

**FINANCIAL ADVISORY AND  
INTERMEDIARY SERVICES ACT, 2002  
GUIDANCE NOTE FOR ACCOUNTANTS  
AND AUDITORS**

[UPDATED 15 JUNE 2005]

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## **GUIDANCE NOTE ON THE ACCOUNTING AND AUDITING PROVISIONS OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002**

The purpose of this guidance note is to provide assistance to authorised financial services providers (providers) not governed by other legislation with respect to the accounting requirements of the Financial Advisory and Intermediary Services Act, No. 37 of 2002, (FAIS or the Act), and auditors of providers with respect to their responsibilities to report to the registrar in terms of section 19(3) and 19(4) of the Act.

This guidance note is issued by the Financial Services Board (FSB) and was prepared in consultation with the Public Accountants' and Auditors' Board (PAAB) and the South African Institute of Chartered Accountants (SAICA). The guidance note does not serve to provide a complete statement of requirements and should be read in conjunction with the Act and its subordinate legislation.

It is the intention of the FSB to update this guidance note as changes to the legislation and underlying compliance requirements occur.

### **INTRODUCTION**

In November 2002 FAIS, which aims to regulate the rendering of certain financial advisory and intermediary services, was promulgated.

FAIS requires providers and intermediaries to register with the registrar of providers (the registrar). It is an offence in terms of FAIS to furnish advice or render intermediary services as defined in the Act without the appropriate licence. The registrar must consider the applicant to be "fit and proper" to furnish advice or render intermediary services to the public before a licence to act as a provider will be issued. FAIS defines a provider as "any person, other than a representative, who as a regular feature of the business of such person-

- (a) furnishes advice; or
- (b) furnishes advice and renders any intermediary service; or
- (c) renders an intermediary service."

Refer to appendix A, attached hereto, for the definitions of advice, financial product and intermediary service. The definition of advice is wide ranging and covers most financial recommendations made to a client, or a potential client with respect to a financial product. The definition excludes the situations in which advice is purely of a factual nature.

FAIS allows the registrar to exempt certain persons or entities from the ambit of the Act. The reason for the exemptions is that FAIS does not seek to regulate those parties that are already regulated in terms of other legislation.

FAIS exempts certain parties referred to in the "Securities Services Act<sup>1</sup>", Collective Investment Schemes Control Act, No. 45 of 2002 (CISCA), Pension Funds Act, No. 24

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<sup>1</sup> To be construed as a reference to the possible future coming into operation of a measure called by that name (currently there is no such law). Until such time as the Securities Services Act, 2002 comes into operation the reference in section 45(1)(a)(i) to 'authorised user', 'clearing house', 'central securities depository' or 'participant' must be considered as references to a 'member', 'clearing house', 'recognised clearing house', 'central central security depository' or 'depository institution' referred to in the Stock Exchanges Control Act, 1985, the Financial Markets Control Act, 1989, and the Custody and Administration of Securities Act, 1992, respectively (section 45(4)).

of 1956 (Pension Funds Act), and Medical Schemes Act, No. 131 of 1998 (Medical Schemes Act) from the provisions of the Act to the extent that the rendering of financial services is regulated by or under these Acts.

In addition, FAIS exempts the following persons from the provisions of the Act to the extent that they do not provide financial services as a regular feature of their business:

- executors, trustees and administrators of deceased or insolvent estates;
- curators, liquidators and judicial managers;
- trustees of certain *inter-vivos* trusts; and
- the parent, tutor or guardian of a minor.

The duties and responsibilities relating to compliance, accounting and record keeping of a provider briefly are as follows:

- *Compliance officers and compliance arrangements (section 17)*: Any provider with more than one key individual or one or more representatives must appoint one or more compliance officers to monitor compliance with FAIS by the provider and its representatives.
- *Maintenance of records (section 18)*: A provider must maintain specified records for a minimum period of five years.
- *Accounting and audit requirements (section 19)*:

A provider must:

- maintain full and proper accounting records of the business of the provider on a continual basis, brought up to date monthly;
- annually prepare financial statements for the business of the services provider, which are to be submitted to the registrar within six months of the provider's financial year;
- appoint an external auditor (to be approved by the registrar) to audit the aforementioned annual financial statements (this is the case even where the entity does not require an audit in terms of its founding document<sup>2</sup>);
- maintain records in respect of money and assets held on behalf of clients on a continual basis brought up to date monthly;
- submit to the registrar a report, by the auditor who performed the audit, which confirms:
  - (a) the amount of money and assets at year-end held by the provider on behalf of clients;
  - (b) that such money and assets were throughout the financial year kept separate from those of the business of the provider and, in the case of non-compliance, the extent thereof; and
  - (c) any other information required by the registrar; and

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<sup>2</sup> An exemption has been granted in this regard; refer to "Exemptions".

- terminate the appointment of the auditor where notice is received from the registrar to do so.
- The duties of the auditor of the provider are as follows:
  - perform the audit of the financial statements of the provider;
  - perform the agreed-upon procedures and report to the registrar in terms of section 19(3);
  - report any irregularities or suspected irregularities to the registrar; and
  - in the event of the auditor's services being terminated by the provider, submit to the registrar a statement of what the auditor believes to be the reasons for the auditor's termination by the provider.

In addition, the auditor may accept appointment as compliance officer of a provider.

Guidance on the registration of providers and the approval of compliance officers and auditors is provided by the FSB, and is available on the FSB website ([www.fsb.co.za](http://www.fsb.co.za)) or upon request from the FSB (call centre numbers: 0800 20 20 87 or 0800 11 04 43).

