

BOARD NOTICE 104 OF 2013**FINANCIAL SERVICES BOARD****FINANCIAL MARKETS ACT, 2012****REQUIREMENTS APPLICABLE TO THE GRANTING OF A MARKET INFRASTRUCTURE LICENCE**

Under sections 7(3)(a), 7(3)(c)(iv), 8(2)(c), 27(3)(a), 27(3)(c)(iii), 28(2)(c), 47(3)(a), 47(3)(c)(ii), 48(2)(c), 54(3)(a), and 54(3)(c)(ii) of the Financial Markets Act, 2012 (Act No.19 of 2012) , I, Dube Phineas Tshidi, Registrar of Securities Services, hereby determine the Requirements as set out in the Schedule, applicable to the granting of an exchange, central securities depository, clearing house or trade repository licence.

**D P TSHIDI****REGISTRAR OF SECURITIES SERVICES****SCHEDULE****1. Definition**

In these Requirements “**the Act**” means the Financial Markets Act, 2012 (Act No. 19 of 2012), and any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned to it.

2. Application for a licence

An application for a licence in terms of the Act must comply with the following-

A person who applies for an exchange, central securities depository, clearing house or trade repository licence must submit to the registrar a written application on Form FM 1 accompanied by –

(i) the information specified in Annexure 1 to Form FM 1; and

(ii) the information required in respect of members of the controlling body of the applicant specified in Annexure 2 to Form FM 1.

3. Address

Applications must be submitted to the Registrar of Securities Services at one of the following addresses

P O Box 35655
Menlo Park
0102

41 Matroosberg Road
Riverwalk Office Park
Block B
Ashlea Gardens Ext 6
0081

4. Commencement

This Notice comes into operation on the same date on which the Act comes into operation.

FORM FM 1

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012)

Application under section 7(3), 27(3), 47(3) and 54(3) of the Financial Markets Act, 2012 (Act No. 19 of 2012) for an exchange, central securities depository, clearing house or trade repository licence, respectively

The Registrar of Securities Services

1. I, the chief executive officer of the
..... (hereunder) referred to as the applicant),
being specifically authorised thereto by the controlling body of the applicant, apply on behalf of the
applicant for the issue of a/an (tick appropriate block) –

- ☐ exchange licence under section 7 of the Act;
- ☐ central securities depository licence under section 27 of the Act;
- ☐ associated clearing house licence under section 47 of the Act;
- ☐ independent clearing house licence under section 47 of the Act; or
- ☐ trade repository licence under section 54 of the Act.

2. The prescribed application fee of is enclosed.

3. The place at which the business of the applicant will be carried on is

Signed at on this day of 20 ..

.....
Chief Executive Officer

Witnesses:

1.....

2.....

ANNEXURE 1 TO FORM FM 1

Information which, if applicable to the applicant in question, must be contained in an application for an exchange, central securities depository, clearing house, or trade repository licence

1. The following administrative information must be provided:

- (a) The postal, physical and electronic mail addresses of the applicant's registered address or head office at which it will receive all documents for the purpose of this application.
- (b) the telephone and facsimile numbers of the applicant and the chief executive officer.
- (c) a list which reflects the full names, addresses and telephone numbers of persons, if any, who alone or with associates will exercise control over the applicant contemplated in section 67(2) of the Act.
- (d) a list which reflects the full names of the members of the controlling body of the applicant, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body.
- (e) a list which reflects the names, physical and postal addresses, telephone and facsimile numbers of –
 - (i) the bank;
 - (ii) the auditor; and
 - (iii) the attorney,of the applicant.

2. A copy of the founding documents of the applicant which regulates at least the following:

- (a) The structure of the applicant;
- (b) the objects of the applicant;
- (c) the powers of the applicant;
- (d) the composition and functions of the controlling body;
- (e) the procedures for election or appointment of members of the controlling body, their terms of office, and when membership may be terminated;
- (f) the procedures for the calling of meetings of people who hold ownership interests in the applicant;
- (g) the voting powers of people who hold ownership interests in the applicant;

- (h) the appointment of auditors; and
- (i) the procedures for the dissolution of the applicant.

