



Smit and Kie Brokers Pty(Ltd).
COMPLIANCE MANUAL

National strength. Local signature.

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1. INTRODUCTION

1.1. COMPLIANCE

Compliance plays an essential role in any organisation that is concerned about risk exposure. The compliance function should be an independent function within an entity, which implement and monitor the compliance risk processes in accordance with the FAIS Act. The ongoing changes to legislation and the introduction of new legislation, has placed greater emphasis on the formal and structured monitoring of the compliance and regulatory requirements.

1.2. OBJECTIVES

- To assist and guide management in discharging their responsibility to comply with applicable:
 - Statutory regulations; ○ Regulatory regulation;
 - Supervisory regulations, and
- Good business practices;
 - To demonstrate to the regulatory bodies that the organisation and its employees are Fit and Proper and capable of performing their services in line with FAIS and other relevant legislation.
- To facilitate the management of compliance risks;
- To avoid disciplinary actions from industry bodies; and
- To minimise the possibility of civil and criminal action against the organisation.

1.3. COMPLIANCE RISK AND COMPLIANCE OFFICERS

- Compliance Risk is the risk of legal or regulatory sanctions, financial loss and/or damage to reputation and values of an organisation when it fails to comply with applicable laws, regulations, and codes of conduct and standards of good practice. It is clear that organisations must have a compliance strategy that is effective, which aims to identify, monitor and control risks facing the organisation.
- The purpose of the compliance officer is to facilitate the effective management of the compliance risk of a company by:
 - Implementing a Compliance Manual and compliance standards for the whole company;
 - Providing advice on compliance related matters; ○ Establish and nurture a compliance culture;
 - Promote the compliance culture through training, programmes and awareness campaigns;
 - Regular reporting to the Board of Directors, Management, Risk Committee and Regulators; ○ Attend to recommendations, queries and complaints; and ○ Monitoring the level of compliance on an ongoing basis.
- It is important to note:

“Every person in the company is part of the compliance function of the entity, the compliance officer can only implement, assist, educate and monitor the compliance levels. It is up to all staff to ensure the compliance of the entity.”
- At present, Smit and Kie Brokers Pty(Ltd).as two approved Compliance Officers.

2. THE COMPLIANCE FUNCTION

2.1. ROLE PLAYERS

- Although the ultimate responsibility of compliance with legal and regulatory requirements rests with the Key Individuals, the compliance process should be seen as a multidisciplinary process in which all key role-players should be involved such as:

- Directors; ○ Risk Committee; ○ Management; ○ Compliance Officers; ○ Compliance Administrators; and ○ Employees.

- The Company will put a Compliance Function into effect for the group and the Head Compliance Officer will be responsible for the Day to Day Management of the function.

2.1.1. DIRECTORS

The Board is appointed by and accountable to the shareholders to lead, control and monitor the business of the entity and to provide effective "compliance" controls.

2.1.2. RISK COMMITTEE

This is a committee within Smit and Kie Brokers Pty(Ltd).that is yet to be established. The committee is to be established and functioning by June 2014. The committee will meet on an annual basis to determine the risks of the organisation, ways in which they can be minimised and will arrange for effective controls and measures to be put in place. They will also review current policies and procedures and determine if they are still relevant and effective.

2.1.3. MANAGEMENT

Management accepts responsibilities for the risks and decisions taken in their division such as the Underwriting and Claims Departments. Their specific role in the compliance process is to ensure the adherence to the compliance manual as well as other vital Smit and Kie Brokers Pty(Ltd).Policies and documentation. They are also required to update their own documentation annually to ensure suitability.

2.1.4. COMPLIANCE OFFICERS

The Compliance Officers are there to identify risks in a holistic approach, implement risk management processes and to monitor risks management processes. The responsibilities can be divided into the following areas:

- Setting Standards;
- Providing Advice, guidelines and recommendations; ○
- Monitoring the compliance culture and function; ○ Maintain

External Relations with regulatory
and other representative bodies; ○
Resolving issues of non-compliance and where they are r
to report these instances to the FSB;

- Training of employees on FAIS and other vital legislation; ○
Assisting in ad-hoc investigations; ○ Handling queries and
complaints; and ○ Performing bi-annual onsite compliance visits
at each branch.

2.1.5. COMPLIANCE ADMINISTRATION

Each branch will have one Compliance Administrator who will be assigned Compliance Administration tasks (as allocated by the Compliance Officers and) will be obligated to report to the Compliance Officers on the Compliance standing of their organisation periodically and perform these Compliance Administrative tasks timeously. Compliance Administrators are not authorised to perform any monitoring or set any standards they are only to feed information and data to the Compliance Officer and to assist the Compliance Office in accurately discharging their duties.

2.1.6. ALL EMPLOYEES

They are the primary role-players in the compliance function, as there adherence to the compliance function would ensure compliance of the entity. It is vital employees are kept up to date on the legislative expectancies of them.

2.2. MONITORING OF COMPLIANCE

2.2.1. COMPLIANCE MONITORING BY REGULATORS

Monitoring of compliance by the regulators normally takes place at the highest level and includes all the entities that function within the financial services industry and are subject to the specific regulator's supervision. The nature of the monitoring, as well as the process followed by the regulators, will depend on:

- The mandate of the regulator and the profile of the specific entity in terms of the nature of its business;
- The proven consistency of the measures implemented by the entity to enhance a culture of compliance; and ○ The relevant supervisory requirements.

