

NOTICE ... OF 2011

FINANCIAL SERVICES BOARD

FINANCIAL MARKETS ACT, 2011

DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR AN APPLICANT FOR AN EXCHANGE, CENTRAL SECURITIES DEPOSITORY, TRADE REPOSITORY OR CLEARING HOUSE LICENCE AND THE DIRECTORS AND SENIOR MANAGEMENT OF AN APPLICANT

I, Dube Phineas Tshidi, Registrar of Securities Services, hereby determine under sections 8(1)(b), 28(1)(b), 48(1)(b) and 56(1)(b) of the Financial Markets Act, 2011 (Act No. of 2011) as set out in the Schedule, the fit and proper requirements for an applicant for an exchange, central securities depository, trade repository or clearing house licence, and its directors and senior managers.

DP TSHIDI

REGISTRAR OF SECURITIES SERVICES

SCHEDULE

Definitions

1. In this Schedule, "**Act**" means the Financial Markets Act, 2011 (Act No. of 2011), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it.

General

Completion of questionnaire

2. (1) An applicant, and any director or senior manager of an applicant, is required to comply with the fit and proper requirements and conditions as determined in this Schedule.

(2) An applicant must complete Annexure B and Annexure D in respect of its directors and senior managers with its application for a licence.

(3) Where there is a change of director or senior manager, an exchange, central securities depository, trade repository or clearing house must complete Annexure B with regards to the director and senior manager.

(4) An exchange, central securities depository, trade repository or clearing house must annually submit a written statement to the registrar confirming compliance by a director or senior manager with the on-going fit and proper requirements as prescribed in this Schedule.

Completion of questionnaire in respect of outgoing directors and senior managers

3. An outgoing director or senior manager of an exchange, central securities depository, trade repository or clearing house must complete and submit the questionnaire set out in Annexure C to the registrar within 30 days of completion of his or her services. Failure to do so without good cause may result in such a person not being regarded as complying with the fit and proper requirements in any subsequent applications to the registrar by that person.

Fit and Proper requirements for an applicant

4. (1) In order to meet the fit and proper requirements, an applicant must be financially sound and comply with the requirements as set out in Annexure 1 of Form FM1 in Notice no ____.

(2) In determining the financial soundness of an applicant, the registrar may consider matters such as, but not limited to:

(a) whether there are any indicators that the applicant will not be able to meet its debts as they fall due;

- (b) whether relevant solvency requirements are met;
- (c) whether the applicant has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- (d) whether the applicant has made arrangements with creditors, filed for sequestration or winding-up or has entered into any business rescue proceedings;
- (e) whether the applicant has been able to provide the registrar with a satisfactory credit reference.

Fit and Proper requirement for directors and senior managers of an applicant for an exchange, central securities depository, trade repository or clearing house licence

5. Directors and senior managers of an applicant must satisfy the following requirements:

Honesty and Integrity

(1) A director or senior manager must be a person who is honest and diligent, who acts ethically and with integrity and fairness.

(2) In determining whether a director or senior manager complies with paragraph (1) the registrar may refer to any information in the registrar's possession or brought to the registrar's attention.

(3) Without prejudice to the generality of paragraphs (1) and (2), a director or senior manager will not qualify in terms of paragraph (1) where such director or senior manager would be ineligible or disqualified to hold office in terms of section 69 of the Companies Act.

Competence and capability

(4) A director or senior manager must show that he or she is competent to undertake the regulated activity including, where appropriate, detailed knowledge of the structure, purpose and risks of the securities associated with the activity.

(5) To demonstrate competence, a director or senior manager involved in carrying out the regulated activity must act in a knowledgeable, professional and efficient manner. In determining a person's competence and capability, the registrar may have regard to-

- (a) the person's satisfactory past performance or expertise in the nature of the business being conducted;
- (b) the person's range of skills and experience to understand, operate and manage the regulated activities and financial affairs;
- (c) the person's technical knowledge and ability to perform prescribed duties for which he or she is engaged, especially recognised professional qualifications and membership of relevant professional institutions.

(6) A director or senior manager of an applicant must have the appropriate skills and experience and must at all relevant times –

- (a) act for the benefit of and in the interest of the applicant;
- (b) avoid any conflict of interest between his or her interests and the interests of the applicant; and
- (c) exercise such care in the carrying out of his or her functions in relation to the applicant as may be reasonably expected of a diligent person holding the same appointment under similar circumstances and who possesses both the knowledge and skill mentioned in paragraph (5)(c) and any such additional knowledge and skill as the director or senior manager in question may have.

Financial soundness or solvency

6. (1) In assessing the financial soundness of a director or senior manager the registrar must assess whether the director or senior manager can maintain solvency and prudent financial control, including meeting liabilities as they become due, ensuring

adequate control over financial risks on a continuing basis and taking proper care of customers.

