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## BOARD NOTICES

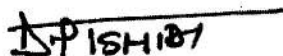
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### BOARD NOTICE 90 OF 2010 FINANCIAL SERVICES BOARD

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

#### EXEMPTION OF INVESTEC INVESTMENT MANAGEMENT SERVICES (Pty) Ltd

I, Dube Phineas Tshidi, 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), Investec Investment Management Services (Pty) Ltd to the extent and subject to the conditions set out in the Schedule.



**D P Tshidi,**  
*Registrar of Financial Services Providers*

#### SCHEDULE

#### EXEMPTION OF INVESTEC INVESTMENT MANAGEMENT SERVICES

##### 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-

"client", in relation to Investec Investment Management Services, means a client transferred from the Independent Investment Trust to Investec Investment Management Services;

"Investec Investment Management Services" means Investec Investment Management Services (Pty) Ltd.

##### Extent of exemption and condition

3. (1) Investec Investment Management Services is exempted from section 5(1) of the Administrative Code of Conduct for Administrative FSPs, 2003, when rendering financial services to clients, subject to the conditions that it-



- (a) binds itself to an irrevocable unilateral commitment in favour of the client that conforms to the specimen mandate approved by the registrar;
  - (b) provides an undertaking to clients that clients will not be afforded lesser rights than what they were afforded in terms of their mandate with the Independent Investment Trust;
  - (c) endorses the commitment and undertaking referred to in subparagraphs (a) and (b) by-
    - (i) a resolution passed to that effect by the board of Investec Investment Management Services; and
    - (ii) an undertaking to that effect given by Investec Management Services to the registrar;
  - (d) publishes its intended actions in two national newspapers;
  - (e) must, where possible, and where it has future contact with a client, initiated by Investec Management Services or the client, causes a mandate to be signed with the client;
  - (f) must advise immediately the registrar of any change to the particulars furnished in its exemption application.
- (2) This Exemption shall, subject to paragraph 4, be valid for a period of 5 years from the date referred to in paragraph 5.

#### **Amendment and withdrawal of exemption and conditions**

4. This Exemption or conditions mentioned in paragraph 3 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**

5. This Exemption is called the Exemption of Investec Investment Management Services, 2010, and comes into operation on the date of publication in the *Gazette*.



**BOARD NOTICE 91 OF 2010****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****EXEMPTION OF PARTICULAR PERSONS FROM QUALIFICATION  
REQUIREMENTS, NO. 2 OF 2010**

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, particular persons from paragraph 5(3) and (4) of the Determination of Fit and Proper Requirements, 2008, to the extent and subject to the conditions and for the duration set out in the Schedule.



**G E Anderson,**  
*Deputy Registrar of Financial Services Providers*



## **SCHEDULE**

### **EXEMPTION OF PARTICULAR PERSONS FROM QUALIFICATION REQUIREMENTS, NO. 2 of 2010**

#### **Definitions**

1. In this Schedule, "the Act" means the Financial Advisory and Intermediary Services Act, 2002, any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

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

**"forward exchange contract"** means a financial product categorised under subcategory 1.13 in Table A in Part IV of the Determination of Fit and Proper Requirements.

#### **Extent, conditions and duration of Exemption**

2. (a) Eugene Malan, Francoise de Laroche and Cindi Schreiber are hereby exempted from paragraph 5(3) and (4) of the Determination of Fit and Proper Requirements when rendering financial services in respect of a forward exchange contract subject to the conditions that they must-
  - (i) have a recognised qualification by 31 December 2011 to render financial services in respect of a forward exchange contract; and
  - (ii) immediately advise the registrar of any change to the particulars furnished in the exemption application.
- (b) This Exemption expires on 31 December 2011.

#### **Amendment and withdrawal of Exemption**

3. This Exemption is 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 Particular Persons from Qualification Requirements, No. 2 of 2010, and comes into operation on the date of publication in the *Gazette*.



