

REPUBLIC OF SOUTH AFRICA

FINANCIAL MARKETS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill
published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B - 2011]

BILL

To replace the Securities Services Act, 2004 (Act No. 36 of 2004) as amended by Financial Services Laws General Amendment Act, 2008 (Act No. 22 of 2008), to align with international standards; to license and regulate exchanges, central securities depositories and clearing houses; to regulate and control securities trading and the custody and administration of securities; to prohibit insider trading; to provide for the approval of nominees; to provide for codes of conduct; and to provide for matters connected therewith.

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BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER I PRELIMINARY PROVISIONS

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise—

“**advice**” means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to a client or group of clients –

- (a) in respect of the buying and selling of securities;
 - (b) on any corporate action or other event affecting the rights or benefits in respect of securities; or
 - (c) on the exercise or lapse of any right in respect of securities; and
- irrespective of whether or not such advice results in any such transaction being effected, but does not include—

- (i) factual advice given merely—
 - (aa) on the procedure for entering into a transaction in respect of securities;
 - (bb) on the procedure relating to a corporate action or other event affecting the rights or benefits in respect of securities;
 - (cc) in relation to the description of securities;
 - (dd) in reply to routine administrative queries;
 - (ee) in the form of objective information about securities; or
 - (ff) by the display or distribution of promotional material;
- (ii) an analysis or report on securities without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the securities is appropriate to the particular investment objectives, financial situation or particular needs of a client;

“**appeal board**” means the appeal board established by section 26A of the Financial Services Board Act;

“associated clearing house” means a clearing house that provides clearing services or settlement services or both clearing services and settlement services to one or more exchanges in accordance with the rules of the relevant exchange and does not approve or regulate clearing members;

“Auditing Professions Act” means the Auditing Professions Act, 2005 (Act No. 26 of 2005);

“auditor” means an auditor registered in terms of the Auditing Professions Act;

“authorised user” means a person authorised by an exchange to perform one or more securities services in terms of the exchange rules, and includes an external authorised user, where appropriate;

“bank” means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), and a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);

“board” means the Financial Services Board established by section 2 of the Financial Services Board Act;

“central securities depository” means a person who is licensed as a central securities depository under section 29;

“clear”, in relation to a transaction or group of transactions in securities, means—

- (a) to calculate and determine, before each settlement process—
 - (i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller;
 - (ii) the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or group of transactions; or
- (b) where applicable, the process by means of which—
 - (i) the functions referred to in paragraph (a) are performed; and
 - (ii) the due performance of the transaction is underwritten from the time of trade to the time of settlement; and

the expression “clearing” has a corresponding meaning;

“clearing house” means a person who is licensed as an associated or independent clearing house or both under Chapter V;

“clearing member” means –

- (a) in relation to an associated clearing house, a person authorised by an exchange to perform clearing services or settlement services or both clearing services and settlement services in terms of the exchange rules;
- (b) in relation to an independent clearing house, a person authorised by that independent clearing house to perform clearing services or settlement services or both clearing services and settlement services in terms of the clearing house rules,

and includes an external clearing member, where appropriate;

“clearing house rules” means the rules made by an independent clearing house in accordance with this Act;

“clearing services” means to clear transactions in securities and any activity necessary to clear such transactions;

“client” means any person to whom a regulated person provides securities services and includes a person that acts as an agent for another person in relation to those services, but excludes the person for whom such a person acts as an agent, unless otherwise agreed in writing;

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008);

“depository rules” means the rules made by a central securities depository in accordance with this Act;

“derivative instrument” means any—

- (a) financial instrument; or
- (b) contract, that creates rights and obligations and that derives its value from the price or value, or the value of which may vary depending on a change in the price or value, of some other particular product or thing;

“directive” means a directive issued by the registrar in accordance with this Act;

“director” means the Directorate of Market Abuse referred to in section 92;

“electronic” includes created, recorded, transmitted or stored in digital or other intangible but visible form by electronic, magnetic, optical or any similar means;

“enforcement committee” means the enforcement committee established by section 10 of the Financial Services Board Act;

“exchange” means a person who constitutes, maintains and provides an infrastructure—

- (a) for bringing together buyers and sellers of securities;
- (b) for matching the orders for securities of multiple buyers and sellers; and
- (c) whereby a matched order for securities constitutes a transaction;

“exchange rules” means the rules made by an exchange in accordance with this Act;

“external authorised user” means a person authorised by a supervisory authority to perform a service or services similar to one or more securities services as defined in this Act and who is subject to the laws of a country other than the Republic, which laws –

- (a) establish a regulatory framework equivalent to that established by this Act; and
- (b) are supervised by a supervisory authority;

“external central securities depository” means a person authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a central securities depository as set out in this Act and who is subject to the laws of a country other than the Republic, which laws –

- (a) establish a regulatory framework equivalent to that established by this Act; and
- (b) are supervised by a supervisory authority;

“external clearing member” means a person authorised by a supervisory authority to perform a service or services similar to one or more clearing services or settlement services as defined in this Act and who is subject to the laws of a country other than the Republic, which laws –

- (a) establish a regulatory framework equivalent to that established by this Act; and
- (b) are supervised by a supervisory authority;

“external exchange” means a person authorised to function as an exchange in terms of the laws of a country other than the Republic;

“external participant” means a person authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a participant as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws –

- (a) establish a regulatory framework equivalent to that established by this Act; and
- (b) are supervised by a supervisory authority;

“Financial Intelligence Centre Act” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

“financial institution” means—

- (a) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the securities of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;
- (b) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;
- (c) any collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or any manager or nominee in relation to such a scheme;
- (d) any long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively; and
- (e) a bank;

“Financial Institutions (Protection of Funds) Act” means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);

“Financial Services Board Act” means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

“foreign collective investment scheme” means a scheme, in whatever form, carried on in a country other than the Republic, in pursuance of which members of the public—

- (a) are invited or permitted to invest money or other assets in one or more groups of assets (whether called a portfolio or by any other name) of such scheme;
- (b) acquire an interest or undivided share (whether called a unit or by any other name) in such a group of assets upon such investment; and
- (c) participate proportionately in the income or profits and the risk derived from such investment;

“independent clearing house” means a clearing house that provides clearing services or settlement services or both clearing services and settlement services to any person, and authorises and supervises its clearing members in accordance with its clearing house rules;

“index” means an indicator that reflects changes in the value of a group of securities on one or more exchange or external exchange;

“insolvency proceeding” means a judicial or administrative proceeding or both, authorised in or by national legislation or the laws of a country other than the Republic, including an interim proceeding, in which the assets and affairs of a person are subject to the control or supervision by a court or an insolvency administrator for the purpose of reorganisation, business rescue, curatorship or liquidation, and includes, but is not limited to any such proceeding under –