With regard to the section 19(3) agree-upon procedures engagements, and where the auditor and/or the Provider do not agree with the scope of the procedures, as set out in appendix 2, in the context of the Provider's particular circumstances. The auditor and/or Provider should contact the Registrar to consult regarding special arrangements, for example, sample sizes, regarding the procedures for the particular circumstances of the Provider.

## **APPLICATION OF FAIS**

### **Compliance officers and compliance arrangements**

The provider other than a sole proprietor without representatives must appoint (a) compliance officer(s) to monitor compliance with the Act and to take responsibility for liaison with the registrar.

The compliance officer may be a director, member, auditor, trustee, principal member or public officer in relation to the provider or any person suitably qualified and experienced as determined by the registrar by notice in the *Gazette*.

In order to fulfil the responsibilities imposed by the Act the compliance officer will be required to:

- sufficiently know and understand the provisions of FAIS;
- ensure that systems of internal control are in place which adequately measure and manage the provider's compliance with the provisions of FAIS;
- monitor and report on compliance with FAIS to the provider and the registrar;
- resolve compliance difficulties as they arise;
- advise and train the provider and the representatives of the provider as to the provisions of FAIS and any developments in this regard and the internal controls implemented to ensure compliance with the FAIS provisions; and
- comply with any additional duties and responsibilities imposed by the regulations of FAIS.

### *Appointment of the auditor as compliance officer*

Where the auditor is considering the acceptance of an appointment as compliance officer of a provider which will result in the auditor being both the auditor and the compliance officer for that provider, the auditor should consider other statutory and professional responsibilities before accepting such an appointment.

The auditor has a professional responsibility to be independent, in fact and appearance, from the provider for which the auditor is performing the audit.

As with the provision of bookkeeping services, it may be appropriate to provide the services of the compliance officer, particularly for smaller providers who do not have the capacity to perform the functions of, or resources, to employ a compliance officer. In such cases the auditor may accept appointment as compliance officer in addition to performing the audit and possibly other services provided that:

- independence and objectivity are not impaired by any relationship or combination of relationships with the provider;
- the auditor does not perform management functions or make management decisions; and
- responsibility for compliance is accepted by management who must oversee and take responsibility for all compliance with laws and regulations.

In such cases, it is suggested that the following principles be adhered to:

- The compliance work is ideally to be performed by staff not also involved in the audit of the provider.
- The auditor agrees separate terms of engagement where the appointment as compliance officer is accepted in addition to being the auditor of the provider. A separate engagement letter is obtained and the auditor ensures that the provider is aware that the auditor's role as compliance officer does not affect the auditor's responsibilities in terms of conducting an audit, i.e. the auditor's duties as compliance officer do not remove the need for the auditor to perform an audit nor reduce the audit fee.

Guidance on the duties and responsibilities of compliance officers is issued by the Compliance Institute of South Africa ([www.compliancesa.com](http://www.compliancesa.com)).

### **Maintenance of specified records**

A provider must maintain records of the following for a minimum period of five years:

- known premature cancellations of transactions or financial products by clients;
- complaints received and an indication of whether such complaints have been resolved;
- the continued compliance with the requirements of section 8 (authorisation of providers);
- cases of non-compliance with FAIS and reasons for non-compliance; and
- the continued compliance by representatives with requirements referred to in section 13(1)(2).

## **Accounting and audit requirements**

### **Maintenance of business accounting records**

In terms of section 19(1)(a) and (b) the provider is required to maintain accounting records and provide financial statements on an annual basis which must cover the business carried on by the provider as authorised under the provider's licence.

### ***Full and proper accounting records***

For the purposes of FAIS full and proper accounting records are :

- 1.Accounting records as defined by the Companies Act for all providers registered as a company in terms of the Companies Act.
- 2.Accounting records as defined by the Close Corporations Act, 1984 (Act No. 69 of 1984) for all providers registered as close corporations in terms of the Close Corporations Act.
- 3.Accounting records for providers, not incorporated in terms of the Companies- or Close Corporations Acts, are to include at least the following in one of the official languages of South Africa:
  - records showing assets and liabilities;
  - records of all purchases on credit, and services received and rendered on credit, in sufficient detail to enable the nature of the services and the parties to the transactions to be identified;
  - records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions to be identified; and
  - vouchers supporting entries in the accounting records and the names of the parties to the transactions.

These accounting records are to be prepared on a continual basis and updated monthly.

### ***Financial statements***

For the purposes of FAIS financial statements are regarded as meaning:

- Annual financial statements as set out in the Companies Act for all providers registered as a company in terms of the Companies Act.
- Annual financial statements as set out in the Close Corporations Act for all providers registered as a close corporation in terms of the Close Corporations Act.
- Financial statements for all other providers are to include at least the following in one of the official languages of South Africa:
  - a balance sheet and notes thereon;
  - an income statement and notes thereon;
  - a statement of changes in equity and notes thereon; and
  - a cash flow statement.

Financial statements are to:

- be prepared in a manner appropriate to the business of the provider in accordance with generally accepted accounting practice<sup>3</sup>, fairly present the financial position of the business at the last day of the financial year and the results of operations and cash flow information for the period then ended;
- be prepared using the accrual basis of accounting which requires the effects of transactions and other events to be recognised when they occur and not as cash or its equivalents are received or paid and recorded in the financial year to which they relate;
- be prepared on a going concern basis unless the provider intends to liquidate the entity, or cease trading, or has no realistic alternative but to do so;
- refer to any material matter which has affected or is likely to affect the financial affairs of the provider;
- be approved and signed by the provider;
- be subject to an audit<sup>4</sup>; and
- be issued within six months of the financial year end of the provider.