**BOARD NOTICE 92 OF 2010****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****(ACT NO. 37 OF 2002)****EXEMPTION OF MARLOW ADVISORS (PTY) LTD IN RESPECT OF CERTAIN CLIENTS**

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), Marlow Advisors (Pty) Ltd 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 MARLOW ADVISORS (PTY) LTD IN RESPECT OF CERTAIN CLIENTS****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-

"**bank**", means a 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1994 (Act No. 94 of 1994);

"**client**", in relation to Marlow Advisors, means-

- (a) a bank;
- (b) a financial services provider who is registered, licensed, recognised, approved or otherwise authorised by-
  - (i) the Registrar of Long-term Insurance to conduct long-term insurance business;
  - (ii) the Registrar of Short-term Insurance to conduct short-term insurance business;
- (c) a person outside the Republic who-
  - (i) as a regular feature of the person's business, renders a service similar to a 'financial service' as defined in section 1(1) of the Act; and



- (ii) is registered, licensed, recognised, approved or otherwise authorised to conduct the business of a bank or a business referred to in paragraph (b) by a foreign regulator, with functions similar to those of the Registrar of Banks or a Registrar referred to in the said paragraph;
- (d) a central bank or other national monetary authority of any country, state or territory;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of Marlow Advisors that the market value of the assets managed by the person will exceed R1 billion at all times of the rendering of financial services to the person;
- (f) any other person included in the definition of 'client' in section 1(1) of the Act, who has confirmed to the satisfaction of Marlow Advisors that the person will have assets of which the net asset value will exceed R20 million at all times of the rendering of financial services to the person, and who is not—
  - (i) a natural person;
  - (ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
  - (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
  - (iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

**"Marlow Advisors"** means Marlow Advisors (Pty) Ltd who renders a financial service to a client as a regular feature of its business and belongs to 'Category I' as defined in paragraph 1(1) of Part I of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, published by Board Notice No. 106 of 2008 in Gazette No. 31514 of 15 October 2008.

### Objective of exemption

2. Marlow Advisors has submitted an application for exemption from the application of the Act in respect of the rendering of financial services in the course of merchant banking business. Marlow Advisors offers similar services to those of merchant banks to which a similar exemption has already been granted.

The Registrar is of the view that the provisions of the Act can hardly be applied where an entity is confronted by large corporate and other clients in a business situation where clients will usually have sufficient know-how and expertise, or access thereto. Certain of these clients will be "execution-only" clients who will have a fixed mind on the services required, leaving the entity with a limited discretion in the rendering of the required service.

The Registrar is also satisfied that the requested exemption can hardly frustrate the achievement of any object of the Act, particularly as the exemption will not apply to several classes of clients still in need of full statutory protection.

The Registrar is in addition satisfied that under current economic and public financial circumstances, the granting of the requested exemption does not seem to be in conflict with public interest and may obviously result in financial or other hardship or prejudice to the relevant parties.



The Registrar is however, despite the considerations mentioned above, satisfied that economic and public financial circumstances and current business practices and client base of Marlow Advisors may change even in the near future, and that the non-applicability of the provisions of the Act referred to above, may in practice be proved to frustrate an object of the Act to provide and promote client protection, and that at this stage an exemption of only limited duration must be granted.

#### **Extent of exemption and condition**

3. Marlow Advisors is exempted until 30 April 2011 from section 7(1) of the FAIS Act, subject to the conditions that it must-
  - (a) maintain suitable guarantees, professional indemnity or fidelity insurance cover, quarterly approved by the Registrar; and
  - (b) prior to the rendering of any financial services to a client, informs the client, that it is exempted from the Act.

#### **Amendment and withdrawal of exemption and conditions**

4. The exemption and conditions mentioned in paragraph 3 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**

5. This Exemption is called the Exemption of Marlow Advisors in respect of Certain Clients, 2010, and comes into operation on the date of publication in the *Gazette*.



**BOARD NOTICE 93 OF 2010****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****NOTICE ON AMENDMENT OF EXEMPTION OF CERTAIN FSPs AND REPRESENTATIVES FROM QUALIFICATION REQUIREMENTS, 2010**

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby under paragraph 4(a) of the Notice on Exemption of Certain FSPs and Representatives from Qualification Requirements, 2009-

- (a) amend paragraph 1 of the Schedule by the substitution for the definition of "financial product" of the following definition:

