (dd) Monetary obligations assumed by the client as well as manner of payment;
    - (ee) Whether cooling off rights are offered and, if so, procedures for the exercise of such rights;
    - (ff) Any material investment or other risks associated with the product;
  - (c) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and, if it is such a replacement, inform the client of actual and potential financial implications, costs and consequence set out in clause 8(1)(d) of this Code before any transaction is concluded.  
[Para (c) substituted by BN 43/2008 with effect from 14 May 2008]
- (3) A direct marketer must prior to the conclusion of any transaction and where a contract is concluded provide the client with the following information, provided where such information is provided orally, it must be confirmed in writing within 30 days:
  - (a) Telephone contact details of the compliance department of the product supplier;
  - (b) To what extent the product is readily realisable or the funds concerned are accessible where appropriate;
  - (c) Details of manner in which benefits will be paid;
  - (d) Any restrictions on or penalties for early termination or withdrawal from the product, or other effects, if any, of such termination or withdrawal;

- (e) Charges and fees to be levied against the product including the amount and frequency thereof and where the product has an investment component, the net investment amount ultimately invested for the benefit of the client;
  - (f) Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person;
  - (g) On request, the past investment performance of the product, where applicable, over periods and at intervals which are reasonable with regard to the type of product involved;
  - (h) Consequences of non-compliance with monetary obligations assumed by the client and any anticipated or contractual escalations, increases or additions;
  - (i) In the case of an insurance product in respect of which provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
  - (j) Concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
  - (k) Any guaranteed minimum benefits or other guarantees where appropriate.
  - (l) That recordings of telephone discussions (where applicable) will be made available to the client on request
- (4) A direct marketer must provide a client (where appropriate) with a record of advice as contemplated in section 9(1)(a) to (d) in writing.  
[Subs (4) substituted by BN 43/2008 with effect from 14 May 2008]
- (5) A direct marketer shall be obliged to record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings. Records of advice furnished to a client telephonically need not be reduced to writing but a copy of the relevant voiceloggged records must be provided, on request, to the client or Registrar within a reasonable time.
- (6) Notwithstanding the above or contrary provision in the code, such of the information required to be provided to the client in terms of clauses 4, 5 and 7 of this Code as has not yet been recorded or provided to the client in writing before the conclusion of any transaction, must be provided to the client in writing within 30 days thereafter.

## **PART XI**

### **COMPLAINTS**

## 16. General

(1) In this Part-

**“complaint”** means a complaint as defined in [section 1](#)(1) of the Act (excluding the reference to [section 26](#)(1)(a)(iii) therein), submitted by a client to a provider for purposes of resolution by the provider;

**“internal complaint resolution system and procedures”**, in relation to a provider and a client, means the system and procedures established and maintained by the provider in accordance with this Code for the resolution of complaints by clients;

**“Ombud”** means the Ombud for Financial Services Providers referred to in [section 20](#)(2) of the Act;

**“resolution”**, or **“internal resolution”**, in relation to a complaint and a provider, means the process of the resolving of a complaint through and in accordance with the internal complaint resolution system and procedures of the provider;

**“Rules”** means the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2002.

(2) A provider must-

- (a) request that any client who has a complaint against the provider must lodge such complaint in writing;
- (b) maintain a record of such complaints for a period of five years;
- (c) handle complaints from clients in a timely and fair manner;
- (d) take steps to investigate and respond promptly to such complaints; and
- (e) where such a complaint is not resolved to the client’s satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.

## 17. Basic principles of systems and procedures

A provider, excluding a representative must maintain an internal complaint resolution system and procedures based on the following:

- (a) Maintenance of a comprehensive complaints policy outlining the provider’s commitment to, and system and procedures for, internal resolution of complaints;
- (b) transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;

- (c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and
- (d) fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.

## **18. Resolution of complaints**

The internal complaint resolution system and procedures of the provider excluding a representative must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:

- (a) availability of adequate manpower and other resources;
- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, the Rules and this Code with regard to resolution of complaints;
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary; and

## **19. Specific obligations**

- (1) Subject to the other provisions of this Part, the internal complaint resolution system and procedures of a provider excluding a representative must contain arrangements which-
  - (a) must -
    - (i) reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;
    - (ii) provide that access to the procedures is at all times available to clients at any relevant office or branch of the provider, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;

- (iii) include in the details envisaged in subparagraph (i), a reference to the duties of the provider and the rights of a client set out in Rule 6(a) and (b) of the Rules;
  - (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and
  - (v) include in such details the name, address and other contact particulars of the Ombud;
- (b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
  - (c) must provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with [section 18](#)(b) and (d) of the Act;
  - (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-
    - (i) the complaint receives proper consideration;
    - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
    - (iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
- (2) In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.

## **PART XII**

### **TERMINATION OF AGREEMENT OR BUSINESS**

- 20.** Subject to the Act, and sections 3(2) and (3) of this Code-

- (a)
  - (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;
  - (ii) where the client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;
- (b) a provider, other than a representative who ceases to operate as such, must immediately notify all affected clients accordingly and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another provider; and
- (c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.

### **PART XIII**

#### **WAIVER OF RIGHTS**

- 21.** No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

### **PART XIV**

#### **SHORT TITLE AND COMMENCEMENT**

- 22.** This Code is called the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister under [section 7](#)(1) of the Act.