### ***Financial year***

Where the financial year is not determined in terms of the Companies or Close Corporations Act (i.e. where the provider is not a company or close corporation), the provider is to fix a date on which, in each year, its financial year will end. The year-end date may be changed, provided it is not changed more than once within any financial year. The duration of any financial year is to be twelve months, except for the first financial year of the provider which may not be less than three months or more than 15 months from date of commencement of services in terms of a provider's licence. Where the year-end is changed, the financial year is not to be less than three months or more than 18 months.

### **Money and assets held on behalf of clients ("trust accounts")**

The provider must maintain full and proper accounting records on a continual basis, brought up to date monthly in respect of money and assets held on behalf of clients (hereafter referred to as "trust accounts"). (Trust account/s in the context of FAIS refers to bank accounts opened in the name of the provider to hold money on behalf of clients. Trust accounts do not form part of the assets of the provider and as such are not disclosed on the balance sheet of the provider). These records are to be maintained separately and in addition to the provider's business records and are to be subject to agreed-upon procedures to be performed by the auditor in order for the auditor to issue the report required in terms of section 19(3) to the registrar.

The provider maintains full and proper accounting records of trust accounts through compliance with the provisions of paragraph 10 of the General Code of Conduct for

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<sup>3</sup> An exemption has been granted in this regard for certain providers; refer to "Exemptions".

<sup>4</sup> An exemption has been granted in this regard for certain providers; refer to "Exemptions".

Authorised Financial Services Providers and Representatives, “Custody of financial products and funds” which states<sup>5</sup>:

“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 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.”

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<sup>5</sup> Refer to the General Code of Conduct for Authorised Financial Services Providers and Representatives (the Code) as this extract represents the requirements of the Code at the time of issue of this guidance note.

Where applicable, providers must also adhere to the provisions of other legislation governing assets held on behalf of clients. These include for example the Pension Funds Act, the Long-term Insurance Act, and the Short-term Insurance Act. Where securities are held for clients by the provider in the STRATE environment, the STRATE rules must be adhered to.

### **Appointment and qualification of an approved auditor**

The provider must appoint an auditor to audit the financial statements (this is the case even where the entity does not require an audit in terms of its founding document) and to prepare a report regarding money and assets held on behalf of clients.

Auditors of providers must be approved by the registrar to act as such. Upon application to seek approval to act as an auditor of a provider the registrar will consider the following:

- whether the auditor is registered with the Public Accountants' and Auditors' Board, as required;
- the auditor's reputation as a result of prior dealings with the registrar;
- the auditor's independence in relation to the provider;
- whether the auditor's audit approach is up to date with changes and developments in standards;
- the auditor's knowledge and competence to perform FAIS engagements; and
- the auditor's access to resources to keep up to date with FAIS developments.

### **Conduct of the audit of providers**

When conducting an audit of financial statements, auditors have to comply with statements of South African Auditing Standards (SAAS) or International Standards on Auditing (ISAs)<sup>6</sup>. These standards require the auditor to:

- plan and perform the audit, in accordance with statements of SAAS or ISA, to obtain reasonable assurance that the financial statements taken as a whole are free of material misstatement;
- evaluate the overall presentation of the financial statements, in order to ascertain whether they have been prepared in accordance with the stated financial reporting framework and statutory requirements; and
- issue an audit report containing a clear expression of opinion on the financial statements taken as a whole.

### **Reporting to the registrar in terms of section 19(3)**

Section 19(3) requires the provider to submit to the registrar a report prepared by the auditor who also performed the audit of the financial statements. The auditor's report is based on the findings of the specimen agreed-upon procedures as contained in appendix B. These procedures have been agreed with the FSB. The auditor conducts

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<sup>6</sup> ISAs are to be applied for audits of financial statements for periods beginning on or after 1 January 2005. See PAAB Circular B.1/2004, "Adoption of IAASB Standards by the Auditing and Assurance Standards Board".

this engagement in terms of the International Standard on Related Services (ISRS)<sup>7</sup> on Engagements to Perform Agreed-upon Procedures Regarding Financial Information.

General procedures which would ordinarily be performed as part of such engagements are listed below to provide additional guidance to the auditor:

- Discuss the terms and scope of the engagement with the provider and the engagement team.
- Prepare an engagement letter setting out the terms and scope of the engagement. Refer to appendix E for an illustrative engagement letter.
- Obtain explanations from management for any unusual fluctuations or inconsistencies in the level and nature of the trust accounts.
- Obtain representations from management that trust accounts have been kept separate from those of the business throughout the year. An illustrative management representation letter is included as appendix D.
- Consider work performed by internal audit, where appropriate, by inspecting internal audit reports related to trust accounts.
- Obtain the compliance officer's reports to the registrar and consider the impact of any instances of non-compliance with the requirements of section 19(3) on the agreed-upon procedures to be performed.

The report must be submitted at the same time as the audited financial statements within six months of the end of the financial year of the provider. An illustrative report to the Registrar is included in appendix C.

The auditor informs the provider that issuing the report in terms of section 19(3) does not form part of the audit of the financial statements and that the auditor is engaged separately to perform the additional work necessary to enable the auditor to issue the report. A separate engagement letter is obtained from the provider and additional fees will necessarily need to be negotiated for the performance of the additional procedures. An illustrative engagement letter is set out in appendix E.

#### **Reporting irregularities to the registrar in terms of section 19(4)**

In terms of section 19(4), the auditor must report to and inform the registrar in writing of any irregularity or suspected irregularity in the conduct of the affairs of the provider concerned, of which the auditor became aware in performing functions as auditor and which, in the opinion of the auditor is material.

The auditor should also consider whether the irregularity is a material irregularity in terms of section 20(5) of the Public Accountants' and Auditors' Act (PAAB Act) and consider the auditor's responsibilities in terms of this section. Further guidance in this regard is provided in *Material Irregularities: A Guide for Registered Accountants and Auditors* issued by the Public Accountant's and Auditor's Board.