- (a) the Companies Act;
- (b) the Insolvency Act, 1936 (Act No. 24 of 1936);
- (c) the Banks Act, 1990 (Act No. 94 of 1990);
- (d) the Financial Institutions (Protection of Funds) Act; and
- (e) the National Payment System Act, 1998 (Act No. 78 of 1998);

“insolvency administrator” means a person authorised to administer an insolvency proceeding by a court or any national legislation, or the laws of a country other than the Republic, including a person authorised on an interim basis;

“in writing”, in relation to anything which, in terms of this Act must be done in writing, includes any such thing done in electronic form;

“issuer” means an issuer of securities and, in Chapter IV, includes an issuer of money market securities;

“listed securities” means securities included in the list of securities kept by an exchange in terms of section 11;

“management of securities and funds” means—

- (a) to exercise discretion in buying or selling securities on behalf of another person;
- (b) the safeguarding of securities on behalf of another person; or
- (c) the safeguarding of another person’s funds intended for the purchase of securities on behalf of that other person;

“Minister” means the Minister of Finance;

“nominal value” means –

- (a) in relation to securities other than shares in a public company, the fixed value assigned to a security by the issuer when it is first issued and is used to assess dividend, capital ownership or interest; or
- (b) in relation to shares in a public company, -
 - (i) prior to the compulsory conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the fixed value assigned to a security by the issuer when it is first issued and is used to assess dividend, capital ownership or interest; or
 - (ii) after the compulsory conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the value of the shares calculated or determined in accordance with the manner prescribed under the Companies Act;

“**nominee**” means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;

“**official web site**” means the web site of the board;

“**participant**” means a person accepted by a central securities depository to perform custody and administration services or settlement services or both in terms of the central securities depository rules, and includes an external participant, where appropriate;

“**prescribed by the Minister**” means prescribed by the Minister by regulation;

“**prescribed by the registrar**” means prescribed by the registrar by notice in the *Gazette*;

“**registrar**” means the person referred to in section 5;

“**regulated person**” means –

- (a) a self-regulatory organisation;
- (b) a trade repository;
- (c) a nominee; or
- (d) a person who provides or who previously provided securities services;

“**regulation**” means a regulation made under section 113;

“**rules**” means exchange rules, depository rules or clearing house rules;

“**safeguarding**” means the activities performed by an authorised user –

- (a) for the purposes of holding securities or funds in custody on behalf of another person;
or
- (b) where the authorised user is accountable to another person for a third party's holding of securities or funds in custody on behalf of that other person,

and includes the administration of matters incidental to those securities or funds;

“securities”— means —

- (a) listed and unlisted -
 - (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 Of 1980);
 - (ii) notes;
 - (iii) derivative instruments;
 - (iv) bonds;
 - (v) debentures;
 - (vi) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
 - (vii) instruments based on an index;
- (b) units or any other form of participation in a collective investment scheme licensed or registered in a country other than the Republic;
- (c) the securities contemplated in subparagraphs (a)(i) to (vii) and (b) that are listed on an external exchange; and
- (d) an instrument similar to one or more of the securities contemplated in subparagraphs (a) to (c) declared by the registrar by notice in the *Gazette* to be a security for the purposes of this Act;
- (e) rights in the securities referred to in subparagraphs (a) to (d);

but excludes—

- (i) money market securities except for the purposes of Chapter IV; and

- (ii) any security contemplated in paragraph (a) specified by the registrar by notice in the *Gazette*;

“securities account” means an account kept by –

- (a) a participant or an authorised user for its own account or for a client; or
(b) a nominee for a person for whom it acts as a nominee,
which reflects the number or nominal value of securities of each kind held for its own account or on behalf of that client or person, as the case may be, and all entries made in respect of such securities;

“securities of the same kind” means securities of the same class and issued by the same issuer;

“securities services” means the following services —

- (a) the buying or selling of securities for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business;
(b) the use of the trading system or infrastructure of an exchange to buy or sell listed securities;
(c) the furnishing of advice to any person;
(d) the custody and administration of securities by a person other than an authorised user;
(e) the management of securities and funds by an authorised user;
(f) clearing services;
(g) the settlement of transactions in securities;
(h) settlement services; or
(i) reporting of transactions in securities;

“senior management” refers to the level of management that is directly accountable to the chief executive officer or to the person in charge of an entity, and includes the chief executive officer if that person is not a director of the institution;

“self-regulatory organisation” means an exchange, a central securities depository or an independent clearing house;

“self-regulatory organisation directive” means a directive issued by a self-regulatory organisation in accordance with its rules;

“settle” means -

- (a) in respect of listed securities, other than listed derivative instruments, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules; or
- (b) in respect of a listed derivative instrument, the completion of a transaction by the fulfillment of all contractual obligations associated with the resultant position in the derivative instrument in accordance with the rules; or
- (c) in respect of unlisted securities, other than money market securities or derivative instruments, the crediting and debiting of the accounts of the transferee and transferor respectively with the aim of completing a transaction in securities and receipt of a notification that payment has been received, unless –
 - (i) otherwise prescribed by the registrar; or
 - (ii) the parties have appointed an independent clearing house or central securities depository to settle a transaction, in which case it has the meaning assigned in paragraph (a) or (b), as the case may be;
- (d) in respect of money market securities, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules;
- (e) in respect of an unlisted derivative instrument, the completion of a transaction by the fulfillment of all contractual obligations associated with the resultant position in the derivative instrument, unless otherwise prescribed by the registrar;

and the expression “settling” or “settlement” has a corresponding meaning;

“**settlement services**” means any activity, other than trading or clearing, necessary to settle a transaction, but does not include settlement;

“**stockbroker**” means a natural person who is a member of the South African Institute of Stockbrokers;

“**supervisory authority**” means a body designated in national legislation to supervise, regulate or enforce legislation or a similar body designated in the laws of a country other than the Republic to supervise, regulate or enforce legislation of that country;

“systemic risk” means the danger of a failure or disruption of the Republic’s financial system as a whole;

“this Act” includes, other than for the purposes of sections 3(4), 3(5) and 3(6), any matter prescribed under this Act, and any notice or directive given, approval granted, condition determined or imposed, or any other decision of the registrar;

“trade repository” means a person who maintains a centralised electronic database of records of transaction data and is licensed as a trade repository under section 57;

“transaction” means a contract of purchase and sale of securities;

“transfer” means the transfer of securities or an interest in securities in the manner provided for in section 53 of the Companies Act;

“uncertificated securities” means –

- (a) securities that are not evidenced by a certificate or written instrument; or
- (b) certificated securities that are held in collective custody by a central securities depository or its nominee in a separate central securities account;

and are transferable by entry without a certificate or written instrument;

“uncertificated securities register” has the meaning assigned to it in section 1 of the Companies Act;

“unlisted securities” means securities that are not –

- (a) listed securities; or
- (b) listed on an external exchange; and

“web site” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2005 (Act No. 36 of 2005).