Smit and Kie Brokers Pty(Ltd). branches had an Onsite visit from the Financial Service Board ('FSB') during 2011 and the visit was successful. The next visit from the FSB is expected in 5-6 years' time. It is important to note however that the FSB monitors at all times through Compliance Officers, Profile Changes, Submissions of Compliance reports and Complaints.

2.2.2. COMPLIANCE MONITORING BY MANAGEMENT

Compliance monitoring by management is another kind of monitoring that must take place as part of their normal operational duties. They are primarily accountable to the Board of Directors for compliance which should be embedded in the systems of the specific business unit and which management is required to monitor.

2.2.3. COMPLIANCE MONITORING BY COMPLIANCE OFFICER

- One of the compliance officer's responsibilities is compliance monitoring, which is a continuous process that takes place throughout the year for all entities and in the form of Onsite visits twice a year.
- The compliance officer should promote compliance awareness, which includes the training of business unit staff with regard to new legislation, amendments to legislation or adherence to existing requirements and act in a consulting role to management in the monitoring process. The Compliance Officer at Smit and Kie Brokers Pty(Ltd). is also responsible for implementing, updating and training on the Procedure guide along with management.
- There are two Compliance Officers at Smit and Kie Brokers Pty(Ltd).:
 - Clifford Garrun; and
 - Benita da Silva.
- Monitoring is done onsite bi-annually. However, monitoring from the Smit & Kie Compliance office should takes place daily. The branches have easy access to the Compliance Officers so that Compliance queries can be dealt with timeously. The Compliance Officers are available at all times via e-mail, cellular and telephonic calls. The Compliance Office also sends out bimonthly Newsletters to The Group with important updates and information and additional memos as and when required.
- Compliance monitoring plans have been formulated, consisting of relevant questions to be answered whilst performing onsite visits. This is not used as a simple checklist but also incorporates an analysis of files, offices and documentation as well as interviews with representatives.

- Branches are to treat these Onsite Inspections seriously. Compliance bi-annual Reports will be formulated and provided to each branch after each Onsite inspection, therein, recommendations, concerns and further Queries will be highlighted and progress will be expected and monitored at the next Onsite Visit.

2.2.4. COMPLIANCE MONITORING BY THE KEY INDIVIDUALS

Key Individuals are responsible for the general management and oversight of the business and thus have a duty to make the necessary enquiries to ensure that the requisite systems, practices and culture are in place and are effective in managing all compliance risks to which the entity is exposed. It is their responsibility to oversee that the entity complies with applicable laws, regulations and supervisory requirements. They are also expected to ensure Compliance duties are being discharged by Management and Employees. They are responsible for the establishment of a Compliance Culture.

3. STATUTORY REQUIREMENTS

3.1. FAIS

- The purpose of FAIS is to regulate the rendering of financial advisory and intermediary services to clients, thereby making the financial services industry more professional;
- In essence, providers of financial services must be licensed and must meet strict obligations if they wish to advise clients on their financial affairs;
- Some of the important expectations of FAIS and related legislation is discussed below you can visit the Financial Services Board ('FSB') website for further information www.fsb.co.za.

3.1.1. FIT AND PROPER REQUIREMENTS

- The Fit and Proper Requirements have been designed to provide the personal requirements for entering and remaining in the financial services industry as an FSP and are incorporated as part of the FAIS Act in the Determinations of Fit and Proper Requirements. They focus on the various individuals giving advice (Representatives) and those that are responsible for overseeing the provision of advice (Key Individuals). Administrative and secretarial staff are excluded from the Fit and Proper Requirements, provided that they do not provide any form of advice to clients.

3.1.1.1. FINANCIAL SERVICE PROVIDERS (“FSP’S)

An FSP is responsible for ensuring that all individuals that are placed on its register of representatives meet the minimum requirements as detailed in the Fit and Proper tables.

3.1.1.1.1. OPERATIONAL ABILITY

The following minimum operational requirements must be met by all FSP’s: ○

A fixed business address;

- Communication facilities (full-time telephone or mobile phone service, and typing and document duplication facilities);
- Storage and filing systems for safekeeping of records (advice records, complaints etc.);
- An account with a registered bank (including, where required by the Act, a separate bank account for client funds);
- Appropriate money laundering control systems and provision for training of staff as required by FICA (FICA – Suspicious Transactions Section 29 is the only section applicable to us

3.1.1.1.2. FINANCIAL SOUNDNESS

The following are considered to be the key indicators that the licence applicant is of sound financial standing:

- Must **NOT** be an un-rehabilitated insolvent or under liquidation or provisional liquidation;
- Assets (excluding goodwill and other intangible assets) should exceed applicants’ liabilities (excluding loans validly subordinated in favour of all other creditors).

3.1.1.2. KEY INDIVIDUALS ○ Based on the fact that Key Individuals are accountable for the

advice related activities of an FSP, it stands to reason that they must also meet the Fit and Proper Requirements. Based on this requirement, FSP’s should carefully consider who they appoint as Key Individuals- The FSB will verify that the key

individual meets the Fit and Proper Requirements, whereas the FSP is responsible for verifying that the representatives are competent prior to placing their names on the register.

- FSP’s must also ensure all people involved in the management and oversight of a business are registered as Key Individuals and where this is not possible, that they

be removed from an oversight and management role and replaced by a suitable and fit and proper person.

3.1.1.3. REPRESENTATIVES

All staff that provide advice (as defined) are classified as representatives and must therefore meet the Fit and Proper requirements.