**"financial product" means-**

- (a) health policies, disability policies and life policies issued under the Long-term Insurance Act, 1998, which provide only risk benefits, excluding-
- (i) fund policies and fund member policies;
  - (ii) investment policies which guarantee a minimum return of any premium paid at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;
  - (iii) health policies, disability policies and life policies which provide risk benefits and have a guaranteed investment value or a materially equivalent value;
  - (iv) annuities which guarantee a minimum annuity, ascertainable in Rand terms at inception, for the term of the policy;
  - (v) any long-term policy which combines any of the policy features in subparagraphs (i) to (iv); and
- (b) credit insurance policies referred to in the National Credit Act, 2005, which fall within a short-term policy defined in section 1(1) of the Short-term Insurance Act, 1998; and

- (b) substitute paragraph 2 of the Schedule by the following paragraph:

**"2.** A reference to the policies in the definition of financial product shall have the meaning assigned in the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998, read with the National Credit Act, 2005, including any subordinate measure made thereunder."

This Notice is called the Notice on Amendment of Exemption of Certain FSPs and Representatives from Qualification Requirements, 2010, and comes into operation on date of publication.



**G E Anderson,**  
*Deputy Registrar of Financial Services Providers*



**BOARD NOTICE 94 OF 2010****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****EXEMPTION OF ILIZWE FINANCIAL SERVICES AND NET TREASURY SERVICES, 2010**

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, acting under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, hereby exempt Ilizwe Financial Services (Pty) Ltd and Net Treasury Services (Pty) Ltd to the extent and subject to the condition and for the duration set out in the Schedule.



**G E Anderson,**  
*Deputy Registrar of Financial Services Providers*

**SCHEDULE****EXEMPTION OF ILIZWE FINANCIAL SERVICES AND NET TREASURY SERVICES, 2010****Definitions**

1. In this Schedule, "the Act" means the Financial Advisory and Intermediary Services Act, 2002, any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

**"Determination of Fees"** means the Determination of Fees payable to the Registrar of Financial Services Providers, 2006, published by Notice R. 240 in *Gazette* No. 28627 of 17 March 2006;

**"forward exchange contract"** means a financial product categorised under subcategory 1.13 in Table A in Part IV of the Determination of Fit and Proper Requirements;

**"Ilizwe Financial Services"** means Ilizwe Financial Services (Pty) Ltd;

**"Net Treasury Services"** means Net Treasury Services (Pty) Ltd.

**Extent of exemption and condition**

2. Ilizwe Financial Services and Net Treasury Services are exempted until 30 June 2010 from-
  - (a) section 7(1) of the Act when rendering financial services in respect of forward exchange contracts, subject to the condition that it renders such services honestly, fairly, with due skill, care and diligence and in the interests of clients and the integrity of the financial services industry; and



- (b) paragraph 2.13 of the Determination of Fees.

**Amendment and withdrawal of exemption**

3. This Exemption is 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 Ilizwe Financial Services and Net Treasury Services, 2010, and comes into operation on 1 June 2010.



**BOARD NOTICE 95 OF 2010****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****(ACT NO. 37 OF 2002)****EXEMPTION OF THE BANK OF NEW YORK MELLON IN RESPECT OF CERTAIN CLIENTS**

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), The Bank of New York Mellon 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 THE BANK OF NEW YORK MELLON IN RESPECT OF CERTAIN CLIENTS****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-

**"bank"**, means a 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1994 (Act No. 94 of 1994);

**"The Bank of New York Melon"** means The Bank of New York Melon, a banking corporation organised and existing under the laws of the State of New York, who renders a financial service to a client as a regular feature of its business and belongs to 'Category I' as defined in paragraph 1(1) of Part I of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, published by Board Notice No. 106 of 2008 in Gazette No. 31514 of 15 October 2008.