(2) For purposes of the definition of “insolvency proceeding”, a proceeding referred to in that definition commences –

- (a) in relation to a judicial proceeding, on the granting of an interim order; and
- (b) in relation to an administrative proceeding, on the filing of a resolution by a company, or the appointment of an insolvency administrator, as the case may be, in accordance with national legislation or the laws of a country other than the Republic.

(3) Where in this Act any supervisory authority is required to take a decision in consultation with the registrar, such decision requires the concurrence of the registrar.

(4) The definition of “this Act” is included for drafting simplicity purposes only and does not afford administrative actions referred to in the definition legislative status.

Objects of Act

2. This Act aims to—

- (a) increase confidence in the South African financial markets by—
 - (i) requiring that securities services be provided in a fair, efficient and transparent manner; and
 - (ii) contributing to the maintenance of a stable financial market environment;
- (b) promote the protection of regulated persons and clients;
- (c) reduce systemic risk; and
- (d) promote the international competitiveness of securities services in the Republic.

Application of Act and rules

3. (1) This Act applies to—

- (a) regulated persons;
- (b) persons that provide securities services;
- (c) persons that operate an exchange;
- (d) *persons that operate a trade repository*;
- (e) issuers;
- (f) clients;
- (g) market abuse;
- (h) securities services; and
- (i) matters incidental to the matters referred to in paragraphs (a) to (g).

(2) This Act does not apply to a collective investment scheme regulated by or under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).

(3) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.

(4) Despite any other law, if there is an inconsistency between any provision of this Act and a provision of any other national legislation, this Act prevails.

(5) Without affecting the generality of subsection (4), the provisions of this Act and the rules relating to settlement and insolvency proceedings, prevail over any other law, legislation, agreement or founding document of any person and are binding on any person.

(6) Despite any other law, if other national legislation confers a power on or imposes a duty upon another organ of state in respect of a matter regulated under this Act, that power or duty must be exercised or performed in consultation with the registrar, and any decision taken in accordance with that power or duty must be taken with the approval of the registrar.

(7) Despite the provisions of the Consumer Protection Act, 2008 (Act No. 68 of 2008), that Act does not apply to any person, function, act, transaction, goods or services that is or are subject to this Act.

Prohibitions

- 4.** (1) No person may—
- (a) operate as an exchange unless that person is licensed under section 9;
 - (b) perform the functions of or act as a central securities depository unless that person is licensed under section 29;
 - (c) perform the functions of or act as a clearing house unless that person is licensed under section 49;
 - (d) act as an authorised user unless authorised by an exchange in terms of the exchange rules;
 - (e) carry on the business of buying or selling listed securities unless that person complies with section 24;
 - (f) provide securities services in respect of unlisted securities in contravention of conditions imposed or prescribed under section 77;
 - (g) act as a participant unless accepted in terms of section 31 as a participant by a central securities depository;
 - (h) act as a clearing member unless authorised by an exchange or an independent clearing house, as the case may be;
 - (i) act as a nominee unless that person is approved under section 78; or
 - (j) perform the functions of or operate as a trade repository unless that person is licensed under section 57.

(2) An authorised user may only provide the securities services for which it is authorised by an exchange in terms of the exchange rules.

(3) A participant may only provide the securities services for which it is authorised by a central securities depository in terms of the central securities depository rules.

(4) A clearing member may only provide the clearing services or settlement services for which it is authorised by an exchange or independent clearing house, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.

(5) A person who is not—

- (a) licensed as an exchange, a central securities depository, a trade repository or a clearing house;
- (b) a participant;
- (c) an authorised user;
- (d) a clearing member;
- (e) an approved nominee; or
- (f) an issuer of listed securities, may not purport to be an exchange, central securities depository, trade repository, clearing house, participant, authorised user, clearing member, approved nominee or issuer of listed securities, as the case may be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and an exchange, a central securities depository, trade repository, clearing house, participant, authorised user or clearing member, as the case may be, where in fact no such connection exists.

CHAPTER II

POLICY, REGULATION AND SUPERVISION OF SECURITIES SERVICES

Registrar and Deputy Registrar of Securities Services

5. (1) The executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act are the Registrar and the Deputy Registrar of Securities Services, respectively.

(2) The registrar must perform the functions assigned to the registrar by or under this Act and must supervise and enforce compliance with this Act.

(3) In performing those functions the registrar—

- (a) must act in a manner which—
 - (i) is compatible with the objects of this Act;
 - (ii) is most appropriate for meeting those objects; and
- (b) must have regard to—
 - (i) international supervisory standards;
 - (ii) the principle that a restriction which is placed on a regulated person, or on the rendering of securities services, should be proportionate to the purpose for which it is intended;
 - (iii) the desirability of facilitating innovation in securities services;
 - (iv) the international nature of regulated persons and securities services;
 - (v) the principle that competition between regulated persons should not be impeded or distorted; and
 - (vi) the need to use resources in the most effective and cost-efficient way;
- (c) must take steps he or she considers necessary to protect investors in their dealings with securities services or regulated persons;
- (d) may by notice require any person, including a regulated person, to furnish the registrar, within a specified period, with specified information or documents;
- (e) may, despite the provisions of any law, furnish information acquired by him or her under this Act to any person charged with the performance of a function under any law, including a supervisory authority;
- (f) must act in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (g) must take reasonable steps to verify any documentation, information or report given to the registrar by a license applicant or regulated person, such information which, in the opinion of the registrar, is material to giving effect to the objects of this Act set out in section 2;
- (h) may impose conditions that are consistent with this Act in respect of any license, authorisation, approval, consent or permission granted by the registrar and may amend or withdraw such conditions;
- (i) may determine the form, manner and period, if not specified in this Act, in which or within which any documentation, information or report that a regulated person is

required to publish, disclose, provide or submit under this Act must be published, disclosed, provided or submitted;

- (j) may, on the written request of a regulated person, extend any period within which any documentation, information or report must be submitted to the registrar;
- (k) may issue guidelines on the application and interpretation of this Act;
- (l) may take any measures he or she considers necessary for the proper performance and exercise of his or her functions or duties, or for the implementation of this Act; and
- (m) must inform the Minister of any matter, that in the opinion of the registrar, may pose systemic risk to the financial markets.

(4) (a) The registrar may, in order to ensure the implementation and administration of this Act, compliance with this Act or that the objects of this Act are achieved, issue a directive to any person, including a regulated person, -

- (i) to implement specific practices, procedures or processes;
- (ii) to take specific actions or measures;
- (iii) to desist from undertaking specific practices, procedures, processes, actions or measures; or
- (iv) prohibiting certain practices, procedures, processes, actions or measures.

(b) A directive referred to in paragraph (a) may—

- (i) apply to any person, regulated person or securities services generally;
- (ii) apply to a specific person, regulated person or securities service; or
- (iii) be limited in its application to a particular kind or type of person, regulated person or securities service.