3.1.1.3.1. HONESTY AND INTEGRITY ○ The FSP will consider when determining whether a person is Fit and Proper (but may still put an individual forward to the FSB for consideration with an appropriate motivation) whether the individual have within the previous five years:

- ✚ been found guilty in any civil or criminal proceedings by a court of law of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
- ✚ been found guilty of a serious act of dishonesty, negligence, incompetence, mismanagement by any professional or financial services industry body;
- ✚ been denied membership of any professional or financial services industry body on account of a serious act of dishonesty, negligence, incompetence or mismanagement;
- ✚ been found guilty by a supervisory body, or where its authorisation to carry on business was refused, suspended or withdrawn due to a serious act of dishonesty, negligence, incompetence or mismanagement;
- ✚ had their licence suspended or withdrawn on account of a serious act of dishonesty, negligence, incompetence or mismanagement; ✚ been disqualified or prohibited (at any time in the past) by a court of law from taking part in the management of a company or another regulated body; and/or
- ✚ Any other facts or information that may influence their decision.

3.1.1.3.2. COMPETENCE

The section on competence focuses on the experience and educational requirements of the applicant, Key Individuals and representatives of the FSP. The compliance officers will ensure at all times that Representatives' are aware of the competency requirements and assist them in achieving them. The Smit and Kie

Brokers Pty(Ltd).also has a training office designed for this purposes: Garrun Training.

3.1.1.3.3. EXPERIENCE

Experience means an active and ongoing gaining of knowledge, skills and expertise while providing services similar or corresponding to financial services, and includes practical or on-the-job training, e.g. a representative may have acquired some of his or her experience as a new business clerk with an insurance company prior to becoming a representative. Included is experience gained overseas or over intermittent periods (Different roles in different companies).

The following key issues apply to experience:

- **Relevance**

- ✚ At least 6 months of the experience must be relevant to the product subcategory;
- ✚ Experience can also be gained in the capacity as owner, trustee, associate, director, member, partner, employee, and consultant or otherwise of a relevant financial services business and not only in the capacity of Representative or Key Individual.

- **Supervisors**

- ✚ An exemption has been published by the FSB concerning representatives that do not meet the required experience and qualification levels detailed in the competency tables. The exemption will allow these individuals to render services under supervision until they have obtained the required experience and/or qualification. Another fully competent staff member would then supervise the individual concerned. It follows that whoever provides the supervision should meet the necessary Fit and Proper Requirements themselves. Supervision is only applicable to Reps who have not been appointed in the Industry before 'New Representatives'. Any individual placed under supervision must enter a Supervision Agreement with their Supervisor and abide by it at all times. The Supervision Agreement will include time limits and obligations. No person can be under supervision for more than 6 (six) years.

✚ Application of this to Role Players:

- ✓ Key Individuals must meet these requirements at the time of licensing; and
- ✓ Staff members cannot perform the function of a supervisor unless they meet the competency requirements.

✚ The following individuals can function as supervisors:

- ✓ an authorised FSP;
- ✓ a key individual;
- ✓ a representative of the FSP who already meets the Fit and Proper Requirements.

✚ **Duties of a supervisor**

- ✓ In addition to meeting the Fit and Proper Requirements, supervisors must perform the following duties for the representatives they supervise:
- ✓ They must review and assess financial services rendered by the representative on an ongoing basis, e.g. reviewing of proposals and needs analyses prior to submission to the relevant product representative;
- ✓ They must conduct performance appraisals and progress assessments of financial services rendered by the representative. This may require the formal establishment of a performance contract with the representative, detailing the performance goals and assessment criteria/ format.

3.1.1.3.4. QUALIFICATION ○ In an attempt to establish whether the relevant individuals hold an appropriate qualification as referred to in the Fit and Proper tables, the following must be considered:

- ✚ Is it an academic qualification obtained in the fields of commerce and/or commercial law; and
- ✚ Qualifications must be registered by SAQA and provided by a registered higher institution, whether local or foreign. In order to check whether a qualification is registered with SAQA, do a search

on the NLRD on their website. To determine if a qualification is recognised you must refer to the board notice 268 of 2013. One may also apply to have their qualification recognised with the FSB – application forms for this are available from the Compliance Department.

3.1.1.3.5. CONTINUOUS PROFESSIONAL DEVELOPMENT (“CPD”) ○ One year after a Representative and/or Key Individual has achieved all the competency requirements they are required to keep their competency by CPD.

- CPD is the process of keeping yourself informed, updated and efficient in your profession.
- Presently, in our category, we are required to obtain 45 hours every three years for Personal lines of CPD and 60 hours every three years for commercial lines. Where one performs both these services, they are required to gain the most onerous amount of hours being 60. However, CPD has been put on hold along with level 2 Regulatory Exams by the FSB.
- For more on Fit and Proper requirements see the company’s debarment memorandum in Annexure A.

3.1.2. GENERAL CODE OF CONDUCT

3.1.2.1. GENERAL OBLIGATIONS

Representatives 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;

All representations made and information provided to a client must be:

- Factually **correct**;
- Easily **comprehensible** with no misleading statements;
- **Adequate and appropriate** in the light of the financial services offered and the client's financial knowledge, allowing the client sufficient time to make an informed decision;
- **Reflected in specific monetary** terms if they pertain to amounts, sums, values, charges, fees, remuneration or monetary obligations payable to the FSP or the representative. Where the latter is not reasonably pre-determinable, the basis of calculation must be adequately described.

