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## BOARD NOTICES

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### BOARD NOTICE 93 OF 2013

#### FINANCIAL SERVICES BOARD

#### FINANCIAL MARKETS ACT, 2012

#### APPLICATION FOR APPROVAL OF THE ACQUISITION OR THE HOLDING OF SHARES OR ANY OTHER INTEREST IN A MARKET INFRASTRUCTURE

Under section 67(8) of the Financial Markets Act, 2012 (Act No.19 of 2012), I, Dube Phineas Tshidi, Registrar of Securities Services, hereby determine the manner and form for an application for the acquisition or holding of shares or any other interest in a market infrastructure as contemplated in section 67, as set out in the Schedule.



**D P TSHIDI**  
**REGISTRAR OF SECURITIES SERVICES**

#### SCHEDULE

##### 1. Definition

In this Schedule, "**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

If an application is made in terms of section 67(8) of the Act for the approval –

(a) by the registrar, in terms of section 67(3) or (4) of the Act, or

(b) by the Minister, in terms of section 67(5) of the Act,

the application must be submitted to the registrar on Form FM 5 and comply with the following conditions-

1. The form must be properly completed and signed. Questions must be answered either in full or as not applicable ("n/a"). The signatory(ies) must be duly authorised to make the application.
2. The format of this form or the wording of questions may not be changed. However, this form may be reproduced.
3. Answers may be in hand or typewriting.

3.1 If the form is completed on a computer –

(a) delete the solid lines in those areas provided for answers before the answers are typed or use the otype mode whilst the answers are typed.

(b) rows may be inserted where insufficient space is provided for answers.

3.2 If the form is completed by hand, should the space provided not be sufficient, the detail can be provided on a separate page, duly initialled and cross-referenced to the relevant question.

3.3 If the form that is submitted contains any changes to typed or written information, those changes must be signed.

4. No copies are required to be submitted with the completed form.

5. The application must be submitted at least one month before the approval is required to allow the registrar time to consider it and seek information or clarification, where necessary.

### **3. Fees**

The form must be accompanied by the fees prescribed by the registrar in terms of section 108 of the Act.

### **4. Information**

The application must set out all the reasons for, and information relevant to, the application for approval.

### **5. Commencement**

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

**FORM FM 5**

I, the undersigned hereby apply for the following approval(s):

|   |  |
|---|--|
| To acquire or hold shares or any other interest in a market infrastructure that will result in me, directly or indirectly, alone or with an associate, exercising control over that market infrastructure as contemplated in section 67(3) of the Act. <sup>1</sup> |  |
| To acquire or control shares or any other interest in a market infrastructure in excess of the percentage approved under subsection (3) but not exceeding 49 per cent as contemplated in section 67(5) of the Act. <sup>1</sup>                                     |  |

1. Mark the applicable box(es) with an "X".

The following information is provided in support of the application.

1. Details of the market infrastructure

1.1 The name of the market infrastructure.

\_\_\_\_\_

1.2 The name(s) of the current shareholder(s) or other person(s) exercising control and their interest

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Background details of the applicant.

2.1 The name of the applicant.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.2 Give a brief history of the aforesaid person in question 2.1 where the person is

(a) a company, include the date and place of incorporation, listing(s) on exchange(s), registration granted by other authorities and main business.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (b) a natural person, include the nationality, whether the person has applied for a licence to carry on any business in the RSA or elsewhere and whether any such application was refused or withdrawn after it was made or any registration revoked and give particulars.

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- 2.3 If the applicant in question 2.1 is a company and belongs to a group of companies, furnish a structural chart reflecting the group structure as well as the applicant's position immediately before and after approval is granted.

- 2.4 Attach copies of the audited financial statements of the persons in question 2.1 for each of the immediate past three financial years. If the person is an individual or another entity, submit audited net worth statements reflecting the position on a date not later than three months prior to the date of this application or audited financial statements, as the case may be.