(c) A directive issued in terms of paragraph (a) takes effect on the date determined by the registrar in the directive, and may take effect immediately.

(d) The registrar may cancel or revoke any previously issued directives.

(e) The registrar must, where a directive applies to all persons, regulated persons or securities services generally, publish the directive on the official web site.

(5) (a) The registrar may—

- (i) liaise with any supervisory authority on matters of common interest;
- (ii) negotiate agreements with any supervisory authority to co-ordinate and harmonise the reporting and other obligations of regulated persons, an external

exchange, a trade repository, authorised user, external clearing house, clearing member, external central securities depository, participant or its subsidiary or holding company;

- (iii) assist any supervisory authority in regulating and enforcing any laws of that supervisory authority that are similar to this Act;
- (iv) participate in the proceedings of any supervisory authority; and
- (v) advise or receive advice from any supervisory authority.

(b) The registrar, without detracting from the generality of paragraph (a), may enter into a written agreement, including a memorandum of understanding, with a supervisory authority which agreement may include -

- (i) a provision that the registrar or supervisory authority may conduct an on-site examination or an inspection of a regulated person, an external exchange, authorised user, trade repository, external clearing house, clearing member, external central securities depository or participant;
- (ii) a provision that the registrar and supervisory authority may share information relating to the financial condition and performance of a regulated person, an external exchange, authorised user, trade repository, external clearing house, clearing member, external central securities depository or participant;
- (iii) a provision that the registrar or supervisory authority -
 - (aa) be informed of adverse assessments of qualitative aspects of the operations of a regulated person, an external exchange, authorised user, trade repository, external clearing house, clearing member, external central securities depository, participant or its subsidiary or holding company; or
 - (bb) may provide information regarding significant problems that are being experienced within a regulated person, an external exchange, trade repository, authorised user, external clearing house, clearing member, external central securities depository, participant or its subsidiary or holding company;
- (iv) such other matters as the registrar may deem relevant.

CHAPTER III EXCHANGES

Definitions

6. In this Chapter, unless the context indicates otherwise—

“**list**” means the list of securities referred to in section 11;

“**listing requirements**” means the requirements, determined by an exchange and approved by the registrar, that must be met before a security may be traded, or may continue to be traded, on that exchange.

Licensing of exchange

Application for exchange licence

7. (1) A person may apply to the registrar for an exchange licence in respect of one or more types of securities referred to in the definition of “securities” in section 1.

(2) An application for an exchange licence must—

- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements listed in section 8;
- (c) be accompanied by—
 - (i) a copy of the proposed exchange rules that must comply with section 17;
 - (ii) a copy of the proposed listing requirements that must comply with section 11;
 - (iii) the founding documents of the applicant;
 - (iv) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;
 - (v) the application fee prescribed by the registrar;
- (d) be supplemented by any additional information that the registrar may reasonably require.

(3) The registrar must publish a notice of an application for an exchange license in two national newspapers or on the official web site. The notice must state—

- (a) the name of the applicant;
- (b) where the proposed exchange rules may be inspected by members of the public; and

- (c) the period within which objections to the application may be lodged with the registrar.

General requirements applicable to applicant for exchange licence

- 8.** (1) Subject to subsection (2), an applicant for an exchange licence must—
- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of an exchange in terms of this Act;
 - (b) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;
 - (c) have made arrangements for the proper supervision of all transactions effected through the exchange so as to ensure compliance with the exchange rules;
 - (d) have the infrastructure necessary for the sustained operation of an exchange in terms of this Act;
 - (e) maintain security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange;
 - (f) have insurance, a guarantee or compensation fund or other warranty in place to enable it to provide compensation, subject to the exchange rules, to clients; and
 - (g) make provision, to the satisfaction of the registrar, for the clearing and settlement of transactions effected through the exchange and for the management of trade and settlement risk.

(2) The registrar may, with reference to the nature of an exchange, determine to what extent an applicant must comply with the requirements referred to in subsection (1).

(3) The registrar may –

- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
- (b) take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto; and
- (c) prescribe any of the requirements referred to in subsection (1) in greater detail.

Licensing of exchange

9. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 7(3) and subject to any conditions which the registrar may consider appropriate, grant an exchange license if—

- (a) the applicant complies with the relevant requirements of this Act; and
- (b) the objects of this Act referred to in section 2 will be furthered by the granting of an exchange license.

(2) The exchange licence must specify the functions that may be provided by the exchange, the securities that may be listed on that exchange, the main office of the exchange in the Republic and the places where the exchange may be operated, and stipulate that the exchange may not be operated at any other place without the prior written approval of the registrar.

(3) An exchange may at any time apply to the registrar for an amendment of the terms of its license and the conditions subject to which the license was granted.

(4) (a) The registrar must publish a notice of an application for an amendment of the terms of an exchange license and the conditions subject to which the license was granted in two national newspapers at the expense of the applicant or on the official web site.

(b) The notice must state—

- (i) the name of the applicant;
- (ii) the nature of the proposed amendments; and
- (iii) the period within which objections to the application may be lodged with the registrar.

(5) Chapter VI applies to an exchange as a self-regulatory organisation.

Functions of exchange

General functions of exchange and power of registrar to assume responsibility for functions

10. (1) An exchange—

- (a) must enforce the exchange rules and listing requirements;
- (b) must supervise compliance by its authorised users with the exchange rules;

- (c) must supervise compliance with this Act by its authorised users and issuers of securities listed on that exchange, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
- (d) must supervise compliance with the Financial Intelligence Centre Act by its authorised users listed as accountable institutions in Schedule 1 to that Act, report any non-compliance of these duties to the registrar and assist the registrar in enforcing that Act;
- (e) must as soon as it becomes aware thereof inform the registrar of any matter that may pose systemic risk to the financial markets;
- (f) may issue self-regulatory organisation directives;
- (g) may amend or suspend the exchange rules in terms of section 72, and may amend its listing requirements in terms of section 11(6)(a);
- (h)
 - (i) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;
 - (ii) may appoint an associated or independent clearing house licensed under Chapter V to perform clearing services or settlement services to the exchange;
 - (iii) must consult with an appointed associated clearing house when making or amending the exchange rules in accordance with which the associated clearing house will provide clearing services;
- (i) must supervise compliance by issuers of securities listed on that exchange with that exchange's listing requirements;
- (j) must conduct its business in a prudent manner and with due regard to the rights of authorised users and their clients; and
- (k) must perform its functions, referred to in the definition of exchange in section 1, in an effective and efficient manner;
- (l) must establish and maintain an effective, efficient and sustainable trading system and infrastructure;
- (m) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Act.

(2) (a) The registrar may assume responsibility for one or more of the functions referred to in subsection (1) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2.

- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)—
 - (i) inform the exchange of the registrar's intention to assume responsibility;
 - (ii) give the exchange the reasons for the intended assumption; and
 - (iii) call upon the exchange to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar.