- Written confirmation of representations must be made where information was provided orally within 30 days of the oral representation. Representations made and information provided in writing must be in a clear and readable print size, spacing and format.
- The representative must disclose to the client and conflicts of interest. Smit and Kie Brokers Pty(Ltd). has in place a Conflicts of Interest Policy (available on our website) and Registers in place.
- Services must be rendered in accordance with the contractual relationship between the parties and the reasonable requests of the client.
- Client instructions must be executed as soon as reasonably possible, with client interests accorded appropriate priority over the interests of the FSP and/or Representative.
- Client transactions must be accurately accounted for by the FSP and must be kept 5 years after termination of the relationship.

3.1.2.2. RECORD KEEPING ○ A FSP must be able to store and retrieve transaction documentation, and **record all communications relating to a financial service** rendered to a client. Telephone calls must be recorded as well. How they are to be recorded is debatable, obviously the best way is to ensure you have a voice logging system – this provides an accurate and objective recording. Reducing them to writing is also necessary, but this allows for human error.

- **All records must be kept for a period of 5 years after termination**, to the knowledge of the FSP, of the product concerned or, in any other case, after the rendering of the financial service concerned.
- All records must be kept safe from destruction. As part of such a requirement, Smit and Kie Brokers Pty(Ltd). has an agreement in place with Technology Unlimited to hold all electronic data offsite for protection. In addition, Smit and Kie Brokers Pty(Ltd). stores hard copy archive documentation at Docufile and all remaining hard copy documents are in the process of being copied into electronic format and thereafter will also be stored at Docufile.
- FSP's are not required to keep the records themselves but must ensure that they are available for inspection within 7 (seven) days of the Registrar's request.
- Records may be kept in an electronic format that is readily reducible to printed form.

- An FSP may not disclose confidential information about a client or product supplier without their prior written consent, unless such disclosure is required in the public interest or under any law. The Protection of Personal Information Act must be adhered to in line with Record Keeping requirements;
- Representations made and information provided to a client by the FSP 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.
- In all client interactions, a representative must act honourably, professionally and with due regard to the convenience of the client.
- At the commencement of any contact initiated by the Representative, the Representative must explain the purpose of the contact.
- When comparing different financial products, product suppliers and providers a representative must make clear the differing characteristics of each.
- A FSP may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representatives.
- When rendering a financial service, a representative may not request a client to sign any written or printed form or document unless all the details which must be inserted by the client, or on behalf of the client, have already been inserted.
- An FSP must, at the request of a client, provide the client with a written statement of account in connection with any financial service rendered to the client.
- A representative must fully inform a client in regard to the completion or submission of any transaction requirement:
- 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;
- That if the representative 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;
- Of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information;

- That the client must, on request, be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.
- Smit and Kie Brokers Pty(Ltd). is aware of The Protection of Personal Information Act and is aligning its procedures and operations to ensure Compliance with this legislation. Smit and Kie Brokers Pty(Ltd). is committed to confidentiality of client information.

3.1.3. COMPULSORY DISCLOSURES

3.1.3.1. INFORMATION ON PROVIDER:

A FSP must, at the earliest reasonable opportunity, furnish the client with the following:

- Full business and trade names, and registration number (if any);
- Postal and physical addresses;
- Telephone number and cellphone numbers (if any);
- Internet and e-mail addresses;
- Contact details of appropriate contact persons or offices;
- Confirmation of the legal relationship between the FSP, product suppliers and representative (if any), to make clear which entity accepts responsibility for the FSP's actions;
- Whether a representative of a the Group is rendering services under supervision as defined in the Determination of Fit and Proper Requirements, Representatives need to confirm their contractual relationship with the licence holder;
- Names and contact details of the relevant compliance department;
- Details of the financial services which the FSP is authorised to provide in terms of the relevant licence and of any conditions or restrictions applicable thereto;
- Whether the FSP holds guarantees or professional indemnity or fidelity insurance cover or not;
- The existence of a specific exemption that the Registrar may have granted to the FSP with regard to any matter covered by the Act;
- Where information is provided orally, the FSP must confirm such information in writing within 30 days.

3.1.3.2. INFORMATION ON PRODUCT SUPPLIER

A FSP must, at the earliest reasonable opportunity and only when appropriate, furnish the client with the following:

- Name, postal and physical address and telephone numbers of product supplier;
- Contractual relationship between the FSP and product supplier (if any), and whether the FSP has contractual relationships with other product suppliers;
- Names and contact details of the relevant compliance and complaints department of the product supplier;
- 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 FSP and representative.
- Where applicable, the fact that the FSP:
 - 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;
 - during the preceding 12-month period received more than 30% of total remuneration, including commission, from the product supplier.
 - Where information is provided orally, the representative must confirm such information in writing within 30 days. The representative must convey any changes thereafter in regard to such information at the earliest opportunity to the client.

3.1.3.3. INFORMATION ABOUT FINANCIAL SERVICES

- A representative must give the client a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision.
- Any material illustrations, projections or forecasts in the possession of the representative must be given to the client whenever reasonable and appropriate.
- A representative must, at the earliest reasonable opportunity, furnish the client with the following:
 - Name/class/type of financial product;
 - Nature and extent of benefits to be provided, including details of the manner in which such benefits are calculated and the manner in which they will accrue;
 - Nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, FSP and representative, including

the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and any anticipated or contractual escalations, increases or additions;

- Nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration") which will or may become payable to the representative, directly or indirectly, by any product supplier or any person other than the client, or for which the representative or FSP 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. Where the maximum amount or rate of such valuable consideration is prescribed by any law, the FSP may elect to disclose either the actual amount applicable or such prescribed maximum amount or rate;
- 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;
- Any guaranteed minimum benefits or other guarantees;
- To what extent the product is readily realisable or the funds concerned are accessible;
- Any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal;
- Material tax considerations;
- Whether cooling-off rights are offered and, if so, procedures for the exercise of such rights;
- Any material investment or other risks associated with the product; ○ In the case of an insurance product in respect of which provision is made for an increase of premiums, the amount of the increased premium for the first 5 years and thereafter on a 5-year basis, but not exceeding 20 years.