3. Adequacy of financial resources

- (a) If the applicant has been in existence for more than a year, a copy of its audited annual financial statements as at its latest financial year-end.
- (b) a copy of the budgeted income statement, balance sheet and cash flow statement for a three year period from the date of the latest financial statements.
- (c) a schedule illustrating the funding provisions for anticipated supervisory responsibilities over the budgetary period.
- (d) a statement signed by the chief executive officer of the applicant specifying the critical assumptions made in the preparation of budgets and the sources from which the applicant will derive its funding.
- (e) where arrangements have been made for the funding of any temporary shortfall in available cash resources, a statement must be provided by the party or parties concerned setting out the extent and terms of their commitment.

4. Adequacy of management and human resources

- (a) An explanation of the management structure of the applicant including the names of the individuals responsible for the major functional areas and the number of personnel employed in each functional area.
- (b) a *curriculum vitae* in respect of each member of the management of the applicant who is responsible for a major functional area, which indicates his or her relevant experience and training.
- (c) a projection of management and staff requirements for the period covered by the budgets referred to in paragraph 3(b).
- (d) a statement by the chief executive officer of the applicant confirming that –
 - (i) all authorised users, participants, external central securities depositories or other persons, or clearing members of an independent clearing house, as applicable, of the applicant have been evaluated and, on the information available, found to be of good character and integrity; and
 - (ii) on the information available, all authorised users, participants, external central securities depositories or other persons, or clearing members of an independent clearing house comply with the minimum capital adequacy requirements determined by the applicant in its rules.

5. The business plan of the applicant, which has been approved by the controlling body and which deals at least with the following matters:

- (a) The planned development of the information technology systems and infrastructure of the applicant and arrangements for their supply, management, maintenance, upgrading and security;
- (b) the planned approach to qualifying, quantifying and managing risk within the applicant;
- (c) plans to ensure the integrity of the market and its authorised users, participants, external central securities depositories or other persons or clearing members of an independent clearing house;
- (d) the surveillance procedures, which have been established to ensure the compliance by authorised users, participants, external central securities depositories or other persons or clearing members of an independent clearing house with the proposed rules and directives of the market infrastructure and the requirements of the Act and the resources of the applicant available to perform this function;
- (e) procedures to be followed to effectively discipline authorised users, participants, external central securities depositories or clearing members of an independent clearing house of the applicant who fail to comply with the rules of the market infrastructure;
- (f) security procedures to ensure the integrity of the systems for recording transactions and the maintenance of records, the capacity of these systems in relation to the budgeted number of transactions and the back-up resources available in the event of a systems failure;
- (g) reports and publications to be made available to the investing public, with the inclusion of price sensitive information, and the manner in which such information will be disseminated;
- (h) the effective and efficient clearing and settlement of transactions effected through the applicant and the management of settlement risk;
- (i) the corporate governance principles that will be implemented;
- (j) details of the persons who have or will provide corporate finance advice or similar services to the applicant, if applicable;
- (k) whether any unregulated business will be carried on by the applicant; and
- (l) whether or not it is intended to list the securities of the applicant.

6. Details of compensation funds of market infrastructures-

- (a) Details of insurance or other warranty, such as a compensation or guarantee fund, to provide compensation to clients of authorised users, participants, external central securities depositories or clearing members of an independent clearing house of the market infrastructures.

(b) In respect of compensation funds, a copy of the pro forma policy document, the manner of funding, and the rules of the fund (where applicable).

7. A report from the auditor of the applicant to the effect that adequate systems and procedures are in operation relating to risk reduction, particularly by means of processing, physical, logical security, back-up and contingency controls.

8. The applicant for an exchange, central securities depository or independent clearing house licence must subject to the requirement prescribed by the Minister, provide sufficient proof that it has assets and resources in the Republic to perform its functions and duties as set out in the Act.

9. The applicant for a market infrastructure licence must, where applicable, provide details of arrangements to be implemented in order to comply with section 62 of the Act.