The introductory wording of section 19(4) states: "*despite anything to the contrary contained in any law*". This wording implies that the provisions of section 20(5)(b) of the PAAB Act which allows 30 days for an audit client to satisfy the auditor that no irregularity has taken place or is taking place or that adequate steps have been taken for

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<sup>7</sup> ISRSs are to be applied for all related services reports issued on or after 1 January 2005. See the PAAB Circular B.1/2004, "Adoption of IAASB Standards by the Auditing and Assurance Standards Board".

the recovery of any loss or prevention of any loss, is not applicable when reporting irregularities under FAIS. The registrar therefore requires the auditor to report all instances of irregularities, which in the auditor's opinion are material, in terms of FAIS forthwith and irrespective of whether the provider rectified the problem or not. Accordingly when a section 20(5) report is issued to the provider the report informs the provider of the auditor's responsibility in terms of FAIS to report to the registrar in terms of section 19(4) of FAIS, and the auditor simultaneously dispatches a section 19(4) report to the registrar containing details of the irregularity and informing the registrar that the auditor has issued a section 20(5) report to the provider.

#### ***“As auditor”***

The auditor is to report irregularities identified while performing the functions as auditor of the provider as soon as practicably possible after the facts have been confirmed. For purposes of FAIS the “functions as auditor” include the performance of the audit of the provider, performance of the agreed-upon procedures and preparation of the section 19(3) report on client monies and the performance of duties as compliance officer of the provider in addition to being the auditor (where applicable).

The registrar requires the auditor to report section 19(4) irregularities as and when they are identified in the auditor's relationship with the provider.

#### ***“Irregularity”***

Section 20(5) requires the irregularity to have caused or to be likely to cause financial loss and to be incurred *“in the conduct of the affairs”*, amongst others, before it will qualify as a material irregularity. The provisions of FAIS do not provide such restrictions and are consequently much broader. FAIS, by exclusion of any reference to financial loss, recognises that an irregularity may not always lead to financial loss to the provider or an outsider but may, amongst others, represent a serious regulatory breach of which the regulator must become aware. Section 19(4) states *“in the conduct or the affairs of”* which is understood to mean “in the conduct of the affairs of the provider or the provider's personal business affairs”. FAIS is concerned with professional persons who render financial advice to the public and who are to be regulated strictly and exhaustively even as regards personal professional conduct.

The definition of “irregularity” (New Webster's Dictionary) includes; “not in accordance with rules, established principles, or customs”, and including more generally matters being “out of line”, “unsuitable” or “inappropriate”, as appears in other commonly used dictionaries.

The intention of FAIS is that “irregularity” must be widely interpreted and will be constituted by conduct contravening or not complying with any provision of the FAIS Act, the General Code of Conduct or of any other subordinate measure promulgated under the Act, and would be wide enough to include conduct which is not legally permitted by other laws or the common law of the Republic. “Irregularity” would also include matters pertaining to internal financial administration of the provider, where these appear abnormal in relation to generally accepted practice.

Following from this, any material irregularity reported in terms of section 20(5) of the Public Accountants' and Auditors' Act would constitute an irregularity in terms of section 19(4) of FAIS.

The irregularity does not need to be a proven occurrence as indicated by *“any irregularity or suspected irregularity”*. Where the auditor suspects an irregularity that

would have been reported had sufficient proof been available to conclude that it was a reportable irregularity, the auditor will report that suspected irregularity and provide the registrar with the basis for the suspicion.

It is advisable in circumstances of uncertainty to obtain legal advice.

### **“Material”**

FAIS leaves the determination of whether an irregularity is material or not up to the auditor, i.e. *“in the opinion of the auditor, is material.”* The underlying intention of section 19(4) is to direct the auditor’s attention to-

- matters on which an auditor is particularly qualified to exercise judgment and in regard to which it can be accepted that the Registrar requires the auditor’s assistance, and which represent matters which cannot be tolerated in the conduct or in the affairs of an authorised financial services provider acting under the FAIS Act if all the objectives of that Act as a law are taken into consideration; and
- matters which in particular constitute contraventions of provisions of the FAIS Act which directly threatens the continued maintenance of the provider’s licence, or constitute conduct contrary to the public interest in the proper exercise of the rights granted by a FAIS licence.

The materiality factors that are to be taken into account for the purposes of the fair presentation of the financial statements may not be relevant when determining the materiality factors for the purpose of section 19(4). Materiality, in the context of section 19(4), is unlikely to exceed materiality for financial statement purposes, and in most instances will be a lesser value.

Appendix F sets out some examples of irregularities that would be reported to the registrar by the auditor, together with an illustrative report.

### **Statement to registrar relating to termination of appointment**

As required by section 19(5) the auditor must submit to the registrar a statement of what the auditor believes to be the reason for the auditor’s termination. In addition, if the auditor would, but for the termination of the auditor’s appointment, have reported an irregularity in terms of section 19(4), the auditor is required to submit such report to the registrar.

### **Offences and penalties**

Any person who contravenes or fails to comply with a provision of section 18 (maintenance of records) and 19(2) (requirement for annual financial statements to be audited) or deliberately makes a misleading, false or deceptive statement or conceals any material fact is guilty of an offence in terms of FAIS and is on conviction liable to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years or both such a fine and such imprisonment.

Details of the other offences under FAIS can be sought in the full text of FAIS.

### **Exemptions**

In terms of exemption No. 1 of 2003, “Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness”, certain providers are exempted from section 19(2)(a) and b(i) of

FAIS. Section 19(2)(a) obliges the provider to cause the financial statements, pertaining to the business of the provider, to be audited and reported on by an external auditor. Section b(i) requires financial statements to be prepared in conformity with generally accepted accounting practice. This exemption does not apply in those instances where the provider is obliged by any other law (for example, the Companies Act or the Close Corporations Act) to have financial statements audited and reported on by an external auditor or, otherwise prepared by an accounting officer.