3.1.4. FURNISHING OF ADVICE

- Advice means:

- any **recommendation, guidance** or **proposal** of a **financial nature** furnished, by **any means or medium** to any client or **group of clients** In respect of dealings with financial products, and whether or not:
 - the advice is given while doing financial planning for the client; or
 - a financial product is sold as a result of such advice.
- However, **advice does not include** giving **factual advice** on:
 - the **procedure** for entering into a transaction in respect of a **financial product**;
 - In relation to the **description** of a **product**;
 - In **response to routine administrative queries** regarding a product;
 - In the form of **objective information** about a **financial product**; or
 - By **displaying** or **distributing promotional material**.

□ **Before furnishing a client with advice**

To provide the client with appropriate and suitable advice, the representative must take reasonable steps to seek from the client appropriate and available information regarding the client's:

- financial situation;
- financial product experience; and
- objectives.

- The representative must conduct an analysis based on the information obtained.
- The representative must identify the financial products (subject to any conditions imposed on their licence) that will be appropriate to the client's:
 - risk profile; and
 - financial needs
 (Needs analysis).

□ **When giving advice**

The representative must:

- ensure that the client understands the advice; and
- ensure that the client is in a position to make an informed decision.

□ **Where client elects not to follow representative's advice** ○ Where a client elects not to follow the representative's advice or elects to receive more limited information or advice than the representative is able to provide:

- The representative must alert the client as soon as reasonably possible of the clear existence of any risks; and

- The representative must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

□ Client advice record

- A representative must keep a record of the advice furnished to a client. Such record must reflect the basis on which the advice was given and in particular, must include:
 - A brief summary of the information and material on which the advice was based;
 - The financial products which were considered; and
 - The financial product(s) recommended, with an explanation of why the products selected is/are likely to satisfy the client's identified needs and objectives.

A representative must provide a client with a copy of this client advice record and a signed copy must be kept for the client file.

3.1.5. CUSTODY OF CLIENTS FUNDS

- Smit and Kie Brokers Pty(Ltd). has an IGF guarantee and collects premiums under this IGF guarantee and in line with Section 45 of the Short-term Insurance Act (“STIA”).

3.1.6. RISK MANAGEMENT

- An FSP must employ resources, procedures and appropriate technology that can reasonably be expected to eliminate — as far as reasonably possible the risk that clients, product suppliers and other FSP’s will suffer financial loss through:
 - Theft; ○ Fraud;
 - Other dishonest acts;
 - Poor administration; ○ Negligence;
 - Professional misconduct, and ○ Culpable omissions.

- Smit and Kie Brokers Pty(Ltd). has a Risk Management Plan which will be updated annually.

□ Insurance

An FSP must if and to the extent required by the Registrar, keep in force suitable guarantees or professional indemnity or fidelity insurance cover. Such guarantees are in place at Smit and Kie Brokers Pty(Ltd). with Intermediaries Guarantee Facility (“IGF”).

3.1.7. PROHIBITION AGAINST WAIVER OF RIGHTS

No representative may request or induce a client to waive any right or benefit conferred on the client by or in terms of the General Code of Conduct and no representative may recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

3.2. FICA

- *"The Financial Intelligence Centre Act, 2001 ("the Act"), cuts across a wide range of institutions within government and the private sector. It places a series of obligations on both sectors — but the key to its success is that they work together and share information."*
- We are determined that this be the case because we want to protect our people from criminal activity and prevent our financial institutions and sector from being abused by criminals and crime syndicates.
- The Act also provides an important tool to assist law enforcement agencies and facilitates their investigations." - Trevor Manual

3.2.1. DEFINITION OF ACCOUNTABLE INSTITUTION

- Schedule 1 of FICA lists 19 institutions which are accountable to fulfil various obligations imposed by FICA. The Minister of Finance has the prerogative to remove or add other accountable institutions at any stage by publishing such facts in the Government Gazette.
- FICA imposes duties and obligations on accountable institutions in order to minimize the extent to which these institutions can be exploited to launder money. The accountable institutions have been identified as being vulnerable to exploitation by criminals to launder ill-gotten gains. They are therefore obliged to identify and verify the identities of clients with whom they transact and to report any suspicious and unusual transactions to the Financial Intelligence Centre.
- Currently the Short Term industry is not listed as an accountable institution, and is thus exempted from the majority of the provisions of FICA.

3.2.2. REPORTING OF SUSPICIONS TRANSACTIONS

- Section 29 of FICA is the relevant section dealing with the reporting obligation.
- The Act read as follows:

- A person who **carries on a business** or is in charge of or manages a business or who is employed by a business and **who knows or suspects** that—
 - the **business has received or is about to receive the proceeds of unlawful activities;**
 - a **transaction or series of transactions** to which the **business is a party**, (or even when only enquiries are made about a transaction), and you knows or suspects that if that transaction is concluded would-
 - facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities;
 - has no apparent business or lawful purpose;
 - is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or
 - may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or
 - the business has been used or is about to be used in any way for money laundering purposes.
- Regulation 22 deals with the manner of reporting:
 - Internet; ○ Facsimile; or ○ Hand delivery.
 - Regulation 23 deals with the information to be reported.
 - Regulation 24 deals with the period of reporting:
 - As soon as possible no longer than 15 days (working days) after a person has become aware of the fact.