Listing of securities

11. (1) An exchange must, to the extent applicable to the exchange in question, make listing requirements which prescribe—

- (a) the manner in which securities may be listed or removed from the list or in which the trading in listed securities may be suspended;
- (b) the requirements with which issuers of listed securities and of securities which are intended to be listed, as well as such issuers' agents, must comply;
- (c) the standards of conduct that issuers of listed securities and their directors, officers and agents must meet;
- (d) the standards of disclosure and corporate governance that issuers of listed securities must meet;
- (e) such details relating to the listed securities as may be necessary;
- (f) the steps that must be taken by the exchange, or a person to whom the exchange has delegated its disciplinary functions, for the investigation and discipline of an issuer, or director, officer or employee of an issuer, that contravenes or fails to comply with the listing requirements;
- (g) for any contravention of or failure to comply with the listing requirements, any one or more of the following penalties that may be imposed by the exchange or a person to whom the exchange has delegated its disciplinary functions:
 - (i) A reprimand;
 - (ii) a fine not exceeding R5 million;
 - (iii) disqualification, in the case of a natural person, from holding the office of a director or officer of a listed company for any period of time;
 - (iv) the payment of compensation to any person prejudiced by the contravention or failure.

(2) The listing requirements may prescribe that—

- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, other national newspapers, the web site of the exchange or through the news service of the exchange;
- (b) any person who contravenes or fails to comply with the listing requirements may be ordered to pay the costs incurred in an investigation or hearing;
- (c) an exchange may take into account at a hearing information obtained by the registrar in the course of an onsite visit or inspection conducted under section 101 or obtained by the directorate in an investigation under section 91 read with section 92.

(3) If a person fails to pay a fine or compensation referred to in subsection (1)(g), the exchange may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed or compensation payable, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the exchange for a liquid debt in the amount specified in the statement.

(4) The listing requirements must prescribe the purpose for which a fine referred to in subsection (1)(g) must be appropriated.

(5) Listing requirements and any other conditions of listing are binding on an issuer and an authorised user and their directors, officers, employees and agents.

(6) (a) An exchange must submit any proposed amendment of its listing requirements, after licensing, together with an explanation of the reasons for the proposed amendment to the registrar for approval.

(b) The registrar must as soon as possible after the receipt of a proposed amendment publish –

- (i) the amendment on the official web site; and
- (ii) a notice in the *Gazette* that the proposed amendment is available on the official web site,

calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the registrar within a period of 14 days from the date of publication of the notice.

(c) If there are no such objections or if the registrar has considered the objections after consultation with the exchange and has decided to approve or amend the proposed amendment, the registrar must publish -

- (i) the amendment and the date on which it comes into operation on the official web site; and
- (ii) a notice in the *Gazette*, which notice must state –
 - (aa) that the amendment of the listing requirements has been approved;
 - (bb) that the listing requirements as amended are available on the official web site and the web site of the exchange;
 - (cc) the date on which the amendment of the listing requirements will come into operation.

(7) (a) The registrar, by notice in the *Gazette* and on the official web site, may amend the listing requirements of an exchange —

- (i) if there is an urgent imperative under exceptional circumstances;
- (ii) if it is necessary to achieve the objects of this Act referred to in section 2; and
- (iii) after consultation with the exchange concerned.

(b) Subsection (6) does not apply to an amendment by the registrar under this subsection.

(8) An exchange—

- (a) must keep a list of the securities which may be traded on the exchange;
- (b) must receive and consider, and may grant, defer or refuse, subject to its listing requirements, applications for the inclusion of securities in the list;
- (c) may, when granting an application referred to in paragraph (b), in consultation with the registrar, delay compliance by an issuer of securities with a specific provision of the listing requirements for a limited period and on conditions determined in the approval, if –
 - (i) practicalities impede the strict application of a specific provision; or
 - (ii) the delay is justified in furtherance of the national government's objective to encourage participation in the financial markets;
- (d) may, when granting an application referred to in paragraph (b) or at any time thereafter, in consultation with the registrar, impose conditions in addition to those provided for in the listing requirements, on an issuer of securities, if—

- (i) necessary or desirable to facilitate the sustainability of that issuer; or
 - (ii) justifiable in furtherance of the national government's objective to encourage participation in the financial markets;
 - (e) may include securities issued by it in its own list subject to the approval of and the conditions prescribed by the registrar; and
 - (f) may, despite any arrangement entered into before or after the commencement of this Act according to which listed securities may be bought and sold on the exchange, charge the fees provided for in the listing requirements or the exchange rules.
- (9) An exchange must, before refusing an application to include securities in the list—
- (a) inform the issuer of its intention to refuse the application;
 - (b) give the issuer the reasons for the intended refusal; and
 - (c) call upon the issuer to show cause within a period specified by the exchange why the application should not be refused.

Removal of listing and suspension of trading

12. (1) An exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list, even to the extent that a removal may have the effect that an entire board or substantial portion of the board on the exchange is closed, or suspend the trading in listed securities, if it will further one or more of the objects of this Act referred to in section 2.

(2) An exchange must, subject to subsection (3) and before a removal or suspension referred to in subsection (1)—

- (a) inform the issuer of its intention to remove or suspend;
- (b) give the issuer the reasons for the intended removal or suspension; and
- (c) call upon the issuer to show cause, within a period specified by the exchange, why the removal or suspension should not be effected.

(3) If the listing requirements, any conditions imposed under section 11(8)(c) or (d) or the exchange rules are not complied with or if a circumstance arises which the exchange rules or the listing requirements envisage as a circumstance justifying the immediate suspension of trading, an exchange may, subject to subsection (1), order an immediate

suspension referred to in that subsection for a period not exceeding 30 days, which period may be extended for further periods of 30 days.

(4) If the trading of listed securities has been suspended in terms of this section, an exchange may, despite subsection (1) and (3), permit authorised users to buy and sell those securities for the sole purpose of fulfilling their obligations entered into in relation to those securities before the suspension.

(5) (a) If an issuer requests an exchange to remove its securities from the list but the exchange considers the securities to be eligible for continued inclusion in the list, the removal must be approved by the holders of those securities in a manner specified by the exchange and the exchange must be satisfied on reasonable grounds that the interests of minority holders of the securities have been considered.

(b) An issuer must provide reasons for the request contemplated in paragraph (a).

(6) (a) If an exchange refuses an application for the inclusion of securities in the list under section 11(8)(b), or under subsection (1) removes securities from the list, the exchange concerned must immediately notify every other exchange in the Republic of the reasons for and date of the refusal or removal.

(b) If the refusal to list securities was due to any fraud or other crime committed by the issuer, or any material misstatement of its financial position or non-disclosure of any material fact, or if the removal of securities was due to a failure to comply with the listing requirements of the exchange, no other exchange in the Republic may, for a period of six months from the date referred to in paragraph (a), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such securities, unless the refusal or removal is withdrawn by the first exchange or set aside on appeal by the appeal board in terms of section 111.