The effect of this exemption is such that a provider who would not comply with generally accepted accounting practice in preparing financial statements and would not cause such financial statements to be subject to an audit save for the provisions of FAIS, are not required to do so. For providers to which the exemption applies financial statements still need to be prepared and submitted to the registrar.

This exemption does not apply to section 19(3). Providers must submit a report prepared by the auditor regarding money and assets held on behalf of clients.

The abovementioned providers have also been exempted from paragraph 5(2) of the Fit and Proper Requirements, which stipulates that upon application for approval to act as a provider, an applicant's assets must exceed the applicant's liabilities. A condition of the exemption is that when complying with section 19(2)(b)(iv) of FAIS (submission of financial statements within 6 months of financial year end), the provider must certify to the satisfaction of the registrar that the provider will at all times be able to meet any financial liability in respect of the provider's business of rendering financial services.

Other exemptions pertaining to representatives and certain fit and proper requirements have been granted but are not dealt with in this guidance note.

## APPENDICES

### Appendix A – Definitions

The definitions contained in this appendix are reproduced from the Act but are not a complete list of all definitions contained in the Act, they are merely included for ease of reference when reading this guidance note.

“**advice**” means; “any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients-

- (a) in respect of the purchase of any financial product; or
- (b) in respect of the investment in any financial product; or
- (c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or
- (d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product,

and irrespective of whether or not such advice-

- (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
- (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected”.

Advice does not include:

- (i) “Factual advice given merely –
  - (aa) on the procedure for entering into a transaction in respect of any financial product;
  - (bb) in relation to the description of a financial product;
  - (cc) in answer to routine administrative queries;
  - (dd) in the form of objective information about a particular financial product; or
  - (ee) by the display or distribution of promotional material
- (ii) an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client;
- (iii) advice given by-
  - (aa) the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of “financial product” in subsection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or

- (bb) the board of trustees of any medical scheme referred to in paragraph (g) of the said definition of “financial product”, or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or
- (iv) any other advisory activity exempted from the provisions of this Act by the registrar; after consultation with the Advisory Committee, by notice in the *Gazette*”.

“**auditor**” means, “an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)”

“**authorised financial services provider**” means, “a person who has been granted an authorisation as a financial services provider by the issue to that person of a licence under section 8”

“**client**” means, “a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service”

“**financial product**” means,

- (a) “securities and instruments, including-
  - (i) shares in a company other than a “share block company” as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (ii) debentures and securitised debt;
  - (iii) any money-market instrument;
  - (iv) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii);
  - (v) any “securities” as defined in section 1 of the Securities Services Act, 2005
- (b) a participatory interest in one or more collective investment schemes;
- (c) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No.52 of 1998), and the Short-term Insurance Act, 1998 (Act No.53 of 1998), respectively;
- (d) a benefit provided by-
  - (i) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No.24 of 1956), to the members of the organisation by virtue of membership; or
  - (ii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No.25 of 1956), to the members of the society by virtue of membership;
- (e) a foreign currency denominated investment instrument, including a foreign currency deposit;

- (f) a deposit as defined in section 1 (1) of the Banks Act, 1990 (Act No.94 of 1990);
- (g) a health service benefit provided by a medical scheme as defined in section 1 (1) of the Medical Schemes Act, 1998 (Act No.131 of 1998);
- (h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;
- (i) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive;
- (j) any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (i), inclusive.”

**“intermediary service”** means, “any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier-

- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or
- (b) with a view to-
  - (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;
  - (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
  - (iii) receiving, submitting or processing the claims of a client against a product supplier.”

Intermediary Service does not include:

- “(i) the rendering by a bank or mutual bank of a service contemplated in paragraph (b) (ii) of the definition of “intermediary service” where the bank or mutual bank acts merely as a conduit between a client and another product supplier;
- (ii) an intermediary service rendered by a product supplier-
  - (aa) who is authorised under a particular law to conduct business as a financial institution; and
  - (bb) where the rendering of such service is regulated by or under such law;
- (iii) any other service exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.”

**“key individual”** means, “in relation to an authorised financial services provider, or a representative, carrying on business as –

- (a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or
- (b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person”

“**person**” means, “any natural person, partnership or trust, and includes-

- (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (b) any company incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporate”

“**representative**” means, any person who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -

- (a) does not require judgement on the part of the latter person; or
- (b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries”

## Appendix B – Agreed-upon procedures for reports to be issued in terms of section 19(3)

The procedures listed below represent the procedures agreed with the FSB for engagements performed in terms of section 19(3) of FAIS.

Section 19(3) refers to money and assets held on behalf of clients (referred to in this guidance note as “trust accounts”). (Trust account/s in the context of FAIS refers to bank accounts opened in the name of the provider to hold money on behalf of clients. Trust accounts do not form part of the assets of the Provider and as such are not disclosed on the balance sheet of the Provider).

The agreed-upon procedure 12 regarding non-monetary assets held on behalf of clients in the name of the Provider has been included because the Registrar requires information regarding non-monetary assets held on behalf of clients by Providers in the Provider’s name. No additional procedures regarding this information has been requested.

The engagement is performed in context of the requirements of paragraph 10 of the General Code of Conduct for Authorised Financial Services Providers and Representatives on custody of financial products and funds, namely “Custody of financial products and funds<sup>8</sup>”

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<sup>8</sup> “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 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.”