- 2.5 Indicate which of the following will be acquired:

| Type  | % | Mark applicable box with an "X" |
|---|---|---------------------------------|
| Shares (in the case of a company)             |   |                                 |
| Interest (in the case of a close corporation) |   |                                 |

- 2.6 Indicate how control, whether directly or indirectly, will be exercised:

|   |  |
|---|--|
| That where the entity is a company, the person, alone or with associates,—<br>(i) holds shares in the market infrastructure of which the total nominal value represents more than 15 per cent of the nominal value of all the issued shares thereof;<br>(ii) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise or<br>(iii) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board |  |
| That where the entity is a close corporation, the person, alone or with associates, owns more than 15 per cent of the members' interest, or controls directly, or has the right to control, more than 15 per cent of members' votes in the close corporation; or  |  |
| That where the entity is a trust, the person, alone or with associates, has the ability to control more than 15 per cent of the votes of the trustees or to appoint more than 15 per cent of the trustees, or to appoint or change more than 15 per cent of the beneficiaries of the trust  |  |

|   |  |
|---|--|
| That where the entity is a company, the person, alone or with associates,—<br>(i) holds shares in the market infrastructure of which the total nominal value represents more than 49 per cent of the nominal value of all the issued shares thereof;<br>(ii) is directly or indirectly able to exercise or control the exercise of more than 49 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise or<br>(iii) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 49 per cent of the votes at a meeting of the board |  |
| That where the entity is a close corporation, the person, alone or with associates, owns more than 49 per cent of the members' interest, or controls directly, or has the right to control more than 49 per cent of members' votes in the close corporation; or   |  |
| That where the entity is a trust, the person, alone or with associates, has the ability to control more than 49 per cent of the votes of the trustees or to appoint more than 49 per cent of the trustees, or to appoint or change more than 49 per cent of the beneficiaries of the trust  |  |

Mark applicable box with an "X"

- 2.7 Describe the structure of the deal, state the purchase price of the shares or interest and the manner of payment and indicate whether own assets or borrowed assets were used for this purpose. Attach a copy of the draft agreement entered into.

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- 2.8 What is the strategic intent of the applicant where it assumes control over the market infrastructure?

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- 2.9 Give reasons why the applicant is of the opinion that this application, if approved, will not defeat the objects of the Act referred to in section 2 of the Act.

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## 3. Directors

Indicate whether the acquisition of shares or other interest in the market infrastructure will result in a change in the composition of the board of the market infrastructure. If the response is in the affirmative, please indicate what will be the changes to the board of directors and how this will comply with the corporate governance principles as envisaged by the most recent King Code on Corporate Governance.

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## 4. Management of the market infrastructure

Indicate whether the acquisition of shares or other interest in the market infrastructure will result in a change in the executive management of the market infrastructure and if so indicate the timeframe within which the change is intended to take place.

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## 5. Business plan

Indicate whether there will be a material change in the business strategy of the market infrastructure as a result of the acquisition of shares or other interest in the market infrastructure and if so, please provide details.

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## 6. Are there any other information or documents that are relevant to this application?

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|------------------|
| Yes <sup>2</sup> |
| No               |

<sup>2</sup>. If the answer is "Yes" kindly specify the information or documents.

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7. I hereby enclose -
- 7.1 the payment or proof of payment of the prescribed fee of R5 000.
  - 7.2 a copy of the structural chart referred to in question 2.3.
  - 7.3 copies of the audited financial statements or net worth statements referred to in question 2.4.
  - 7.4 the draft agreement referred to in question 2.7.
  - 7.5 the other documents, if any, mentioned in this form in support of the application.
8. I certify, to the best of my knowledge, that the information given in the answers to the above questions are complete, accurate and true and not misleading in any respect.

Full forename(s) and surname of –

the Applicant

\_\_\_\_\_  
or his duly authorised representative

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE