

**NOTICE OF 2011**

**FINANCIAL SERVICES BOARD**

**FINANCIAL MARKETS ACT OF 2011**

**CONDITIONS APPLICABLE TO THE GRANTING AND RENEWAL OF AN  
EXCHANGE, CENTRAL SECURITIES DEPOSITORY, TRADE REPOSITORY OR  
CLEARING HOUSE LICENCE**

Under sections 7(2)(a), 7(2)(c)(iv), 8(3)(c), 27(2)(a), 27(2)(c)(iii), 28(2)(c), 47(2)(a), 47(2)(c)(ii), 48(2)(c), 55(2)(a) and 56(2)(c) of the Financial Markets Act, 2011 (Act No. of 2011) ("the Act"), I, Dube Phineas Tshidi, Registrar of Securities Services hereby prescribe the Conditions as set out in the Schedule, applicable to the granting and renewal of an exchange, central securities depository, trade repository or clearing house licence.

**D P TSHIDI**

**REGISTRAR OF SECURITIES SERVICES**

**SCHEDULE**

**1. Definition**

In these Conditions "**the 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.

## **2. Application for the renewal of licence**

An application for a licence or for the renewal of a licence in terms of the Act must comply with the following conditions:

- (a) 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.
  
- (b) A person who applies for the renewal of an exchange, central securities depository, clearing house or trade repository licence must submit to the registrar a written application on Form FM 2 accompanied by the information specified in Annexure 1 to Form FM 2.

## **3. Address**

Applications must be submitted to:

The Registrar of Securities Services  
P O Box 35655  
Menlo Park  
0102

## **4. Commencement**

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

**D P TSHIDI**

**REGISTRAR OF SECURITIES SERVICES**

**FORM FM 1**

**FINANCIAL MARKETS ACT, 2011 (ACT NO. OF 2011)**

**Application under section 7(2), 27(2) 47(2) and 55 (2) of the Act 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(1) of the Act;

central securities depository licence under section 27(1) of the Act;

associated clearing house licence under section 47(1) of the Act;

independent clearing house licence under section 47(1) of the Act; or

trade repository licence under section 55(2) of the Act.

for the period ending 31 December 20 .....

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, trade repository licence**

1. The following administrative information:

- (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 68(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 clearing members of an independent clearing house 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 of the self-regulatory organisation 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 self-regulatory organisation or the requirements of the Act;
- (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 clearing and settlement of transactions effected through the applicant and the management of trade and 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 self-regulatory organisations-

- (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 self-regulatory organisations.
- (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, backup and contingency controls.

8. 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 services to the exchange.

4. Details pertaining to the settlement and custody and administration services to be provided to the exchange.

5. Details of the functions and services to be provided by the exchange.

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

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

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

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

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

**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 clients against any unauthorised access, alteration, destruction or dissemination.

4. An auditor's report confirming that the applicant has appropriate information technology in place to effectively handle electronic trading, lending 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 services proposed.

6. The benefits to investors of using the custodial services of the central securities depository.

7. The frequency and format of custodial balance statements to participants, external CSDs or other persons.

8. The range and type of securities services to be provided by the central securities depository.

9. The range and type of securities in respect of which those securities services are to be provided by the central securities depository.

**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 shall include at least the following:

1. Name of the exchange.

2. Letter of proposed engagement by an 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 securities services provided by the clearing house and the affairs of clients against any unauthorised access, alteration, destruction or dissemination.

4. The range and type of securities services to be provided by an associated clearing house.

5. The range and type of securities in respect of which those securities services to be provided by an associated clearing house.

6. The benefits to investors of using the securities services of an associate clearing house.

**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 securities services and the affairs of clients against any unauthorised access, alteration, destruction or dissemination.

4. An auditor's report 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 clearing house related operations commence;

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

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

6. The range and type of securities in respect of which those securities services 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 securities services of an independent clearing house.

**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. An auditor's report 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.

**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. whether the member has ever been convicted or found guilty of a criminal or disciplinary offence resulting from dishonesty, fraud, embezzlement or a breach of the rules of any professional organisation, including a regulated person;
3. whether the member has ever been involved in an entity that was placed under business rescue proceedings or in liquidation;
4. whether the estate of a member has ever been sequestrated, and the date of rehabilitation, if any;
5. whether the member has ever been barred from entry into any profession or occupation;
6. in respect of (2) to (5) above, an indication if proceedings are pending;
7. 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; and
8. any other information required in terms of Board Notice number      setting out the fit and proper requirements of the applicant, its directors and senior management.

**FINANCIAL MARKETS ACT, 2011 (ACT NO. OF 2011)**

**Application for renewal of licence**

The Registrar of Securities Services

1. I ....., the chief executive officer of the applicant known as

the.....being specifically authorised thereto by the controlling

body of the applicant, apply on behalf of the applicant under section 49(6)/57(5) or 60(1) of the Act for the renewal of a/an (tick appropriate block) –

exchange licence;

central securities depository licence;

trade repository licence;

associated clearing house licence; or

independent clearing house licence.

for the period ending 31 December 20.....

2. The prescribed application fee of ..... is enclosed.

Signed at ..... on this ..... day of  
.....20....

.....  
Chief Executive Officer

Witnesses:

1.....

2.....

## **ANNEXURE 1 TO FORM FM 2**

### **Information which must be contained in an application for the renewal of an exchange, central securities depository, clearing house or trade repository licence**

1. A copy of the latest audited annual financial statements of the applicant.
2. A copy of the latest annual budget of the applicant approved by the controlling body.
3. A copy of the latest strategic planning document, which has been approved by the controlling body, dealing with financial resource adequacy, human resource adequacy, business continuity planning, disaster recovery, and any other matter considered to be of strategic importance to the controlling body of the applicant.
4. A management discussion and analysis report, signed by the chief executive officer, addressing the material changes that have occurred in the information previously submitted in terms of FM1 (or FM2 for previous licence renewals) as pertaining to the previous licence period.
5. A management discussion and analysis report, signed by the chief executive officer, addressing the progress made in complying with any conditions laid down by the registrar in respect of the previous licence which has been granted or renewed.
6. A statement, signed by the chief executive officer, confirming that during the year preceding the date of the application for renewal –
  - (a) the rules of the exchange, central securities depository or independent clearing house were properly enforced and if some rules were not enforced, the reasons therefore must be given;
  - (b) the applicant at all times complied with the Act as well as the applicable conditions;
  - (c) the applicant complied with all directions, requests, conditions or requirements of the registrar; and
  - (d) the applicant has given effect to all decisions of the appeal board, if any.