## **Agreed-upon procedures**

### **Accounting records**

1. Enquire and observe whether the accounting systems of the provider are structured in such a manner that the accounting records for the trust accounts are maintained separately from the accounting records of the provider<sup>9</sup>.

### **Cash**

2. Obtain bank confirmation letters for all trust accounts, confirming whether:
  - the balance of the trust account agrees to the balance reflected in the Provider's accounting records;
  - any encumbrances over the trust accounts agree with those disclosed by the Provider.
3. Obtain the year-end bank reconciliations for all trust accounts, and for each reconciliation:
  - Enquire about any old or unusual reconciling items and agree these items to supporting documentation or subsequent resolution of the reconciling item.
  - Cast the bank reconciliation.
  - Trace outstanding deposits to the next day's bank statement (paragraph 10(1)(d)(i) of the General Code of Conduct for Authorised Financial Services Providers and Representatives requires all monies received to be deposited within one business day).
  - Agree payments which appear on the bank statement 1 week after year-end to the outstanding cheque listing. Agree those payments which do not appear on the outstanding cheque listing to supporting documentation to confirm that they have been recorded in the correct period.
  - Agree cheques which appear on the outstanding cheques list to bank statements after year-end.
4. Obtain a schedule of transfers between all bank accounts of the Provider for the period before and after the year-end.
  - Confirm whether transfers between accounts are accounted for in the same accounting period by inspecting transfers between accounts.
  - Confirm whether transfers between accounts are valid by inspecting documentation supporting the transfers. Supporting documentation may include, for example, client mandates.
5. For two months, or such shorter period as agreed with the Registrar, during the financial year, agree deposits made into trust accounts to supporting documentation confirm whether the deposit constitutes a valid receipt from a client, and confirm whether the deposits are made within one business day.
- 6(a) For two months, or such shorter period as agreed with the Registrar during the financial year, agree payments made during the year from trust accounts to

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<sup>9</sup> This is intended to be a high level observation regarding the accounting systems of the Provider.

- supporting documentation confirming whether the payment was made in terms of a valid client instruction/mandate.
- 6(b) Agree each payment made from the trust account into the provider's business bank account during the two months selected (or such shorter period as agreed with the Registrar), to supporting documentation, confirming whether transfers which represent fees were made in terms of the contract with the client.
  7. Enquire whether or not there are any restrictions on trust accounts and confirm whether these restrictions were not breached in performing procedures 5 and 6 above.
  8. Obtain a selection of 10% of client correspondence files.
    - Trace current year movements referred to in the file to the bank statements.
  9. Inspect the trust account bank statements, relating to the two months selected for procedures 5 and 6 above or such shorter period as agreed with the Registrar, for evidence of banking charges. (Only fees relating to deposits and withdrawals of the client's funds are for the client's own account in terms of paragraph 10(1)(d)(iii) of the General Code of Conduct for Authorised Financial Services Providers and Representatives).
    - Confirm whether fees which are not for the Provider's trust account are charged to the business account of the Provider. by agreeing the fees identified in the trust account as being for the provider' account to the provider's business account.
  10. Inspect the trust account bank statements, relating to the two months selected for procedures 5, 6 and 9 or such shorter period as agreed with the Registrar) for interest accruing.
    - Confirm whether interest accruing is credited to the trust account and not the provider's business (paragraph 10(1)(d)(iv) and paragraph 10(3) of the General Code of Conduct for Authorised Financial Services Providers and Representatives) by agreeing interest earned to the trust account accounting records.
  11. Agree receipts and payments on the Provider's business bank account relating to the two months selected for procedures 5, 6 and 9 or such shorter period as agreed with the Registrar with supporting documentation such as bank deposit books or slips or cheques confirming whether any trust monies have been erroneously dealt with as business monies.

#### **Non-monetary assets held on behalf of clients**

12. Obtain a schedule of non-monetary assets held at year-end on behalf of clients, held in the name of the Provider.

## **Appendix C – Illustrative agreed-upon procedures report to the registrar in terms of section 19(3)**

### **Factual Findings Report to the Registrar of Financial Services Providers in terms of section 19(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)(“the Act”) by the independent auditor**

In accordance with section 19(3) of the Act, we have performed the procedures agreed with you and described in the guidance issued by the Financial Services Board with respect to the compliance by ..... (Business name of the Provider) with section 19(3) of the Act. Our engagement was undertaken in accordance with the International Standards on Related Services<sup>10</sup> (ISRS) applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed, is that of the Registrar. Our procedures were performed solely to assist the Registrar in evaluating the compliance by the Provider with section 19(3) of the Act.

#### Findings

Based on our procedures as regards money and assets held by the Provider on behalf of clients (hereafter referred to as “trust accounts”), our findings are:

1. With regard to procedure 1, we enquired whether the accounting system of the Provider are structured in such a manner that the accounting records of the trust accounts and the accounting records of the Provider are separately maintained. We observed that the accounting system is structured in such a manner/ we observed that the accounting system is not structured in such a manner.
2. With regard to procedure 2, the balance per the bank confirmation letters of R... agreed to the balance reflected in the Provider’s records/the following discrepancy between the bank confirmation letters and the Provider’s records was noted..... The encumbrances disclosed in the bank confirmation letters agreed/did not agree with those disclosed by the Provider (note the discrepancies if any).
3. With regard to procedure 3, we obtained explanations for old and unusual reconciling items, agreeing them to supporting documentation. We tested the following reconciliations ..... and found the mathematical accuracy of the reconciliation to be correct. We traced ..... outstanding deposits to the next day’s bank statement/we were unable to trace the following outstanding deposits to the next day’s bank statement .....

Payments appearing on the bank statements after year-end were traced to the bank statement after year-end. ... payments relating to the financial year did not appear on the outstanding cheque listing at year-end.

