



Financial Sector
Conduct Authority

FSCA FAIS Notice 86 of 2018

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

EXEMPTION OF SERVICES UNDER SUPERVISION, 2018

The Financial Sector Conduct Authority, hereby under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) read with 281(3)(b) of the Financial Sector Regulation Act, 2017, exempts certain financial services providers and representatives from provisions of the Act to the extent and subject to the conditions as set out in the Schedule.



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For the Financial Sector Conduct Authority

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SCHEDULE

1. Definitions

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

“**categories of financial services**” means the financial services rendered by the respective categories of FSPs as referred to in section 3 of the Fit and Proper Requirements;

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

“**competency requirements**” means the-

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

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

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

“**execution of sales**” has the meaning assigned to it in section 1(1) of the Fit and Proper Requirements and, for purposes of this exemption, is limited to where it is performed in compliance with section 22(b)(ii) of the Fit and Proper Requirements;

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

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

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

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

“minimum experience periods” means, insofar as it applies to representatives, the period of experience contemplated in sections 17(1), 18(1), 19(1), 20(1) and 21(1) of the Fit and Proper Requirements;

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

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

“supervised representative” means a representative who does not meet one or more of the competency requirements and who renders financial services under supervision;

“supervision” means the guidance, instruction and oversight, by any means or medium, by a supervisor using a variety of assessment, observation and oversight methods or tools that are appropriate for the assessed level of competence of the supervised representative.

2. Extent of exemption

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

3. Amendment or withdrawal

This Exemption is subject to-

- (a) amendment thereof published by Notice on the Authority's website; and
- (b) withdrawal in a like manner.

4. Transitional requirements and withdrawal of Notices

Withdrawal of Notices

(1) The Notices on –

- (a) Exemption of Services under Supervision in terms of Requirements and Conditions, 2008, published by Board Notice 104 of 2008 in Government Gazette No 31514 of 15 October 2008;
- (b) Exemption of Certain Representatives from Class of Business Training Requirements, 2018, published by FAIS Notice 52 of 2018; and
- (c) Exemption of Services under Supervision, 2018, published by FSCA FAIS Notice 83 of 2018,

are hereby withdrawn.

Transitional arrangements

- (2) Notwithstanding the withdrawal of the Notice referred to in subparagraph (1)(a), the provisions of that Notice relating to –
 - (a) the period in which a representative working under supervision must complete the applicable regulatory examination continues to apply to a supervised representative who was appointed to work under supervision prior to the repeal of that Notice but only for the financial products and categories of financial services for which they were working under supervision; and
 - (b) the supervision agreement applies to supervised representatives until the date on which Condition 3 takes effect.
- (3) A supervised representative appointed to work under supervision prior to the commencement of this Exemption, must comply with the applicable class of business training within 12 months from the commencement date referred to in paragraph 5.

5. Short title and commencement

This Exemption is called the Exemption of Services under Supervision, No 2 of 2018, and comes into effect on 1 February 2019, except those Conditions specified in the first column of the Table hereunder, which will take effect on the dates as indicated in the second column of the Table:

Condition	Effective Date
Condition 3 in respect of representatives appointed as supervised representatives on or after 1 December 2018	1 March 2019
Condition 3 in respect of representatives appointed as supervised representatives before 1 December 2018	1 June 2019

ANNEXURE A

Conditions of Exemption

Condition 1: Entry level requirements

- (1) A supervised representative of a –
 - (a) Category I or IV FSP, other than a supervised representative referred to in subparagraph (b) and paragraph (2), must have –
 - (i) a Grade 12 National Certificate; or
 - (ii) a qualification equivalent to a Grade 12 National Certificate;
 - (b) Category I FSP that is appointed only to perform the execution of sales must have –
 - (i) a Grade 10; or
 - (ii) an academic achievement equivalent to Grade 10; and
 - (c) Category II, IIA or III FSP must have a qualification recognised in terms of section 24 of the Fit and Proper Requirements for a representative of a Category II, IIA or III FSP respectively.
- (2) Condition 1 does not apply to a supervised representative of a Category I FSP that is appointed only to render financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits.

Condition 2: Specific compliance periods

Regulatory examination requirements

- (1) A supervised representative, other than a supervised representative referred to in paragraph (2), must within 2 years from date of first appointment comply with the applicable regulatory examination requirements.
- (2) A supervised representative that only has a date of first appointment to –
 - (a) render financial services in respect of a Tier 2 financial product; or
 - (b) perform the execution of sales,must within 2 years from the date on which it was first appointed as a representative to render financial services, other than the execution of sales, in respect of a Tier 1 financial product, comply with the applicable regulatory examination requirements.

Class of business training requirements and qualification requirements

- (3) A supervised representative must within –
 - (a) 12 months from the date on which a person was first appointed as a representative in respect of a particular financial product comply with the class of business training requirements applicable to that financial product; and
 - (b) six years from the date on which a person was first appointed as a representative in respect of a particular financial product comply with the qualification requirements applicable to that financial product.