10. The applicant must supply any other information, which the registrar may reasonably require.

Additional information, which must be contained in an application for an exchange licence

1. A copy of the proposed rules of the applicant, approved by the controlling body of the applicant.

2. A copy of the proposed listing requirements of the applicant, approved by the controlling body of the applicant.

3. The name of a licensed independent clearing house or associated clearing house to be appointed by the exchange to provide clearing house functions to the exchange, or, if it has not appointed a clearing house to clear transactions on behalf of the exchange, details of the infrastructure for the clearing of transactions effected through the exchange.

4. Details of the functions to be provided by the exchange.

5. Details pertaining to the settlement and custody and administration functions to be provided to the exchange.

6. Details of additional business or function not provided for in section 10 of the Act.

7. Details pertaining to the trading method or facility by means of which the business of the exchange will be carried on.

8. The range of securities proposed to be listed on the exchange.

9. The range of investors, both local and foreign, expected to invest through the exchange.

10. The benefits to such investors of investing through the exchange.

11. The extent and manner of publication of prices of listed securities.

12. The arrangements in place for the supervision of authorised users so as to ensure compliance with the Financial Intelligence Centre Act, 2001.

13. The arrangements in place for the efficient and effective monitoring of compliance by issuers of securities listed on the exchange with that exchange's listing requirements.

14. The arrangements in place to effectively and efficiently manage the material risks associated with the operation of an exchange.

15. Details pertaining to the effective and reliable infrastructure to facilitate the trading of securities listed on the exchange.

16. The arrangements in place for the efficient and effective surveillance of all transactions effected through the exchange and for the supervision of authorised users so as to identify possible market abuse and ensure compliance with the exchange rules, exchange directives and the Act.

17. The governance arrangements in place that are clear and transparent, promote the safety and efficiency of the exchange, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

18. The arrangements in place for effective and efficient security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange.

19. The arrangements in place for the effective and efficient clearing and settlement of transactions effected through the exchange and for the management of settlement risk.

20. A report by an independent party, agreed to by the registrar, confirming that the applicant has -

(a) adequate systems, procedures and policies in place including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the exchange related operations commence; and

(b) adequate disaster recovery hardware and related facilities located off-site.

Additional information, which must be contained in an application for a central securities depository licence

1. A copy of the proposed rules of the applicant, approved by the controlling body of the applicant.

2. Details pertaining to the method or facility by means of which the business of the central securities depository will be carried on.

3. An auditor's report, confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to securities accounts and the affairs of participants against any unauthorised access, alteration, destruction or dissemination.

4. A report by an independent party, agreed to by the registrar, confirming that the applicant has appropriate information technology in place to effectively handle electronic settlement, and communication including –

(a) a secure electronic messaging system;

- (b) interface specifications;
 - (c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the central securities depository related operations commence; and
 - (d) adequate disaster recovery hardware and related facilities located off-site.
5. The range and type of custodial functions proposed.
 6. The benefits to investors of using the custodial functions of the central securities depository.
 7. The frequency and format of custodial balance statements to participants, external central securities depositories or other persons.
 8. The range and type of functions to be provided by the central securities depository.
 9. The range and type of securities in respect of which those functions are to be provided by the central securities depository.
 10. The arrangements in place for the efficient and effective monitoring of compliance by participants with the depository rules.
 11. Details of the infrastructure necessary for the sustained operation of a central securities depository in terms of the Act.
 12. The arrangements in place to manage operational risk associated with the operation of a central securities depository.
 13. The arrangements in place to provide for the settlement of transactions and for the management of settlement risk.
 14. The governance arrangements in place, that are clear and transparent, promote the safety and efficiency of the central securities depository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
 15. The arrangements in place for security and back-up procedures to ensure the integrity of its records.