Cheques on the outstanding cheque listing at year-end were traced to the bank statements after year-end/Of the ... cheques on the outstanding cheque listing at year-end ... cheques were not found in the bank statements after year-end.

4. With regard to procedure 4, we obtained a schedule of transfers, for the period before and after year-end, between all bank accounts of the Provider and confirmed that the transfers were accounted for in the same accounting

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<sup>10</sup> ISRSs are to be applied for all related services reports issued on or after 1 January 2005. See the PAAB Circular B.1/2004, “Adoption of IAASB Standards by the Auditing and Assurance Standards Board”.

period/the following transfers were not accounted for in the same accounting period ....

We confirmed that the transfers listed on the schedule were valid by inspecting documentation supporting the transfer/the following transfers were not supported by documentation.

5. With regard to procedure 5, for two months, namely... and ....., deposits into trust accounts were agreed to supporting documentation/the following deposits were not supported by documentation ...

We confirmed whether deposits were made within one business day/ the following deposits were not made within one business day....

6. With regard to procedure 6, for two months, namely..... and ....., payments from trust accounts were agreed to supporting documentation to confirm whether the payments were made in terms of a valid client instruction/mandate/ the following payments were not supported by a valid client instruction/mandate ...

We further agreed each payment made into the Provider's business account from the trust account, during the two months selected, to supporting documentation and confirmed whether transfers that represent fees where made in terms of the contract with the client/ the following fees transferred into the Provider's own bank account were not supported by a client contract...

7. With regard to procedure 7, we confirmed that restrictions on trust accounts were not breached while performing agreed procedures 5 and 6 / the following breaches of restrictions on trust accounts were identified while performing agreed procedures 5 and 6 ...

8. With regard to procedure 8, ...client files were selected . Movements referred to in the files were traced to bank statements/the following movements were not able to be traced to bank statements .....9. With regard to procedure 9, the following fees for the Provider's account were traced from the bank statements to the Provider's business account ..../the following fees for the Provider's account were not found in the Provider's business account ...

10. With regard to procedure 10, the following interest amounts were traced from the bank statements to the trust account in the Provider's accounting records of trust accounts .../the following interest amounts were not found in the trust account in the Provider's records of trust accounts .....

11. With regard to procedure 11, we selected payments and receipts from the Provider's business bank accounts for two months within the financial year of the Provider and confirmed whether the payments and receipts were not trust monies erroneously dealt with as business monies / the following payments and receipts did constitute trust monies dealt with as business monies....

12. With regard to procedure 12, the schedule of non-monetary assets held on behalf of clients totaling R.... was obtained. According to the schedule obtained the following non-monetary assets were held in the name of the Provider on behalf of clients.....

Because the above procedures do not constitute either an audit or a review made in accordance with statements of South African Auditing Standards (or International Standards on Auditing), we do not express any assurance on the trust accounts as at .....(date of the financial year-end).

Had we performed additional procedures or had we performed an audit or review of the trust accounts in accordance with statements of South African Auditing Standards (or International Auditing Standards), other matters might have come to our attention that would have been reported to you.

Our report is solely for the information of the registrar and is not to be used for any other purpose, nor is it to be distributed to any other party.

Auditor Name  
Registered Accountant and Auditor  
Address  
Date

## **Appendix D – Illustrative management representation letter for an agreed-upon procedures engagement in terms of section 19(3)**

The following letter is for use as a guide and is not intended to be a standard letter. This management representation letter will need to be varied according to individual requirements and circumstances.

### **(Entity Letterhead)**

(To Auditor) (Date)

This representation letter is provided in connection with your engagement to perform agreed-upon procedures on the monies and other assets held on behalf of the clients of....., (name of provider) for the year ended .....(date) for the purpose of reporting to the Registrar of Financial Services Providers in terms of section 19(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (“the Act”).

We confirm, to the best of our knowledge and belief, the following representations:

- There have been no irregularities involving management or employees who have a significant role in the accounting and internal control systems dealing with the monies and other assets held on behalf of our clients.
- We have made available to you all clients’ files, books of account and supporting documentation and all minutes of meetings of shareholders and the board of directors (namely those held on .....(date) and .....(date), respectively).
- All client monies received have been promptly banked in the separate bank accounts disclosed to you.
- Money has only been transferred out of these accounts, to the firm’s business accounts, in terms of fees and disbursements due to the firm in terms of the contracts signed by our clients.
- The firm has complied with all the requirements of the Act, as well as all regulations published by the Financial Services Board.
- The information provided to you with respect to the monies and other assets held on behalf of our clients is free of material misstatements, including omissions.
- We have not lodged any liens or encumbrances over the monies and other assets held on behalf of our clients.
- There are no formal or informal compensating balance arrangements with any of our cash and investment accounts containing monies and other assets held on behalf of our clients.
- We understand that your engagement was conducted in accordance with the statement of South African Auditing Standards (or International Standards on Auditing<sup>11</sup>) applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the registrar.

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<sup>11</sup> See footnote 5.

- We understand that we are responsible for the implementation and operation of internal controls that are designed to prevent and detect fraud and error. There has been no fraud or possible irregularities involving management or employees who have a significant role in the system of internal control, dealing with the monies and other assets held on behalf of our clients. Based on our assessment, we believe the risk that the amounts recorded in terms of monies and other assets held on behalf of our clients are materially misstated as a result of fraud to be acceptably low.

The contents of this letter were considered by the Board/members/management of .....(name of provider) on [date] and the undersigned were authorised to sign this representation letter on behalf of the Board/members/management.

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## **Appendix E – Illustrative engagement letter for an agreed-upon procedures engagement required by section 19(3)**

The following letter is for use as a guide and is not intended to be a standard letter. This illustrative engagement letter will need to be varied according to individual requirements and circumstances.

