

BOARD NOTICE 208 OF 2012**FINANCIAL SERVICES BOARD
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED
BUSINESS WITH PRIVATE EQUITY FUNDS**

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), certain persons from the provisions of the Act when conducting financial services related business with a private equity fund, to the extent and subject to the conditions set out in the Schedule.



G E ANDERSON,
Deputy Registrar of Financial Services Providers

SCHEDULE**EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED
BUSINESS WITH PRIVATE EQUITY FUNDS****Definitions**

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

'associate' means an 'associate' as defined in section 1(1) of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

'Code of Conduct for Discretionary FSPs' means the Code of Conduct for Discretionary FSPs, 2003, contained in Chapter II of the Notice on Codes of Conduct for Administrative and Discretionary FSPs, published by Notice 79 of 2003 in Gazette No. 25299 of 8 August 2003, as amended;

'Determination of Fit and Proper Requirements' means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

'clients' means the persons, other than the provider or its associates, who have committed capital to the private equity fund;

'pension fund' means a pension fund and the board or board members as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

'private equity fund' means a managed pool of capital that-

- (a) has as its principle business the making of equity, equity orientated or equity related investments primarily in unlisted companies or ventures to earn income or capital gains;

- (b) is managed or advised by a member of the South African Venture Capital and Private Equity Association or other equivalent private equity and venture capital industry body; and
- (c) is not open or offered to the public as an investment;

'provider' means a Category II FSP that render financial services to a private equity fund.

Extent of exemption and conditions

2 (a) A provider is exempted from-

- (i) section 5(1)(c) of the Discretionary Code of Conduct in respect of mandates concluded prior to the date referred to in paragraph 4 hereunder provided the provider, in writing, has informed clients of the risks associated with investing in private equity funds and local and foreign financial products with particular reference to any currency risk or informs clients of the aforementioned risks within six months from the date referred to in paragraph 4;
- (ii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded prior to the date referred to in paragraph 4 hereunder;
- (iii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded after the date referred to in paragraph 4 hereunder provided clients, who in the aggregate have committed 75% of the capital to the private equity fund, have the right to terminate, for any reason whatsoever, the mandate of the provider after notice in writing of not more than 180 days;
- (iv) section 9(4)(c) of the Determination of Fit and Proper Requirements until 30 June 2014 provided such provider renders financial services to one or more private equity funds only.

(b) The exemptions referred to in paragraph 2 are subject to the conditions that the provider must-

- (i) register the exemption with the Registrar in the prescribed format and manner; and
- (ii) inform the Registrar in writing within 15 days after the change has taken place, of any change in respect of the information that was submitted for purposes of registering the exemption.

Amendment and withdrawal of exemption and conditions

3 The exemptions and conditions referred to in paragraphs 2 are subject to-

- (a) amendment thereof published by the registrar by notice in the *Gazette*; and
- (b) withdrawal in like manner.

Short title and commencement

4 This Exemption is called the Exemption of Certain Persons conducting Financial Services related business with a Private Equity Fund, 2012, and comes into operation on the date of publication in the *Gazette*.



FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT 37 OF 2002)

FORM AND MANNER OF REGISTRATION OF EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED BUSINESS WITH PRIVATE EQUITY FUNDS, 2012

Edition	Issue Date	Effective Date	Withdrawal Date
1 st	13 December 2012	13 December 2012	-

I, German Emmanuel Anderson, the Deputy Registrar of Financial Services Providers, hereby under paragraph 2(b) of the Notice on the Exemption of Certain Persons Conducting Financial Services Related Business with Private Equity Funds, 2012 (published by Board Notice 208 in *Gazette* No. 35997 of 13 December 2012, prescribe that the registration for the exemption under the said Notice must be submitted in the manner and in the format set out in the schedule.

A handwritten signature in black ink, appearing to read 'GE Anderson', is written over a circular stamp or seal.

**GE ANDERSON
DEPUTY REGISTRAR OF FINANCIAL SERVICES PROVIDERS**

SCHEDULE

**APPLICATION FOR REGISTRATION OF EXEMPTION OF CERTAIN PERSONS
CONDUCTING FINANCIAL SERVICES RELATED BUSINESS WITH A PRIVATE EQUITY
FUND, 2012**

Name of FSP

FSP number

1. General requirements

This registration form must be completed in full and must be submitted to the Registrar *via* electronic mail to the following address: **FAIS.Exemptions@fsb.co.za**

2. Registration of Exemptions

Indicate in respect of which exemption referred to in paragraph 2 of the Notice registration is sought.

- (a) Subparagraph 2(a)(i) of the Notice
(Section 5(1)(c) of the Discretionary Code of Conduct in respect of mandates concluded prior to the date referred to in paragraph 4 of the Notice)

- (b) Subparagraph 2(a)(ii) of the Notice
*(Section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded **prior** to the date referred to in paragraph 4 of the Notice)*

- (c) Subparagraph 2(a)(iii) of the Notice
*(Section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded **after** the date referred to in paragraph 4 of the Notice provided clients, who in the aggregate have committed 75% of the capital to the private equity fund, have the right to terminate, for any reason whatsoever, the mandate of the provider after notice in writing of not more than 180 days)*

- (d) Subparagraph 2(a)(iv) of the Notice
(Section 9(4)(c) of the Determination of Fit and Proper Requirements until 30 June 2014 provided such provider renders financial services to one or more private equity funds only)

3. Membership

- (a) Is the FSP a member of the South African Venture Capital and Private Equity Association? Yes No

- (b) If no, please indicate the name of the private equity and venture capital industry body of which the FSP is a member.

4. Declaration

The declaration must be completed and signed by the key individual of the FSP.

I,, (name of key individual) declare that the FSP only renders financial services to one or more private equity funds and that the information provided in this form and annexures is correct.

.....
Signature **Date**