(2) In determining the financial soundness of a director or senior manager, the registrar may consider-

- (a) whether the person has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- (b) whether the person has made arrangements with creditors, filed for sequestration or been adjudged bankrupt or had assets sequestered;
- (c) whether the person has been able to provide the registrar with a satisfactory credit reference.

(3) A director or senior manager must in the application to the registrar, be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be assessable to the director or senior manager and which may be relevant for purposes of a decision by the registrar.

Continuing requirements of fit and proper standards

Fitness

7. (1) An exchange, central securities depository, trade repository or clearing house must have measures in place to ensure that directors and senior managers remain competent for the positions they hold. This requires continuous supervision of a director or senior manager's character, competence and experience relative to the duties involved, including whether the director or senior manager-

- (a) has sufficient skills, knowledge, competence, diligence and soundness of judgment to undertake and fulfill the particular duties and responsibilities of the position in question; and

(b) has continued to demonstrate the appropriate competence and integrity in fulfilling professional responsibilities.

Probity

(2) For purposes of this Schedule, the registrar may regard a person as not proper whenever he or she-

(a) has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards, or has been obstructive, misleading or untruthful in dealing with regulatory bodies or a court;

(b) has breached a fiduciary obligation;

(c) has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;

(d) has been reprimanded, disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;

(e) has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;

(f) has been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management; or

(g) was the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity.

Short title and commencement

8. This Notice is called the Fit and Proper Requirements and comes into operation on the date on which the Act comes into operation.

ANNEXURE A

GENERAL INFORMATION ON COMPLETION OF QUESTIONNAIRES AS CONTAINED IN ANNEXURES B, C AND D

A. Instructions for completion and submission

1. The questionnaires in Annexure B, C and D must be properly completed and signed. Questions must be answered either in full or indicated not applicable ("n/a"). The signatory(ies) of the questionnaires must be duly authorised to furnish the information.
2. The questionnaires in Annexure B, C and D must be completed in respect of directors, senior managers and key employees as indicated therein.
3. The format of the questionnaire or the wording of questions may not be changed. However, this document may be reproduced.
4. Answers may be in handwriting or in typewriting.
 - a. If the questionnaire is completed electronically (a) delete the solid lines in those areas provided for answers before the answers are typed or use the overtype mode whilst the answers are typed; and (b) rows may be inserted where insufficient space is provided for answers.
 - b. If the questionnaire is completed in writing and should the space provided not be sufficient, the detail can be provided on a separate page, duly cross-referenced to the relevant question. Please indicate the number of any supplementary sheets attached to Annexure B and C.
 - c. If the questionnaire submitted contains any changes to typed or written information, such changes must be signed.

B. General information

1. The registrar may request information or documents in addition to the information and documentation requested in this questionnaire.
2. The information in the questionnaire is confidential and not available for inspection by the general public.

ANNEXURE B

QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF DIRECTORS AND SENIOR MANAGERS

1. Personal details of the director or senior manager in respect of which this questionnaire is being completed:

1.1. Surname and title:

1.2. Full first name(s):

1.3. Any previous surname(s) or first name(s):

1.4. Indicate the proposed position to be held, e.g. director or managing director:

1.5. Effective date of appointment (where applicable):

1.6. Residential address and telephone number:

1.7. Postal address:

1.8. Previous residential address(es) during the previous 5 years:

1.9. Nationality

Date of birth: _____

Place of birth: _____

RSA Identity Document number (attach a certified copy): _____

Passport number: _____

Expiry date: _____

Country of issue: _____

1.10. Nationality and indicate how it was acquired (e.g. birth, naturalisation or marriage):

1.11. Professional qualification(s), the year(s) when, and the institution(s) at which, this was acquired (*may be provided in separate sheet*):

1.12. Attach completed Personal Credential Verification Forms for purposes of the background screening of each director, senior manager or key employee. The said forms are obtainable from the Financial Services Board.

1.13. Attach detailed curriculum vitae.

2. General details in respect of the individual proposing to become a director or senior manager:

2.1. State in what capacity you are completing this document, i.e. as a current or prospective director (executive or non-executive) or senior manager. State full job title and describe the particular duties and responsibilities:

2.2. Significant shareholding history (including indirect holdings) over at least the last five years (including only those holdings which provided you a significant influence over the operations and affairs of the entity)

3. Specific test to assess fitness and probity

If any answers to any of these questions is 'yes' please provide details on separate pages or in the space provided with proper referencing

3.1 Have you ever been subject to any proceedings of a disciplinary or criminal nature, or have been notified of any impending proceedings or of any investigation, which might lead to such proceedings?

3.2 Have you, or any business in which you have had controlling interest or have

exercised significant influence, been investigated, disciplined, suspended or criticized by a regulatory or professional body, a court or tribunal, whether publicly or privately?

3.3 Have you ever been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a licence to conduct trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated?

3.4 As a result of the removal of the relevant licence, registration or other authority mentioned in question 3 above, have you ever been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorization?