Addressee [the directors, members, proprietor(s) or partners, as appropriate]

Dear Sir(s)

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services that we will provide. Our engagement will be conducted in accordance with the statement of South African Auditing Standards (or International Standard on Related Services<sup>12</sup>) applicable to agreed-upon procedures engagements and we will indicate so in our report.

We have agreed to perform the engagement required by section 19(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002) and report to the registrar of financial services providers the factual findings resulting from our work.

The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed by us is that of the registrar and the procedures that we will perform are solely to assist the registrar in determining whether the amounts recorded with respect to monies and other assets held on behalf of the clients of .....(name of provider) are in accordance with section 19(3) of FAIS. Our report is not to be used for any other purpose, or distributed to any party other than the registrar, and is solely for your information, and that of the registrar.

The procedures that we will perform will not constitute an audit or a review made in accordance with statements of South African Auditing Standards (or International Standards on Auditing) and, consequently, no assurance will be expressed.

We wish to draw your attention to section 19(4) of FAIS, under which we are obliged to report any irregularity under that section directly to the registrar. Unlike section 20(5) of the Public Accountant's and Auditor's Act, 1991, there is no 30 day period of grace.

### **Fees**

Our fees, which will be billed as work progresses, are based on the time required by the individuals assigned to the engagement plus out-of-pocket expenses. Individual hourly rates vary according to the degree of responsibility involved and the experience and skill required.

### **Limitation of Liability**

The maximum liability of .....(name of the firm), its partners, directors, employees and agents for all claims arising out of the services provided in connection with this engagement/contract shall be limited to an amount equal to twice the total fees charged for all services provided in connection with this engagement/contract. This maximum liability shall be an aggregate liability for all claims from whatever source and howsoever arising, whether in contract, delict or otherwise.

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<sup>12</sup> See footnote 6.

.....(name of the firm) will not be liable to .....(name of provider) or any cessionary or third party claiming through or on behalf of .....(name of provider) for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified. This engagement/contract is governed by South African law and any claims will be subject to the exclusive jurisdiction of the Courts of South Africa.

Any claims, howsoever arising, must be commenced formally by service of court summons or process initiating arbitration proceedings within two years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the claim and, in any event regardless of the knowledge of the Claimant, by no later than three years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action. This expressly overrides any statutory provision which would otherwise apply.

.....(name of the firm), its partners, directors, employees and agents shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by, or misrepresentations, fraudulent acts or wilful default on the part of .....(name of provider), its directors, employees or agents. ....(name of provider) indemnifies .....(name of the firm) and holds it harmless against all and any claims made against it by any party whatsoever in respect of any such loss, damages, costs or expenses and against the actual costs incurred by .....(name of the firm) in defending such claims.

**Conclusion**

We look forward to full co-operation with your staff, and we trust that they will make available to us whatever records, documentation and other information requested in connection with our engagement.

Please sign and return the attached copy of this letter to indicate that it is in accordance with your understanding of the terms of the engagement, including the specific procedures that we have agreed will be performed

\_\_\_\_\_  
(name of the firm)

Acknowledged on behalf of  
(signed)

.....  
Name and title

\_\_\_\_\_  
(Date)

## **Appendix F – Examples of irregularities that would be reported to the registrar in terms of section 19(4) and an illustrative report**

The irregularities identified in this appendix are examples of irregularities, which would typically be reported to the registrar in terms of section 19(4). However, the irregularities listed below are only examples of irregularities, which would be reported, and consequently the list is not necessarily complete. Furthermore, the auditor exercises professional judgement when considering whether irregularities identified are material and require a section 19(4) report to the registrar.

The following matters if identified by the auditor in the conduct of the audit of the financial statements may constitute irregularities, which are to be reported to the registrar in terms of section 19(4):

- The audit client is a provider as defined in FAIS but is not licensed as required by section 7(1).
- The provider has dealt in a financial product for own benefit, account or interest based on advance knowledge of pending transactions for its clients, or on any non-public information the disclosure of which would be expected to affect the prices of such product.
- The provider allows s-rated<sup>13</sup> persons to provide financial advice or intermediary services.
- The provider appoints key individuals and representatives who do not meet the fit and proper requirements or who do not hold the necessary qualifications.

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<sup>13</sup> “The S Reference system is a system of self-regulation within the long-term insurance industry, whereby the public at large, and the industry, are protected from persons who are not fit and proper to be engaged in the business of marketing the products of the industry, or in directly controlling or training those who are so engaged. An S reference can be imposed upon an intermediary for up to five years (or shorter as determined by the S Reference Panel). After the expiry of the five year (or shorter) period, the S reference will lapse”, the Life Officers Association of South Africa, website [www.loa.co.za](http://www.loa.co.za). A list of s-rated person can be obtained from the website.

The following is an illustrative report to the registrar in terms of section 19(4)

The Registrar of Financial Services Providers  
The Financial Services Board  
Rigel Park  
446 Rigel Avenue South  
Erasmusrand  
Pretoria

Dear Sir

**REPORT TO THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS IN TERMS OF SECTION 19(4) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2002)**

In our capacity as auditors to.....(name of the provider) we are reporting to you in terms of section 19(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (the "Act").

During the conduct of our audit for the year ended.....(date) we established that .....(name of the provider) is not maintaining records of complaints and/or dealing with complaints in the manner envisaged by part IX of the general Code of Conduct for Authorised Financial Services Providers and Representatives.. As a consequence we have reason to believe that in the conduct of the affairs of .....(name of the provider) an irregularity is taking place which in our opinion is material.

Name

Registered Accountant and Auditor

Chartered Accountant (SA)

Address

Date

Cc: (provider)