

**NOTICE 19 OF 2005****FINANCIAL SERVICES BOARD****SECURITIES SERVICES ACT, 2004****ACCOUNTING RECORDS TO BE MAINTAINED BY A REGULATED PERSON**

Under section 89(a) of the Securities Services Act, **2004** (Act No. 36 of **2004**), I, Jeffrey van Rooyen, hereby prescribe in the Schedule the accounting records to be maintained by a regulated person.

**J VAN ROOYEN**

**Registrar of Securities Services**

**SCHEDULE****Definitions**

1. In this Schedule -

“**the Act**” means the Securities Services Act, **2004** (Act No. 36 of 2004), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context otherwise indicates -

“**generally accepted accounting practice**” means accounting practices which are in accordance with South African Statements of Generally Accepted Accounting Practice issued by the Accounting Practices Board or, in the absence of any such statement, accounting practices which are generally accepted in the Republic;

“**internal controls**” means those internal controls established in order to provide reasonable assurance of -

- (a) the safeguarding of assets against unauthorised use or disposition; and
- (b) the maintenance of proper accounting records and the reliability of financial information used within the business or for publication.

**Accounting records to be maintained by regulated persons, where applicable**

2. (1) The accounting records of a regulated person must show the transactions and financial commitments of a regulated person, and transactions and payments relating to clients in such a manner that they disclose with substantial accuracy the financial position, performance and cash flows of the regulated person, and separately the position of clients of the regulated person, at the close of business on any day.
- (2) Accounts of clients must be designated as such and must be clearly distinguishable from the business accounts of a regulated person.
- (3) A regulated person may keep computerised records provided that such records are subject to acceptable back-up and recovery procedures and can be reproduced in printed form.

**Accounting records to be maintained by exchange**

3. (1) An exchange must maintain –
- (a) entries from day to day of all sums of money received and expended by the exchange and the matters in respect of which the receipt and expenditure took place;
  - (b) a record of funds held in trust for authorised users;
  - (c) a record of all income and expenditure of the exchange explaining the nature thereof;
  - (d) a record of all assets and liabilities of the exchange, including any provision for financial commitments or contingent liabilities;
  - (e) a record of all purchases and sales of securities listed on the exchange, which reflects the -
    - (i) date and time of each transaction concluded on the exchange;
    - (ii) identification of the authorised users that are counterparties to the transaction;
    - (iii) name of the issuer of the securities;
    - (iv) name or description of the securities; and
    - (v) the price per unit and quantity of the securities bought and sold.

**Accounting records to be maintained by central securities depository**

4. (1) **A** central securities depository must maintain a record of –
- (a) the central securities accounts held by it;
  - (b) all moneys, assets and rights received or distributed by it, including dividends and other distributions made by the issuer **of** securities deposited, and the disbursement of such dividends and distributions to clients;
  - (c) its income, expenses, funds, assets and liabilities in respect of the holding of securities in safe custody;
  - (d) certificated and uncertificated securities deposited with it; and
  - (e)** its participants.

**Accounting records to be maintained by clearing house**

5. (1) **A** clearing house must maintain –
- (a) entries from day to day of all sums of money received and expended by the clearing house and the matters in respect of which the receipt and expenditure took place;
  - (b) a record of funds held in trust for regulated persons;
  - (c) a record of all income and expenditure **of** the clearing house explaining the nature thereof;
  - (d) a record of all assets and liabilities of the clearing house, including any provision for financial commitments or contingent liabilities;
  - (e) a record of all purchases and sales of securities cleared by the clearing house, which reflects the –
    - (i) date of each transaction;
    - (ii) identification of the regulated persons that are counterparties to the transaction;
    - (iii) name or description of the securities; and
    - (iv) price per security and quantity of the securities cleared.

**Accounting records to be maintained by authorised users, participants and regulated persons not covered by paragraphs 3, 4 and 5**

6. (1) An authorised user, participant and other regulated person not covered by paragraphs 3, 4 and 5 must maintain accounting records which must as a minimum contain -
- (a) a daily record of all sums of money received and expended;
  - (b) a record of funds held in trust;
  - (c) a record of all income and expenditure;
  - (d) a record of all assets and liabilities, including any provisions for financial commitments or contingent liabilities;
  - (e) a record of all purchases and sales of securities which reflects the -
    - (i) date and time of each transaction;
    - (ii) person from whom securities were bought or to whom they were sold unless it is processed through an automated trading system recognised by the relevant exchange;
    - (iii) name of the person on whose behalf the securities were bought or sold;
    - (iv) quantity and description of the securities which were bought or sold;
    - (v) name of the issuer of the securities;
    - (vi) price per security and the total consideration;
    - (vii) brokerage;
    - (viii) taxes that are payable in respect of each transaction;
    - (ix) terms of the contract;
    - (x) capacity (principal or agent) in which the transaction was entered into; and
    - (xi) the following additional information in respect of transactions in options:
      - (aa) the reference number of the transaction and option number, where applicable;
      - (bb) whether the option is a put or call option;
      - (cc) the terms and conditions under which the option may be exercised, including the type of option, the strike price or yield, the strike date and time and the settlement date;
      - (dd) the identity of the writer of the option;
      - (ee) the quantity and description of the **listed** security to which the option relates;