**"client"**, in relation to The Bank of New York Melon, means-

- (a) a bank;
- (b) a financial services provider who is registered, licensed, recognised, approved or otherwise authorised by-
  - (i) the Registrar of Long-term Insurance to conduct long-term insurance business;



- (ii) the Registrar of Short-term Insurance to conduct short-term insurance business;
- (c) a person outside the Republic who-
  - (i) as a regular feature of the person's business, renders a service similar to a 'financial service' as defined in section 1(1) of the Act; and
  - (ii) is registered, licensed, recognised, approved or otherwise authorised to conduct the business of a bank or a business referred to in paragraph (b) by a foreign regulator, with functions similar to those of the Registrar of Banks or a Registrar referred to in the said paragraph;
- (d) a central bank or other national monetary authority of any country, state or territory;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of The Bank of New York Mellon that the market value of the assets managed by the person will exceed R1 billion at all times of the rendering of financial services to the person;
- (f) any other person included in the definition of 'client' in section 1(1) of the Act, who has confirmed to the satisfaction of The Bank of New York Mellon that the person will have assets of which the net asset value will exceed R20 million at all times of the rendering of financial services to the person, and who is not-
  - (i) a natural person;
  - (ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
  - (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
  - (iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

### **Objective of exemption**

2. The Bank of New York Mellon has submitted an application for exemption from the application of the Act in respect of the rendering of financial services in the course of merchant banking business. The Bank of New York Mellon offers similar services to those of merchant banks to which a similar exemption has already been granted.

The Registrar is of the view that the provisions of the Act can hardly be applied where an entity is confronted by large corporate and other clients in a business situation where clients will usually have sufficient know-how and expertise, or access thereto. Certain of these clients will be "execution-only" clients who will have a fixed mind on the services required, leaving the entity with a limited discretion in the rendering of the required service.

The Registrar is also satisfied that the requested exemption can hardly frustrate the achievement of any object of the Act, particularly as the exemption will not apply to several classes of clients still in need of full statutory protection.

The Registrar is in addition satisfied that under current economic and public financial circumstances, the granting of the requested exemption does not seem to be in



conflict with public interest and may obviously result in financial or other hardship or prejudice to the relevant parties.

The Registrar is however, despite the considerations mentioned above, satisfied that economic and public financial circumstances and current business practices and client base of The Bank of New York Mellon may change even in the near future, and that the non-applicability of the provisions of the Act referred to above, may in practice be proved to frustrate an object of the Act to provide and promote client protection, and that at this stage an exemption of only limited duration must be granted.

#### **Extent of exemption and condition**

3. The Bank of New York Mellon is exempted until 30 April 2011 from section 7(1) of the FAIS Act, subject to the conditions that it must-
  - (a) maintain suitable guarantees, professional indemnity or fidelity insurance cover, quarterly approved by the Registrar; and
  - (b) prior to the rendering of any financial services to a client, informs the client, that it is exempted from the Act.

#### **Amendment and withdrawal of exemption and conditions**

4. The exemption and conditions mentioned in paragraph 3 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**

5. This Exemption is called the Exemption of The Bank of New York Mellon in respect of Certain Clients, 2010, and comes into operation on the date of publication in the *Gazette*.



**BOARD NOTICE 96 OF 2010**

**FINANCIAL SERVICES BOARD**

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002**

**EXEMPTION OF BRIAN JURGEN McEWAN FROM QUALIFICATION  
REQUIREMENTS, 2010**

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, Brian Jurgen McEwan from paragraph 10(3)(a), (c), (d) and (e) of the Determination of Fit and Proper Requirements, 2008, to the extent and subject to the conditions set out in the Schedule.



**G E Anderson,**  
*Deputy Registrar of Financial Services Providers*



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## SCHEDULE

### EXEMPTION OF BRIAN JURGEN McEWAN FROM QUALIFICATION REQUIREMENTS

#### Definitions

1. In this Schedule, "the Act" means the Financial Advisory and Intermediary Services Act, 2002, any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

**"Determination of Fit and Proper Requirements"** means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008.

#### Extent and duration of Exemption

2. Brian Jurgen McEwan is exempted from paragraph 10(3)(a), (c), (d) and (e) of the Determination of Fit and Proper Requirements subject to the conditions that he-
  - (a) may not canvass any new clients;
  - (b) may not render financial services to new clients;
  - (c) may not render financial services in respect of a financial product for which he was not approved as at 31 December 2009;
  - (d) must comply with paragraph 7 of the Determination of Fit and Proper Requirements; and
  - (e) must immediately advise the registrar of any change to the particulars furnished in the exemption application.

#### Amendment and withdrawal of Exemption

3. This Exemption is 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 Brian Jurgen McEwan from Qualification Requirements, 2010, and comes into operation on the date of publication in the *Gazette*.
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