3.3. TCF

- Smit and Kie Brokers Pty(Ltd). is committed to The FSB’s Treating the Customer Fairly initiative and has established a TCF Policy and aligned Procedures in the Group Procedure Manual.

3.4. RDR

The Retail Distribution Review Paper was released by the FSB in December 2014. This is a white paper and has not been legislated as of yet. Comment is requested on the RDR from the industry in order to amend this paper practically and ensure its weight is significant and useful. RDR will amend many provisions in FAIS and its proposals seek to further TCF.

3.5. STIA

- All provisions of the Short-Term Insurance Act must be complied with. Specially, the Binder Regulation, relevant agreements between Smit and Kie Brokers Pty(Ltd). and its Insurers are currently in place.

4. BUSINESS PROCESSES

The business processes of the Group will be incorporated and discussed in detail in The Group Procedure Manual.

ANNEXURE A

TO: REPRESENTATIVES AND KEY INDIVIDUALS OF SMIT AND KIE BROKERS Pty(Ltd)

FROM: COMPLIANCE DEPARTMENT

RE: DEBARMENT MEMO

1. INTRODUCTION

1.1. Section 14 of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (“FAIS”), places an obligation on Financial Service Providers (“FSP’S”) to ensure that their representatives (“Reps”) are fit and proper when they render financial services on behalf of the FSP.

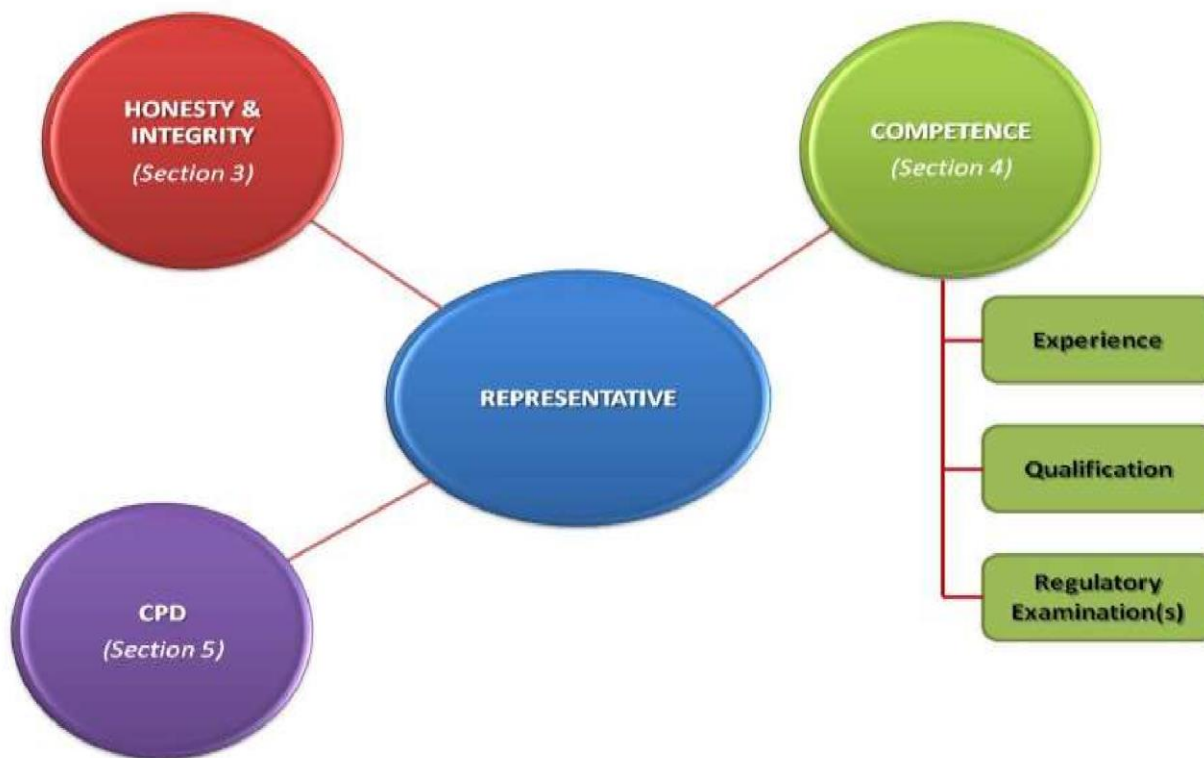
1.2. Should a Rep not comply with the fit and proper requirements referred to in section 8 (1) (a) & (b) read with the Determination of Fit and Proper Requirements for FSP’S

and Reps the FSP must debar such a person from rendering any further financial services and remove such debarred rep from the register of reps and inform the Registrar of the debarment which may prevent the Rep from rendering financial services for a lengthy period of time or even indefinitely depending on the discrepancy.

- 1.3. The company has in place a Debarment Code which will be given to all Reps it is their responsibility to read and become familiar with this code. This Memo intends to describe the fit and proper requirements and the importance and implications thereof.

2. FIT AND PROPER REQUIREMENTS

- 2.1. There are three pillars to being Fit and Proper (see the diagram below):
 - 2.1.1. **honesty and integrity** as per section 3 of FAISⁱ - simply put, this means a Rep must possess qualities of honesty and integrity. Should you require further information on honesty and integrity refer to the FAIS Act and/or the compliance officer (alternatively, visit the FSB website at: www.fsb.co.za);
 - 2.1.1 A Rep must be **competent** in that they have the relevant *experience, qualification* and have completed the *Regulatory examinations* by the deadline according to their date of appointment;
 - 2.1.2 The rep must maintain professional competency by way of **Continuous Professional Development** (“CPD”) this may be in the form of workshops, studies, conferences and courses. CPD has been put on hold until further notice from the FSB.