(c) If an exchange withdraws a refusal or removal before the expiry of the six months, it must notify the issuer and every other exchange in the Republic.

Application of amended listing requirements to previously listed securities

13. (1) Amended listing requirements may be applied by the exchange to securities listed before the amendment of the listing requirements, by notice in writing to the issuer of such listed securities.

(2) Listing requirements so applied take effect from a date determined by the exchange, which date must not be earlier, except when special circumstances justify an earlier date, than one month after the date on which the exchange so notifies the issuer, but the exchange may postpone the former date on written request by the issuer.

(3) If an exchange refuses a request for a postponement in terms of subsection (2) the issuer concerned may make representations in writing to the registrar, and if the request for a postponement is reasonable, the registrar may, after consultation with the exchange, postpone the date on which the listing requirements take effect by not more than three months and must inform the exchange accordingly in writing.

Disclosure of information by issuers of listed securities

14. (1) (a) An exchange may require an issuer of listed securities to disclose to it any information at the issuer's disposal about those securities, or about the affairs of that issuer, if such disclosure is necessary to achieve one or more of the objects of this Act referred to in section 2.

(b) An exchange may require the issuer to disclose that information to the registered holders of the securities, within a period specified by the exchange.

(c) If the issuer refuses to disclose the information to the exchange or the registered holders of the securities, the exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the exchange.

(2) When an issuer discloses information in terms of this section to the registered holders of securities that may influence the price of those securities, the issuer must at the same time make the information available to the public.

Maintenance of insurance, guarantee, compensation fund or other warranty

15. An exchange may impose a levy on any person involved in a transaction in listed securities effected through the exchange for the purpose of maintaining the insurance, guarantee or compensation fund or other warranty contemplated in section 8(1)(f).

Funds of exchange

16. An exchange may require its authorised users and their clients to contribute towards the funds of the exchange for the purpose of carrying on the business of the exchange.

Exchange rules

Requirements with which exchange rules must comply

- 17.** (1) The exchange rules must be consistent with this Act.
- (2) The exchange rules must provide—
- (a) for the criteria for authorisation and exclusion of authorised users and, in particular, that no person may be admitted as an authorised user or allowed to continue such person's business as an authorised user unless the person—
- (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
 - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the exchange rules;
- (b) for the authorisation and criteria for authorisation of the securities services that authorised users may provide, and if –
- (i) there are different categories of –
 - (aa) authorised users, for the authorisation and criteria for authorisation of the securities services that each category of authorised user may provide;
 - (bb) securities listed on an exchange, for the authorisation and criteria for authorisation of the categories in respect of which an authorised user may provide one or more securities services;
 - (ii) the exchange authorises its authorised users to perform securities services in respect of securities not listed on the exchange, for the authorisation and criteria for authorisation of the categories of such securities in respect of which an authorised user may provide one or more securities services;
- (c) (i) for the capital adequacy, guarantee and risk management requirements with which an authorised user must comply;

- (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of authorised users or different activities of an authorised user's business;
- (d) for an efficient, honest, transparent and fair manner in which and terms and conditions subject to which transactions in listed securities must be effected by authorised users, whether for own account or on behalf of other persons;
- (e) for the manner in which transactions in listed securities must be cleared and settled;
- (f) for the clearing and settlement of transactions if the exchange has not appointed a licensed clearing house, in compliance with requirements prescribed by the registrar for the provision of clearing services or settlement services under section 48(1)(b);
- (g) for the regulation of transactions in listed securities entered into as a result of any first communication made to a person without an express or tacit invitation from such person;
- (h) for the circumstances in which a transaction in listed securities may be declared void by the exchange;
- (i) that no authorised user may engage with a person whom the authorised user believes or suspects requires approval as a nominee under section 78 of this Act or approval to undertake management of securities in terms of any law without having taken reasonable measures to ascertain that such person has the necessary approval;
- (j) for the approval by the exchange of a nominee of an authorised user which nominee holds securities in a securities account or central securities account as defined in Chapter IV;
- (k) for surveillance of any matter relevant for the purposes of this Act, the exchange rules and the self-regulatory organisation directives;
- (l) for the conditions subject to which an officer or employee of an authorised user may, in relation to the buying and selling of listed securities, advise on or conclude any transaction on behalf of an authorised user in the course of that authorised user's business and for the circumstances in which an officer or employee of an authorised user may be denied access to the exchange;
- (m) for the circumstances in which trading in any listed security may be suspended or halted;

- (n) for the manner in which an authorised user is required to conduct the securities services for which it is authorised generally;
- (o) for the operation by an exchange or authorised user of a trust account contemplated in section 21;
- (p) for the manner in which authorised users must comply with section 22;
- (q) for the—
 - (i) recording of transactions effected through the exchange;
 - (ii) monitoring of compliance by authorised users with the exchange rules and self-regulatory organisation directives; and
 - (iii) surveillance of any matter relevant for the purposes of this Act, the exchange rules and the self-regulatory organisation directives;
- (r) for the circumstances and manner in which an authorised user may advertise or canvass for business;
- (s) for the equitable and expeditious resolution of disputes between authorised users in respect of transactions in listed securities and between authorised users and their clients in respect of securities services provided to those clients;
- (t) for the manner in which complaints against an authorised user or officer or employee of an authorised user must be investigated;
- (u) for the steps to be taken by the exchange, or a person to whom the exchange has delegated its investigative and disciplinary functions, to investigate and discipline an authorised user or officer or employee of an authorised user who contravenes or fails to comply with the exchange rules, the interim exchange rules or the self-regulatory organisation directives and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;
- (v) for the manner in which an authorised user, officer or employee of an authorised user who is believed to—
 - (i) be able to furnish any information on the subject of any investigation referred to in paragraphs (t) and (u); or
 - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject,

may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;

- (w) in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 8(1)(f), for—
 - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
 - (ii) the amount of the levy imposed by the exchange for this purpose;
 - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
 - (iv) restrictions on the amount of any claim;
 - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
 - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;
- (x) that authorised users must disclose to their clients the fees for their services;
- (y) that authorised users may charge a fee for different categories of transactions;
- (z) for the purposes for which an exchange may issue self-regulatory organisation directives;
- (aa) for supervisory measures that enable the exchange to comply with sections 10(1)(c) and (d);
- (bb) for the authority of, and the manner in, and circumstances under which –
 - (i) an exchange may limit the revocation of any settlement instruction given by an authorised user or its client; or
 - (ii) an authorised user or its client may revoke any settlement instruction on the commencement of insolvency proceedings, but prior to settlement; and
- (cc) for the administration of securities held for own account or on behalf of a client by an authorised user, including the settlement of unsettled transactions, under insolvency proceedings in respect of that authorised user.

(3) (a) The exchange rules may provide for the approval of external authorised users to be authorised users of the exchange.

