

BOARD NOTICE 43 OF 2008

(Government Gazette 31054)

FINANCIAL SERVICES BOARD

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

AMENDMENT NOTICE ON THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2008

I, Robert James Gourlay Barrow, Registrar of Financial Services Providers, hereby, after consultation with the Advisory Committee on Financial Services Providers, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), amend Parts VI, VII and X in the Schedule to the Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, as set out in the Schedule to this Notice.

(Signed)

RJG Barrow,

Registrar of Financial Services Providers

SCHEDULE

AMENDMENT NOTICE ON THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2008

Definitions

- 1 In this Schedule "the Notice" means the Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.

Amendment of Part VI of Schedule to Notice

- 2 Part VI of the Schedule to the Notice is hereby amended-
- (a) by the substitution for subparagraph (bb) of section 7(1)(c)(iii) of the following subparagraph:
 - (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";

- (b) by the insertion in the said section 7(1)(c)(iii) after subparagraph (cc) of the following subparagraphs:
- (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;
 - (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.";
- (c) by the addition to section 7 of the following subsection:
- (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."

Amendment of Part VII of Schedule to Notice

3. Part VII of the Schedule to the Notice is hereby amended-
- (a) by the substitution for subparagraphs (i), (ii), (vii) and (viii) of section 8(1)(d) of the following subparagraphs:
 - (i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;
 - (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;
 - (vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;
 - (viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and";
 - (b) by the insertion in section 8(1)(d) after subparagraph (viii) of the following subparagraph:
 - (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.";
 - (c) by the addition to section 8(1) after paragraph (d) of the following paragraph:
 - (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)."
 - (d) by the substitution for subsection (3) of section 8 of the following subsection:
 - "(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.";
 - (e) by the substitution for paragraphs (b) and (c) of section 9(1) of the following paragraphs:
 - (b) the financial product which were considered;
 - (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"; and
 - (f) by the insertion in section 9(1) after paragraph (c) of the following paragraph:
 - (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.

Amendment of Part X of Schedule to Notice

- 4. Part X of the Schedule to the Notice is hereby amended-
 - (a) by the substitution for paragraph (c) of section 15(2) of the following paragraph:
 - (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."; and
 - (b) by the substitution for subsection (4) of section 15 of the following subsection:
 - (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."

Short title and commencement

- 5. This Notice is called the Amendment Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2008. Sections 1, 3, and 4 come into operation on the date of publication of this Notice in the Gazette. Section 2 comes into operation on a date three months after the date of publication of this Notice in the Gazette.