3. COMPETENCY

3.1. EXPERIENCE

- 3.1.1. Only recognised if gained within the last 5 years;
- 3.1.2. Can be gained under supervision;
- 3.1.3. Must be practical or 'hands-on';
- 3.1.4. Within or Outside South Africa;
- 3.1.5. for short-term personal lines a rep needs 1 (one) year experience to give advice and 6 (six) months for intermediary services;
- 3.1.6. For short-term commercial lines a Rep needs 1 (one) year experience to give advice and 6 (six) months for intermediary services.

3.2. QUALIFICATIONSⁱⁱⁱ

- 3.2.1. A list of recognised qualifications is published in the Gazette and is available on the FSB website and from the Compliance Officer.
- 3.2.2. the qualification may be obtained while working under supervision (for new reps only – appointed from January 2010 or later) within 6 (six) years of your Date of First Appointment^{iv} (by 30 June of your sixth year)– however on an entry level a rep needs at least a matric, Grade 12 or an equivalent school leaving certificate at an NQF level 4^v;
- 3.2.3. qualifications are listed as ‘G’ generic or ‘S’ and ‘SP’ specific – should it be listed as G a Rep will be required to complete the product specific Level 2 regulatory exams (‘RE2’s’). Should it be listed as S, the content of your qualification is considered 80% relevant to your industry (only applicable for Reps appointed from 1 January 2008 – 31 December 2009) or SP, where the content of your qualification is considered 100% relevant to your industry (for Reps appointed after December 31 2009) then a Rep **may** be exempted from writing these second level RE’s – at this stage, it is unclear what the procedure is regarding this exemption i.e. if we apply. However the RE 2 exams have been put on hold until further notice from the FSB
- 3.2.4. if your qualification is not on the list you may apply to have it recognised. There is however a cost involved in this application and the subjects you completed need to match certain qualifying criteria. The Qualifying Criteria is available on the FSB website or from the Compliance Officer;
- 3.2.5. If you were appointed as a Rep before 31 December 2009 then you are governed by ‘Transitional Requirements’ discussed later in this Memo. If you are appointed after 31 December 2009 you must have (or be completing under supervision) a recognised qualification and for purposes of this memorandum, you are regarded as a ‘New Rep’.

3.3. REGULATORY EXAMINATIONS

3.3.1. **Regulatory examination Level 1** - this regulatory examination

deals with the regulatory framework and is compulsory for all individuals in the financial services sector. The content of this examination focus on the regulatory framework, i.e. FAIS, Code of Conduct, Etc. This exam was required to be completed by 30 September 2012 (unless granted a further extension by the Registrar) if you were appointed before 31 December 2009 and within two years (by the 30 June of the second year) of your appointment but if you were appointed after 31 December 2009;

3.3.2. **Regulatory examination Level 2** - The level 2 regulatory examinations are the “product specific” examinations and therefore cover the knowledge and skill required for a representative giving advice and/or rendering intermediary services on a specific financial product. This exam is supposed to be completed within six years (by the 30 June of the sixth year) of completion of the first level RE. However, the Re 2 exams have not been launched yet and the FSB have put them on hold until further notice. If you have an S (for reps from Jan 2008 – Dec 2009) or SP (for reps from Jan 2010 and onward) qualification you may be exempt from writing these exams.

3.4. TRANSITIONAL REQUIREMENTS

3.4.1. The transitional arrangements apply to all representatives who were appointed by the Registrar during the period September 2004 to 31 December 2009;

3.4.2. Your date of first appointment is the date on which you were first appointed as a Rep to *any FSP*;

3.4.3. All **representatives** appointed between September 2004 and 31 December 2009 will be grouped into the following groupings:

3.4.3.1 **Group 1:** Appointed between September 2004 and 31 December 2007;

3.4.3.2 **Group 2:** Appointed between 1 January 2008 and 31 December 2009;

- 3.4.4. if you fall in group 1 you must have the relevant product experience (as described above), Complete a relevant registered skills programme of 30 / 60 credits (on the NQF level related to the financial product) by 31 December 2009 and complete your first level RE by 30 September 2012 (unless the Registrar has granted you a further extension);
- 3.4.5. if you fall into group 2 you must have the relevant product experience (as described above), Complete a relevant registered skills programme of 30 / 60 credits (on the NQF level related to the financial product) by 31 December 2011 *OR* Complete a full qualification from the list of recognised qualifications by 31 December 2013 and complete your first level RE by 30 September 2012 (unless the Registrar has granted you a further extension).

4 CONTINUOUS PROFESSIONAL DEVELOPMENT ("CPD")

4.1 Within the context of Fit and Proper the purpose of CPD is to ensure that representatives and Key Individuals:

- 4.1.1 Develop and maintain professional competence in order to provide financial services of a high quality in the public interest that will support the professionalisation of the financial services industry;
- 4.1.2 Understand that the primary responsibility of competence vests in the individual, and that they have an obligation to develop and maintain their professional competence;
- 4.1.3 Render financial services with due care, competence and diligence with an ongoing duty to maintain knowledge and skill at a level required to ensure that the client receives competent professional service based on up-to-date developments in legislation and the financial services industry.

