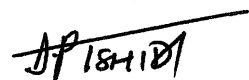


**BOARD NOTICE 113 OF 2014****FINANCIAL SERVICES BOARD****FINANCIAL MARKETS ACT, 2012****CONFLICTS OF INTEREST**

I, Dube Phineas Tshidi, Registrar of Securities Services, hereby under section 62 of the Financial Markets Act, 2012 (Act No. 19 of 2012) publish for comment –

- (a) the *draft* requirements with which the arrangements of market infrastructures to manage possible conflicts of interest must comply; and
- (b) the manner in which a market infrastructure has to conduct an annual assessment in compliance with section 62

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 term, word or expression used in this Schedule, bears the meaning assigned to it in the Act.

**2. Governance arrangements**

- (1) A market infrastructure must –
  - (a) establish an appropriate and effective internal governance process on potential, perceived or actual conflicts of interest between its regulatory functions and its commercial services;
  - (b) through the established process identify potential, perceived or actual conflicts of interest between its regulatory functions and its commercial services
  - (c) record, adopt and implement, to the satisfaction of the registrar, effective and appropriate policies and measures to address the situation where a potential, perceived or actual conflict of interest is identified to avoid or manage and disclose the conflict; which measures may include-
    - (i) separation of its commercial services from its regulatory functions;
    - (ii) procedures to prevent access to information from employees responsible for either function;
    - (iii) clear guidelines for employees on issues of security and confidentiality .

- (d) constitute an independent committee or other body that is tasked with ensuring that the market infrastructure complies with subparagraphs (a) – (c).;
- (e) take the necessary and appropriate steps to ensure that the committee or body constituted under subparagraph (d) is able to independently fulfil its functions and that it does not labour under a conflicting duty to the management or controlling body of the market infrastructure;
- (f) in its policies, clearly set out the manner in which the market infrastructure will deal with any breaches of the measures under subparagraph (b) and the sanctions and actions that may be taken by the market infrastructure in the event of such breaches.

### 3. Annual Assessment

- (1) A market infrastructure must –
  - (a) annually assess the efficacy of the policies, processes and measures it has adopted to identify, avoid, eliminate, or otherwise manage and disclose actual or potential conflicts of interest between its regulatory functions and its commercial services;
  - (b) annually prepare a Conflicts of Interest Assessment Report which report must comprehensively deal with the assessment of all material and relevant matters related to the market infrastructure's conflicts of interest policy including
    - (i) an evaluation of the effectiveness of the independent body constituted to deal with conflicts of interest;
    - (ii) whether the controlling body adhered to its conflicts of interest policy;
    - (iii) whether the controlling body effectively implemented and supported the policies and procedures referred to in this Notice;
    - (iv) whether the independent body constituted to deal with conflicts of interest performed a self-evaluation of its performance as well as the performance of the members of this body;
    - (v) whether the market infrastructure identified, disclosed and recorded the conflicts of interest referred to in this Notice; and
    - (vi) whether the market infrastructure adopted appropriate and effective arrangements to separate its regulatory functions from its commercial services;
  - (c) submit its Annual Conflicts of Interest Assessment Report to the registrar together with its Annual Supervisory Assessment Report;
  - (d) publish the results of its Annual Conflicts of Interest Assessment Report at least on its website.
- (2) The independent committee or body referred to in paragraph 2 must perform an annual assessment of its efficiency in enforcing the governance arrangements stated in this section, including an annual review and approval of its terms of reference.
- (3) The assessment referred to in subparagraph (2) may include self-evaluation, a request for feedback from stakeholders and any other form of assessment to measure the efficacy in which the market infrastructure has dealt with any actual or potential conflicts of interest.
- (4) The results of the assessment referred to in subparagraph (2) must be disclosed to the registrar within 5 days of finalisation thereof.

**4. Disclosure of conflicts of interest**

A market infrastructure must-

- (a) disclose the details of the nature and extent of any conflicts in its annual report contemplated in section 69 of the Act;
- (b) record and publish (at least on its website) all its arrangements in respect of the manner in which it deals with conflicts of interest, including its conflicts of interest's policy.

**5. Commencement**

The Notice comes into operation on the date of publication.

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