(b) If the exchange rules provide for this, the rules must provide for the identification of those securities services that will be authorised and regulated by the exchange in terms of the exchange rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external authorised user is authorised and supervised.

(4) The exchange rules made under this section apply to an authorised user only to the extent that those rules apply to –

- (a) all authorised users generally; and
- (b) the securities service or services for which that authorised user has been authorised by the exchange.

(5) An exchange may, with the approval of the registrar, make exchange rules on matters additional to those listed in subsection (2).

(6) Subject to section 3(5), an exchange rule made under this section is binding on the exchange, its authorised users, issuers of securities listed on that exchange and on their officers and employees, and on clients of its authorised users.

Authorised users

Restriction on borrowing against and repledging of securities belonging to other persons

18. No authorised user may—

- (a) borrow against pledged listed securities an amount in excess of the outstanding balance of any amount which the authorised user may have lent the pledgor against the pledged securities;
- (b) repledge listed securities without the written consent of the pledgor.

Marking of or recording details of securities

19. When a document of title relating to listed securities comes into the possession of an authorised user, the authorised user must, as soon as possible—

- (a) mark it; or
- (b) record and store the necessary details,

in a manner which will render it possible at any time thereafter readily to establish the identity of the owner of those securities.

Restriction on alienation of securities

20. Subject to the exchange rules, an authorised user may only alienate listed securities deposited with the authorised user if the person who deposited them has authorised such alienation in writing.

Segregation of funds of authorised users and other persons

21. (1) (a) Every authorised user must open and maintain a trust account at a bank designated for client funds, or may use such an account opened and maintained by an exchange, into which any instruments of payment or cash received from a client must be deposited on the day of receipt: Provided that any deposit that is made by a client directly into an authorised user's own account, or any deposit that is received after banking hours, must be transferred into such trust account by the start of business on the next day.

(b) A trust account referred to in this subsection may contain only funds of clients and not those of an exchange or authorised user.

(2) Funds received from a client need not be deposited into a trust account if payment—

(a) is made to the authorised user by a buyer of listed securities—

(i) against delivery of such securities to the buyer; or

(ii) against such securities being marked or recorded as the property of the buyer;

or

(b) is preceded by a payment made by the authorised user to the seller of listed securities against delivery of such securities to the authorised user; or

(c) is made to pay a debt due to the authorised user: Provided that a debt arising from the purchase of listed securities which have not been marked or recorded as the property of the buyer of the securities may not be regarded as a debt due for this purpose; or

(d) is made in terms of any other law or exchange rule which specifically provides for such payment to be deposited into some other account.

(3) Funds held in a trust account and any funds which have not been deposited into a trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, are considered to be “trust property” as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds, subject to this section.

(4) Funds deposited into a trust account may only be withdrawn by an authorised user for the purpose of making payment—

(a) to the person entitled to the payment; or

(b) in terms of any other law or the exchange rules:

Provided that if, after the withdrawal, any deposited cheque, draft or other instrument against which the withdrawal was made is not subsequently honoured, the authorised user must pay the shortfall arising from the default into the trust account immediately.

(5) All bank charges accruing in respect of a trust account are for the account of the authorised user except that bank charges specifically relating to a deposit or withdrawal of the funds of a client are for that client’s own account.

(6) Any interest accruing to the funds in a trust account is payable to the owner of the funds after any fees owing to the authorised user or exchange have been deducted.

(7) Any excess remaining in a trust account after payment of or provision for all claims of persons whose funds have or should have been deposited in the trust account, is not trust property as contemplated in subsection (3).

(8) The division of the High Court of South Africa having jurisdiction over an authorised user may, on the application of an exchange, the registrar or any other person having a claim against a trust account of the authorised user, on good cause shown, prohibit the authorised user from operating the trust account, and may appoint a curator to control and administer the trust account with such rights, powers and duties in relation thereto as the court may consider necessary.

Segregation of securities of authorised users and other persons

22. (1) Every authorised user must deposit securities held by it for its own account and for or on behalf of its clients in separate securities accounts and must ensure that securities held for or on behalf of its clients are identifiable as belonging to a specific person.

(2) Every authorised user must balance and reconcile the aggregate number of each security reflected in securities accounts maintained by the authorised user, and held by a participant, a central securities depository or another third party on behalf of the authorised user and its clients, with the number of securities held by the participant, central securities depository or other third party, on a daily basis unless otherwise provided for in the exchange rules.

(3) Any securities held by an authorised user for or on behalf of another person must be identifiable as belonging to a specific person and are considered to be trust property as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those securities.

General provisions in relation to listed securities

Use of designation “stockbroker” and related designations

23. (1) A stockbroker may use the designation “stockbroker”, “stockbroker (South Africa)” or “stockbroker (SA)”.

(2) A person who is not a stockbroker may not—

- (a) purport to be a stockbroker; or
- (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act implying, or tending to induce the belief, that such person is a stockbroker.

(3) A person to whom the rules of an external exchange apply, and whose business is substantially similar to that of a stockbroker, may use the designation “stockbroker” if the country in which the use of the designation is authorised is indicated after the designation.

Buying and selling listed securities

24. A person may only carry on the business of buying or selling listed securities if that person—

- (a) is an authorised user and acts in compliance with the relevant exchange rules;
- (b) effects such buying or selling through an authorised user in compliance with the relevant exchange rules;

- (c) is not an authorised user, but is a financial institution transacting as principal with another financial institution also transacting as principal, subject to section 25; or
- (d) is a person who, subject to any condition that the registrar may prescribe, buys or sells listed securities in order to—
 - (i) give effect to a reconstruction of a company or group of companies by the issue or reallocation of shares, or a takeover by one company of another or an amalgamation of two or more companies; or
 - (ii) effect a change in the control over management or the business of a company.

Reporting of transactions in listed securities

25. (1) Any transaction in listed securities resulting in a change of beneficial ownership of those securities that is concluded outside of an exchange by –

- (a) a financial institution referred to in section 24(c);
- (b) a person referred to in section 24(d),

must be reported by that financial institution or person, as the case may be, to the registrar.

(2) The registrar may, in respect of a report referred to in subsection (1), prescribe—

- (a) the information required in respect of any transaction; and
- (b) the manner in and time within which reports are to be rendered.

(3) (a) The registrar must disclose information about a transaction reported in terms of subsection (1) to the exchange on which the securities are listed.

(b) The registrar may disclose information about a transaction reported in terms of subsection (1) to the public, if the registrar is satisfied that such disclosure will enhance the objects of this Act referred to in section 2 or regulatory effectiveness and transparency.

(4) The exchange referred to in subsection (3) may publish any information disclosed to it in terms of that subsection.

CHAPTER IV

CUSTODY AND ADMINISTRATION OF SECURITIES

Definitions

26. In this Chapter, unless the context indicates otherwise—

“central securities account” means an account that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities, kept by a central securities depository for -

- (a) a participant;
- (b) an external central securities depository; or
- (c) any other persons as determined in the depository rules.