4.2 The activities one could do included (but not limited to):

- 4.2.1 Courses, conferences or seminars;
- 4.2.2 Studies leading to formal assessments such as additional qualifications;
- 4.2.3 Workshops; and
- 4.2.4 Structured self-study programmes including web-based, computer-based or paper-based delivery that assess knowledge.

4.3 One must obtain confirmation from the institution providing the activity that it is an approved CPD activity;

4.4 CPD is technically supposed to begin *the year after* completion of the RE exams and no later than 6 (six) years from appointment as a Representative. However, CPD has been put on hold until further notice from the FSB;

4.5 A Representative needs 10 (ten) hours of CPD for Personal lines and 15 for Commercial if you perform both these services you need the highest amount of hours being 15 per a year one year after completion of all competency requirements (to be confirmed – still in draft. Presently CPD runs over a 3 year cycle and is 45 and 60 hours);

4.6 See the Board Notice on CPD requirements for further information which you can access under the FAIS heading on www.fsb.co.za.

5. IMPLICATIONS OF NON-COMPLIANCE WITH THE ABOVE REQUIREMENTS

5.1 The Key Individuals and Compliance Department of Smit and Kie Brokers Pty(Ltd). will provide a reasonable amount of assistance and resources to ensure its Reps to meet the above requirements however, where there is apathy and a blatant lack of interest we will have no option but to debar the infringing reps. Reps are exactly what their name suggests, representatives of their FSP, thus where a Rep is noncompliant it reflects poorly on the FSP. Going forward, in 2014, it is our goal to

have all our reps having successfully completed their regulatory exams and qualifications;

6. DEBARMENT

6.1 For more detailed information pertaining to debarment please refer to the company's debarment codification;^{vi}

6.2 Debarment is the withdrawal of a Rep from rendering financial or intermediary services on behalf of a FSP as a result of a material breach of the FAIS act;

6.3 A material breach can be;^{vii}

- i. blatant apathy or refusal to complete RE exams;
- ii. Blatant apathy or refusal to complete FAIS credits and/or qualifications;
- iii. Blatant apathy or refusal to partake in CPD; iv. continuous unreasonable failure of RE's;
- v. dishonesty and lack of integrity;
- vi. Intentional or gross negligent advice giving or performance of intermediary services.

6.4 Debarment may even result in no longer being able to perform financial services indefinitely – depending on the breach;

6.5 Of course, it goes without saying, that debarment on your profile will be disadvantageous when applying for a new job or progressing in your existing job.

If may prove to be impossible to work for another FSP once listed as debarred.

7. CONCLUSION

In conclusion, The Key Individuals and Compliance Department guarantee that it will reasonably provide support, training, resources and assistance to all reps attempting to complete the above requirements. Having that said, we expect all Reps to take these requirements seriously, and to study hard and prepare well in advance in order to ensure

success. It must be noted that it is essentially the Key Individuals who must ensure compliance with the abovementioned requirements.

- ⁱ 3) Without prejudice to the generality of subparagraphs (1), (2) and (4), any of the following factors constitutes prima facie evidence that an FSP, key individual or representative does not qualify in terms of subparagraph (1), namely that the FSP, key individual or representative-
- a) has within a period of five years preceding the date of [application](#) or the proposed date of appointment or approval, as the case may be, been found guilty in any criminal proceedings or liable in any civil proceedings by a court of law (whether in the Republic or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
 - b) has within a period of five years preceding the date of application or the proposed date of appointment or approval, as the case may be, been found guilty by any [statutory professional body](#) or [voluntary professional body](#) (whether in the Republic or elsewhere) recognized by the Board, of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative;
 - c) has within a period of five years preceding the date of application or the proposed date of appointment or approval, as the case may be, been denied membership of anybody referred to in subparagraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative;
 - d) has within a period of five years preceding the date of application, or the proposed date of appointment or approval, as the case may be
 - i) been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere), recognised by the Board; or ii) had its [authorisation](#) to carry on business refused, suspended or withdrawn by any such body, on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn the honesty and integrity of the [FSP](#), key individual or representative;
 - e) has within a period of five years preceding the date of application, appointment or approval, as the case may be, had any licence granted to the financial services provider by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative; or
 - f) has at any time prior to the date of application, appointment or approval, as the case may be, been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.
- 4) An FSP and key individual must in the application to the Registrar, and a representative must at appointment by the FSP, be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to, the FSP, key individual or representative, and which may be relevant for purposes of a decision by the Registrar, or in the case of a representative, by the FSP, that the FSP, key individual or representative complies or does not comply with subparagraph (1).

ⁱⁱ Board Notice 106 of 2008

ⁱⁱⁱ Determination of Qualifying Criteria and qualifications of 2008 and Board notice

44 of 2010 ^{iv} Your date of first appointment is the date on which you were first appointed as a Representative to *any* FSP.

^v A representative of a Category I provider must, on appointment, have a recognised qualification as determined by the Registrar by notice in the Gazette, as it applies to the applicable Categories or subcategories he or she is appointed for: Provided that the Registrar may, by notice in the Gazette, exempt representatives that on appointment only meet the following entry level qualifications while working under supervision until the recognised qualification is obtained: i) Matric; ii) Grade 12; or iii) an equivalent school leaving certificate at NQF Level 4, with the proviso that in respect of representatives in [subcategory 1.1 Long Term Insurance Category A](#) and/or 1.19 Friendly Society Benefits, the entry level qualification requirement is either [ABET level 1](#), or the proven ability to read, write and calculate to the satisfaction of the provider.

^{vi} Available from the compliance officer and human resource manager.

^{vii} This is not an exhaustive list.