Additional information, which must be contained in an application for an associated clearing house licence

Particulars of the applicant's proposed appointment by an exchange, which must include at least the following:

1. Name of the exchange.
2. Letter of proposed engagement by the exchange.

3. An auditor's report confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to the functions performed by the clearing house and the affairs of clearing members against any unauthorised access, alteration, destruction or dissemination.
4. The range and type of functions to be provided by an associated clearing house.
5. The range and type of securities in respect of which those functions are to be provided by an associated clearing house.
6. The benefits to investors of using the associated clearing house.
7. The arrangements in place to ensure compliance with the requirements prescribed by the registrar for clearing or settlement of transactions in securities or both.
8. The arrangements in place for an effective and reliable infrastructure to facilitate the clearing of securities cleared by the clearing house.
9. The arrangements in place to manage the material risks associated with the operation of a clearing house.
10. The governance arrangements in place, that are clear and transparent, promote the safety and efficiency of the clearing house, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
11. The arrangements in place for security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the clearing house.
12. A report by an independent party, agreed to by the registrar, confirming that the applicant has -
 - (a) adequate systems, procedures and policies in place including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the clearing house related operations commence; and
 - (b) adequate disaster recovery hardware and related facilities located off-site.

Additional information which must be contained in an application for an independent clearing house licence

1. A copy of the proposed rules of the applicant, approved by the controlling body of the applicant.
2. Details pertaining to the method or facility by means of which the business of the independent clearing house will be carried on.
3. An auditor's report confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to the provision of relevant functions and the affairs of clearing members against any unauthorised access, alteration, destruction or dissemination.

4. A report by an independent party, agreed to by the registrar, confirming that the applicant has appropriate information technology in place to effectively handle the electronic clearing and settlement services and communication including –

(a) a secure electronic messaging system;

(b) interface specifications;

(c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the independent clearing house related operations commence;

(d) adequate disaster recovery hardware and related facilities located off-site.

5. The range and type of functions to be provided by the independent clearing house.

6. The range and type of securities in respect of which those functions are to be provided by the independent clearing house.

7. A list of clearing members, where applicable.

8. The benefits to investors of using the independent clearing house.

9. The arrangements in place to ensure compliance with the requirements prescribed by the registrar for clearing or settlement of transactions in securities or both.

10. The arrangements in place for an effective and reliable infrastructure to facilitate the clearing of securities cleared by the clearing house.

11. The arrangements in place to manage the material risks associated with the operation of a clearing house.

12. The arrangements in place for the efficient and effective monitoring of all transactions cleared through the clearing house and for the supervision of clearing members so as to ensure compliance with the clearing house rules.

13. The governance arrangements in place, that are clear and transparent, promote the safety and efficiency of the clearing house, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

14. The arrangements in place for security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the clearing house.

15. An applicant for independent clearing house licence that is a central counterparty must comply with the requirements as prescribed by the Minister applicable to a clearing house that is a central counterparty.

Additional information, which must be contained in an application for a trade repository licence

1. Details of the functions and services to be provided by the trade repository.

2. The range and type of securities in respect of which those functions and services will be performed.
3. An auditor's report confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents reported to and maintained by the trade repository against any unauthorised access, alteration, destruction or dissemination.
4. Details pertaining to the method or facility by means of which the business of the trade repository will be carried on.
5. A report by an independent party, agreed to by the registrar, confirming that the applicant has appropriate information technology in place to effectively handle the reported transaction data including-
 - (a) a secure electronic messaging system;
 - (b) interface specifications;
 - (c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the trade reporting related operations commence;
 - (d) adequate disaster recovery hardware and related facilities located off-site.
6. Details of its objective, non-discriminatory and publicly disclosed requirements for access and participation.
7. The arrangements in place for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository.
8. The arrangements in place to identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks.
9. An applicant for a trade repository licence must comply with the regulations applicable to the licensing of trade repositories as prescribed by the Minister.

ANNEXURE 2 TO FORM FM 1

Information required in respect of members of controlling body of exchange, central securities depository, trade repository or clearing house

An application for a licence must be accompanied by the following information in respect of members of the controlling body of the applicant:

1. a *curriculum vitae* in respect of each member of the controlling body indicating the nature and extent of the member's qualifications and experience in the business operated by the applicant and the names of three referees.

2. the information required in terms of the Determination of Fit and Proper Requirements for Market Infrastructures.
 3. an indication if proceedings referred to in paragraphs (3)(a) to (f) and paragraph 5 of Determination of Fit and Proper Requirements for Market Infrastructures are pending.
 4. full details of any fact which may have an impact on the evaluation by the registrar of the good character and integrity of a member of the controlling body.
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