CPD requirements

- (4) A supervised representative, other than a supervised representative referred to in paragraph (5), must comply with the applicable CPD requirements –
 - (a) from the date on which the supervised representative meets the class of business training requirements, regulatory examination requirements and qualification requirements; or
 - (b) after six years from date of first appointment,whichever occurs first.
- (5) A supervised representative that only has a date of first appointment to –
 - (a) render financial services in respect of a Tier 2 financial product; or
 - (b) perform the execution of sales, andwho after that date is appointed as a representative to render financial services, other than the execution of sales, in respect of a Tier 1 financial product, must comply with the applicable CPD requirements –

- (i) from the date on which the supervised representative meets the class of business training requirements, regulatory examination requirements and qualification requirements applicable to that Tier 1 financial product; or
 - (ii) after six years from the date on which the supervised representative was first appointed as a representative to render financial services, other than the execution of sales, in respect of a Tier 1 financial product,
- whichever occurs first.

- (6) Where the compliance date contemplated in paragraphs (4) and (5) does not coincide with the start of a CPD cycle, the CPD hours for that particular CPD cycle must be calculated as follows:

$[X \div 12] \times Y = Z$	X = Number of annual required CPD hours
	Y = number of months from the date in paragraph (4) and (5) until the end of the CPD cycle
	Z = Required pro rata CPD training

Experience requirements

- (7) A supervised representative, insofar it relates to the experience requirements must –
- (a) work under supervision for at least the minimum experience periods applicable to the categories of financial services and financial products for which it is appointed to work under supervision; and
 - (b) remain under supervision until being assessed as having the required experience in respect of the particular category financial services and financial products for which it is appointed.
- (8) The minimum experience periods referred to in paragraph (7) –
- (a) may run concurrently where a supervised representative is appointed for multiple categories of financial services and/or financial products; and
 - (b) commence on the date the supervised representative was first appointed as a representative in respect of the particular category of financial service or financial product.

Condition 3: Supervision agreement

- (1) The FSP and supervised representative, prior to the rendering of services under supervision, must enter into a written supervision agreement, which agreement may form part of any other relevant agreement or the FSP’s performance management process.
- (2) The supervision agreement must –
- (a) identify the supervisor;

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

Condition 4: Duties of the FSP

- (1) An FSP that appoints a supervised representative to work under supervision must-
 - (a) have the operational ability, including adequate and appropriate human, technical and technological resources, controls and procedures and an adequate and effective governance framework to –
 - (i) appoint supervised representatives; and
 - (ii) monitor and supervise supervised representatives, including monitoring and supervising compliance with the conditions of this Exemption and the supervision agreement referred to in Condition 3;
 - (b) ensure that such appointment does not –
 - (i) materially increase any risk to the FSP or the fair treatment of clients;
 - (ii) materially impair the quality of the governance framework of the FSP, including the FSP's ability to manage its risks and meet its legal and regulatory obligations;
 - (iii) compromise the fair treatment and protection of or continuous and satisfactory service to clients; and
 - (iv) prevent the FSP from acting in the best interests of its clients;
 - (c) assign a supervisor to the supervised representative that –
 - (i) has adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that the representative performs;

- (ii) meets the prescribed minimum competency requirements, including CPD requirements, applicable to a –
 - (aa) representative appointed for the financial services and financial products for which the supervised representative will be working under supervision; or
 - (bb) a key individual approved to manage the financial services and class of business for which the supervised representative will be working under supervision;
- (iii) has the required coaching and assessment skills; and
- (iv) has the operational ability to adequately and effectively monitor and supervise the supervised representative;
- (d) ensure that –
 - (i) a working relationship exists between the supervisor and supervised representative that enables the supervisor to have oversight of the activities performed by the supervised representative and that enables the transfer of skills;
 - (ii) the supervisor complies with the Conditions of this Exemption; and
 - (iii) the supervised representative is supervised when performing its functions;
- (e) at regular intervals review the appropriateness, effectiveness and adequacy of the supervision arrangements; and
- (f) ensure that the supervised representative actively pursue the completion of the class of business training, regulatory examination and recognised qualification within the prescribed time limits.

(2) An FSP must -

- (a) reflect on its register of representatives, the central register and the competency register as contemplated in sections 13(3) and 13(5) of the Act and section 13(5) of the Fit and Proper Requirements respectively, whether a representative is rendering financial services under supervision; and
- (b) update the registers referred to in subparagraph (a) within 15 days after a representative ceases to render financial services under supervision.

Condition 5: Duties of supervisor

A supervisor must-

- (a) implement and ensure compliance with the supervision agreement;
- (b) mentor and coach the supervised representative in respect of the financial services and financial products for which it is appointed in order for the supervised representative to acquire the required skills, knowledge and competencies to perform its functions;

- (c) at regular intervals review and assess the learning activities and progress of the supervised representative, including recording observations and aspects of further development;
- (d) immediately report to the FSP any unfair treatment of a client as a result of the supervised representative's actions or where the representative's actions may not have been in the best interest of the client;
- (e) record and document the method, frequency and level of intensity of supervision and any changes to the aforementioned; and
- (f) keep all records relating to the supervision, including information and documentation relating to –
 - (i) development and training;
 - (ii) supervision activities;
 - (iii) assessments;
- (iv) decisions to implement a reduced level of supervision.

Condition 6: Duties of representative

- (1) A supervised representative must -
 - (a) actively pursue the completion of the class of business training, regulatory examination and recognised qualification within the prescribed time limits;
 - (b) at all times adhere to the provisions of the supervision agreement; and
 - (c) disclose to clients that it is rendering financial services under supervision.

Condition 7: Intensity of supervision

The FSP must –

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