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- (ff) the option premium and settlement date; and
  - (gg) whether the option was exercised or lapsed and the exercise date, if applicable;
- (9) a record of all securities and documents of title which are in the possession, safe custody or under the control of the regulated person, in which is reflected the -
- (i) name of the issuer of the securities;
  - (ii) quantity and description of the securities;
  - (iii) identification numbers of the securities and documents of title, where applicable;
  - (iv) name of the registered holder and if the registered holder is a nominee controlled by the regulated person, the beneficial owner or owners;
  - (v) person from whom the securities were received and to whom the securities were delivered;
  - (vi) date of receipt and delivery;
  - (vii) location where the securities or documents of title are kept;
  - (viii) details of any charge to which the securities may be subject;
  - (ix) person on whose behalf securities or documents of title have been received or delivered;
  - (x) purpose for which the securities or documents of title are held.
- (g) a record of securities held by the regulated person on behalf of its clients which must be made available to its clients at least on a quarterly basis and which must contain as a minimum -
- (i) the name of the client;
  - (ii) the quantity and a description of securities held;
  - (iii) a description of transaction movements within the securities accounts during the period since the previous report;
- (h) a record of the reconciliation of the securities accounts maintained by a participant and the central securities account maintained by the central securities depository.
- (2) An authorised user or participant must reconcile balances with exchanges, clearing houses, central securities depositories and banks as frequently as is appropriate for the volume of transactions on accounts. Any differences, other than differences in timing between the records of the authorised user

- or participant and the exchanges, clearing houses, central securities depositories or banks, as the case may be, must be investigated forthwith and corrected as soon as is practicable.
- (3) Authorised users must reconcile securities under their control with the accounting records relating to securities held by the authorised user on a daily basis. Correcting entries must be made immediately.

### **Internal control and risk management**

7. (1) A participant shall as far as is reasonable establish and maintain adequate systems of internal control.
- (2) The system of internal control shall be designed to ensure that –
- (a) the relevant business can be carried on in an orderly and efficient manner;
  - (b) financial and other information used or provided by the participant is reliable;
  - (c) all transactions and financial commitments entered into are recorded and are within the scope of authority of the participant or the officer or employee acting on behalf of the participant;
  - (d) there are procedures to safeguard the assets of the participant and assets belonging to any other person for which the participant is accountable, and to control liabilities; and
  - (e) there are measures, **so** far as is reasonably practicable, to minimize the risk of **loss** to the participant or the clients of the participant from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur **so** that prompt remedial action may be taken by the participant or the management of the participant.
- (3) A participant shall as far as is reasonable adopt sound risk management principles and procedures.
- (4) The principles and procedures of risk management shall be designed to ensure that the records of the participant are maintained in such a manner as to promptly disclose financial and business information that **will** enable the participant or the management of the participant to –
- (a) identify, quantify, control and manage the risk exposures of the participant;

- (b) make timely and informed business decisions;
  - (c) monitor the performance and all aspects of the business of the participant;
  - (d) monitor the capital of the participant to ensure compliance with the capital adequacy requirements imposed in terms of the rules of the applicable self-regulatory organisation.
- (5) A participant must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in paragraphs (1) to (4) above to its auditor, the applicable self-regulatory organisation and the Registrar.

Accounting records as it pertains to authorised user or participant that ceases business

8. (1) An authorised user or participant that ceases business must maintain a record of funds or assets held in trust, which funds or assets must be transferred to a client or another person authorised to deal in or hold custody of securities, until such transfer has been fully effected.
- (2) An authorised user or participant that ceases business must -
- (a) notify the respective exchange or central securities depository of the intended or actual date of cessation of business;
  - (b) notify the clients for whom they hold assets or funds, in writing, of the intended or actual date of cessation of business, provide those clients with statements reflecting the assets and funds held on their behalf and indicate to which authorised user, participant or other person authorised to deal in or hold custody of securities their assets and funds will be delivered in the absence of an instruction from the client to the contrary; and
  - (c) deliver the client assets and funds in accordance with the information available or obtained in terms of paragraph (b) above.

Commencement

9. This Notice comes into operation on the same date on which the Securities Services Act, 2004, comes into operation.