

NOTICE OF 2011

FINANCIAL SERVICES BOARD

FINANCIAL MARKETS ACT OF 2011

ACCOUNTING RECORDS TO BE MAINTAINED BY A REGULATED PERSON

Under section 97(a) of the Financial Markets Act, 2011 (Act No. of 2011), I, Dube Phineas Tshidi, Registrar of Securities Services hereby prescribe the accounting records to be maintained by a regulated person 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, 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. Accounting records to be maintained by regulated persons

(1) The accounting records of a regulated person must show the transactions and financial commitments of a regulated person and transactions and payments relating to clients in such a manner that they disclose with substantial accuracy the financial position, performance and cash flows of the regulated person, and separately the position of clients of the regulated person, at the close of business on any day.

(2) Accounts of clients must be designated as such and must be clearly distinguishable from the business accounts of a regulated person.

(3) A regulated person may keep computerised records provided that such records are subject to acceptable back-up and recovery procedures and can be reproduced in printed form.

3. Accounting records to be maintained by exchanges

(1) An exchange must maintain –

(a) entries from day to day of all sums of money received and expended by the exchange and the matters in respect of which the receipt and expenditure took place;

(b) a record of funds held in trust for authorised users;

(c) a record of all income and expenditure of the exchange explaining the nature thereof;

(d) a record of all assets and liabilities of the exchange, including any provision for financial commitments or contingent liabilities;

(e) a record of all purchases and sales of securities listed on the exchange, which reflects the –

(i) date and time of each transaction concluded on the exchange;

(ii) identification of the authorised users that are counterparties to the transaction;

(iii) name of the issuer of the securities;

(iv) name or description of the securities; and

(v) the price per unit and quantity of the securities bought and sold.

4. Accounting records to be maintained by central securities depository

(1) A central securities depository must maintain a record of –

- (a) the central securities accounts held by it;
- (b) all moneys, assets and rights received or distributed by it, including dividends and other distributions made by the issuer of securities deposited, and the disbursement of such dividends and distributions to clients;
- (c) its income, expenses, funds, assets and liabilities in respect of the holding of securities in safe custody;
- (d) certificated and uncertificated securities deposited with it; and
- (e) its participants.

5. Accounting records to be maintained by clearing house

(1) A clearing house must maintain –

- (a) entries from day to day of all sums of money received and expended by the clearing house and the matters in respect of which the receipt and expenditure took place;
- (b) a record of funds held in trust for regulated persons;
- (c) a record of all income and expenditure of the clearing house explaining the nature thereof;

(d) a record of all assets and liabilities of the clearing house, including any provision for financial commitments or contingent liabilities;

(e) a record of all purchases and sales of securities cleared by the clearing house, which reflects the –

- (i) date of each transaction;
- (ii) identification of the regulated persons that are counterparties to the transaction;
- (iii) name or description of the securities; and
- (iv) price per security and quantity of the securities cleared.

6. Accounting records to be maintained by authorised users, participants, clearing members and regulated persons not covered by paragraphs 3, 4 and 5

(1) An authorised user, participant, clearing member and other regulated person not referred to in paragraphs 3, 4 and 5 must maintain, where applicable, accounting records which must as a minimum contain –

(a) a daily record of all sums of money received and expended;

(b) a record of funds held in trust;

(c) a record of all income and expenditure;

(d) a record of all assets and liabilities, including any provisions for financial commitments or contingent liabilities;

(e) a record of all purchases and sales of securities which reflects the –

- (i) date and time of each transaction;
- (ii) person from whom securities were bought or to whom they were sold unless it is processed through an automated trading system recognised by the relevant exchange;
- (iii) name of the person on whose behalf the securities were bought or sold;
- (iv) quantity and description of the securities which were bought or sold;
- (v) name of the issuer of the securities;
- (vi) price per security and the total consideration;
- (vii) brokerage;
- (viii) taxes that are payable in respect of each transaction;
- (ix) terms of the contract;
- (x) capacity (principal or agent) in which the transaction was entered into; and
- (xi) the following additional information in respect of transactions in options-
 - (aa) the reference number of the transaction and option number, where applicable;
 - (bb) whether the option is a put or call option;
 - (cc) the terms and conditions under which the option may be exercised, including the type of option, the strike price or yield, the strike date and time and the settlement date;
 - (dd) the identity of the writer of the option;
 - (ee) the quantity and description of the listed security to which the option relates;
 - (ff) the option premium and settlement date; and
 - (gg) whether the option was exercised or lapsed and the exercise date, if applicable;

(f) a record of all securities and documents of title which are in the possession, safe custody or under the control of the regulated person, in which is reflected the –

- (i) name of the issuer of the securities;
- (ii) quantity and description of the securities;
- (iii) identification numbers of the securities and documents of title, where applicable;
- (iv) name of the registered holder and if the registered holder is a nominee controlled by the regulated person, the name of the person on whose behalf the nominee is holding the securities;
- (v) person from whom the securities were received and to whom the securities were delivered;
- (vi) date of receipt and delivery;
- (vii) location where the securities or documents of title are kept;
- (viii) details of any pledge to which the securities may be subject;
- (ix) person on whose behalf securities or documents of title have been received or delivered;
- (x) purpose for which the securities or documents of title are held.

(g) a record of securities held by the regulated person on behalf of its clients which must be made available to its clients, in the case of a participant, at

least on a bi-annual basis, and in the case of another regulated person, other than an authorised user, at least on a quarterly basis, and which must contain as a minimum –

- (i) the name of the client;
 - (ii) the quantity and a description of securities held;
 - (iii) a description of transaction movements within the securities accounts during the period since the previous report;
- (h) a record of the reconciliation of the securities accounts maintained by a participant and the central securities account maintained by the central securities depository.

(2) An authorised user or nominee of an authorised user, participant or nominee of a participant or clearing member must reconcile balances with exchanges, clearing houses, central securities depositories and banks, if applicable, as frequently as is appropriate for the volume of transactions on accounts. Any differences, other than differences in timing between the records of the authorised user or nominee of an authorised user, participant or nominee of a participant or clearing member and the exchanges, clearing houses, central securities depositories or banks, as the case may be, must be investigated forthwith and corrected as soon as is practicable.

(3) An authorised user and a nominee of an authorised user must reconcile securities under their control with the accounting records relating to securities held by the authorised user and the nominee of the authorised user on a daily basis. Correcting entries must be made immediately.

7. Accounting records of an authorised user, participant or clearing member of an independent clearing house that ceases business

An authorised user, participant or clearing member of an independent clearing house that ceases business must maintain a record of funds or assets held in trust, which funds or assets must be transferred to a client or another person authorised to deal in, hold custody or provide for the clearing and settlement services in respect of securities, until such transfer has been fully effected.

8. Commencement

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