3.5 Have you ever been subject of any justified complaint relating to regulated activities?

3.6 Have you ever been charged or convicted of any criminal offence, particularly an offence relating to dishonesty, fraud, forgery, uttering a forged document, perjury any financial crime or other criminal acts or been involved in acts of serious financial or other misconduct?

3.7 Have you ever contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies?

3.8 Have you ever been a director, partner, or otherwise involved in the management of a business that has gone into curatorship, insolvency or liquidation while you have been connected with that business or within one year after that connection?

3.9 Have you ever been dismissed, asked to resign or resigned, from employment or from a position of trust, fiduciary appointment or similar because of questions about your honesty and integrity?

3.10 Have you ever been disqualified, under the Companies Act or any other financial services legislation or regulation the object of which is the protection of

the public against financial loss from acting as a director or serving in a managerial capacity?

3.11 Have you ever been diagnosed as being mentally ill or unstable?

3.12 Have you ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement?

3.13 Have you ever been the subject of any adverse judgment or award, in South Africa or elsewhere that remains outstanding or was not satisfied within a reasonable period?

3.14 Have you ever made any arrangements or composition with your creditors, filed for bankruptcy, been adjudged bankrupt, had your assets sequestrated, or been involved in proceedings relating to any of these?

3.15 Have you ever been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:

(a) Has been the subject of any adverse judgment or award, in South Africa or elsewhere, which remains outstanding or was not satisfied within a reasonable period?

(b) Has, in South Africa or elsewhere, made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of the foregoing?

3.16 Do you have reasons to believe that any of your close relatives or business associates, if subject to the above tests, would have responded by a 'Yes' to any of these questions?

ANNEXURE C

QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF AN OUTGOING DIRECTOR OR SENIOR MANAGER

1. Specific information to be provided:

- 1.1. Title, full name(s) and surname of outgoing director or senior manager:
- 1.2. Indicate the position held (e.g. director or managing director):
- 1.3. Reason(s) for the termination or resignation of the outgoing director or senior manager:
- 1.4. Effective date of the termination of the appointment or resignation:

2. Is there any other information or documents that are relevant to this document?

YES: _____

NO: _____

If the answer is "Yes" kindly specify the information or documents:

SIGNATURE: MANAGING DIRECTOR

DATE

SIGNATURE: OUTGOING DIRECTOR/
SENIOR MANAGER

DATE

ANNEXURE D

QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF AN APPLICANT

1. Details of the Entity

1.1 Entity Name:

1.2 Registration Number:

1.3 Any other name under which business is conducted and where is it used:

1.4 Registered address and email address:

1.5 Postal address:

1.6 Telephone and Facsimile numbers of the applicant:

1.7 Physical, postal and telephone numbers of the applicant's bank

1.8 Physical, postal and telephone numbers of the applicant's auditor

1.9 Physical, postal and telephone numbers of the applicant's attorney

2. Specific test to determine the financial soundness of the applicant:

If any answers to any of these questions is 'yes' please provide details on separate pages or in the space provided with proper referencing

2.1 Please provide details, if any, on whether the applicant will not be able to meet its debts as they fall due:

2.2 Please confirm whether relevant solvency requirements are met:

2.3 Please advise whether the applicant has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period:

2.4 Please advise whether the applicant has made arrangements with creditors, filed for sequestration or winding -up or has entered into any business rescue proceedings:

DECLARATION

I, the undersigned, (insert full first name(s) and surname) hereby certify that, to the best of my knowledge, the information given in answers to the above questions are true, complete and accurate and not misleading in any respect.

I undertake that, as long as I continue to be a director, senior manager, I will notify the registrar of any material changes to, or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in no event later than 21 days from the day that the change comes to my attention.

I hereby authorise the Financial Services Board, and its duly authorised verification agent, to request or confirm any personal information as well as any other information that I have provided in support of my application to any personal data holders (including but not limited to the South African Police Service, the Government of the Republic, industry bodies and associations, employers and any educational, training, credit bureau and fraud prevention organisations) for the purpose of verifying my personal credentials and records.

Credential verification types include, but are not limited to, educational qualifications, professional membership, employment history, and employment references including industry employment registers, consumer credit, criminal records, driver's licence, and fraud prevention checks.

I authorise the personal data holders (including but not limited to the aforesaid institutions) to furnish information regarding my credentials, whether claimed or not, to the Financial Services Board and its duly verification agent. I unconditionally indemnify the Financial Services Board, its verification agent and the personal data holders against any liability that may result from furnishing information in this regard.

Position held:

SIGNATURE

DATE

Documents to be submitted

- a certified copy of the RSA identity number;
- completed Personal Credential Verification Forms;
- the *curriculum vitae*;
- the signed declaration; and
- the other documents, if any, mentioned in questions in support of the information contained in this document.(Please indicate the pages of each enclosure and the number of the question above to which the enclosure relates)