“certificated securities” means securities evidenced by –

- (a) in relation to securities issued by an issuer other than a public company, a certificate or written instrument; or
- (b) in relation to securities issued by a public company, a certificate;

“deposit” means a deposit of securities and includes a deposit by means of an entry in a securities account or a central securities account;

“entry” means an electronic recording of any issuance, deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other lawful instruction in respect of securities or an interest in securities;

“securities” for purposes of this chapter, unless specifically provided for otherwise, means uncertificated securities, including money market securities; and

“withdrawal” means a withdrawal of securities and includes a withdrawal by means of an entry in a securities account or a central securities account.

Licensing of central securities depository

Application for central securities depository license

- 27.** (1) A person may apply to the registrar for a central securities depository license.
- (2) Such an application must—
- (a) be made in the manner and contain the information prescribed by the registrar;
 - (b) show that the applicant complies with the requirements referred to in section 28;
 - (c) be accompanied by—
 - (i) a copy of the proposed depository rules that must comply with section 35;
 - (ii) the founding documents of the applicant;

- (iii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;
- (iv) the application fee prescribed by the registrar;
- (d) be supplemented by any additional information that the registrar may reasonably require.

(3) The registrar must publish a notice of an application for a central securities depository license in two national newspapers, at the expense of the applicant, or on the official web site. The notice must state—

- (a) the name of the applicant;
- (b) where the proposed depository rules may be inspected by members of the public; and
- (c) the period within which objections to the application may be lodged with the registrar.

General requirements applicable to applicant for central securities depository license

28. (1) An applicant for a central securities depository license must—

- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of a central securities depository in terms of this Act;
- (b) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;
- (c) have made arrangements for the proper supervision of compliance by participants with the depository rules;
- (d) as soon as it becomes aware thereof inform the registrar of any matter that it reasonably believes may pose systemic risk to, the financial markets.
- (e) maintain security and back-up procedures to ensure the integrity of its records.

(2) The registrar may –

- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
- (b) take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto; and

(c) prescribe any of the requirements referred to in subsection (1) in greater detail.

Licensing of central securities depository

29. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 27(3) and subject to the conditions which the registrar may consider appropriate, grant a central securities depository license if—

- (a) the applicant complies with the relevant requirements of this Act; and
- (b) the objects of this Act referred to in section 2 will be furthered by the granting of such a license.

(2) The license must specify the securities services that may be provided by the central securities depository and the securities in respect of which those securities services may be provided by the central securities depository, the main office of the central securities depository in the Republic and the places where the central securities depository may be operated, and that the central securities depository may not be operated at any other place without the prior written approval of the registrar.

(3) A central securities depository may at any time apply to the registrar for an amendment of the terms of its license and the conditions subject to which its license was granted.

(4) (a) The registrar must publish a notice of an application for an amendment of the terms of a central securities depository license and the conditions subject to which the license was granted in two national newspapers or on the official web site at the expense of the applicant.

- (b) The notice must state—
- (i) the name of the applicant;
 - (ii) the nature of the proposed amendments; and
 - (iii) the period within which objections to the application may be lodged with the registrar.

(5) Chapter VI applies to a central securities depository as a self-regulatory organisation.

Functions of central securities depository

Functions of central securities depository and power of registrar to assume responsibility for functions

- 30.** (1) A central securities depository—
- (a) must enforce the depository rules;
 - (b) may amend or suspend the depository rules in terms of section 72;
 - (c) must supervise compliance by participants with the depository rules;
 - (d) must supervise compliance with this Act by participants, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
 - (e) may issue self-regulatory organisation directives;
 - (f) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities account;
 - (g) must maintain a central securities account with due regard to the interests of the participant and its clients or an external central securities depository;
 - (h) must notify a participant or external central securities depository in writing or as otherwise agreed to by the participant or external central securities depository, as the case may be, of an entry made in the central securities account of that participant, a client of that participant or that external central securities depository, as the case may be;
 - (i) must balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer—
 - (i) in respect of certificated securities of the same kind, not less than once every six months;
 - (ii) in respect of uncertificated securities of the same kind—
 - (aa) if that aggregate has not changed, not less than once every month;
 - (bb) if that aggregate has changed, on the business day after such change;
 - (j) must administer and maintain a record of uncertificated securities deposited with it;
 - (k) is entitled to access to the records of uncertificated securities administered and maintained by its participants;
 - (l) may, if the central securities depository is licensed as a clearing house under Chapter V, provide clearing services in accordance with its clearing house license;

- (m) must disclose to persons for whom central securities accounts are kept, participants and issuers the fees and charges required by it for its services;
- (n) must on request disclose to—
 - (i) the registrar information about the securities held in a central securities account;
 - (ii) an issuer information about the securities issued by that issuer and held in central securities accounts;
- (o) must, if a participant ceases to be a participant, notify the registrar thereof as soon as possible;
- (p) may enter into an agreement with an external central securities depository for the performance of any function referred to in this subsection for or by that external central securities depository;
- (q) must conduct its business in a prudent manner and with due regard to the rights of participants, clients and issuers;
- (r) may perform securities services to the extent necessary to perform the functions referred to in this subsection;
- (s) must perform the securities services for which it is licensed in an effective and efficient manner;
- (t) must establish and maintain effective, efficient and sustainable infrastructure to perform the securities services for which it is licensed;
- (u) may do all other things that are necessary for, incidental or conducive to the proper operation of a central securities depository and that are not inconsistent with this Act.

(2) (a) The registrar may assume responsibility for one or more of the functions referred to in subsection (1) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2.

- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)—
 - (i) inform the central securities depository of the registrar's intention to assume responsibility;
 - (ii) give the central securities depository the reasons for the intended assumption;and

- (iii) call upon the central securities depository to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar.

Participant

Acceptance of participant

31. A central securities depository may accept, in terms of the depository rules, a person that holds securities or an interest in securities, as a participant in that central securities depository.

Functions of participant

Functions of participant

32. A participant—

- (a) must, if securities are deposited with the participant, deposit them with a central securities depository;
- (b) must maintain a securities account for a client in respect of securities deposited;
- (c) must reflect the number or nominal value of securities of the same kind deposited in a securities account;
- (d) must administer and maintain a record of all securities deposited with it in accordance with the depository rules;
- (e) must record all securities of the same kind deposited with it in an uncertificated securities register if so required by the depository rules;
- (f) must disclose to clients and issuers the fees and charges required by it for its services;
- (g) must notify a client in writing or as otherwise agreed to by the client of an entry made in the client's securities account;
- (h) must on request disclose to—
 - (i) the registrar information about the securities recorded in a securities account;
 - (ii) an issuer information about the securities issued by that issuer and recorded in a securities account in accordance with the depository rules;

- (i) must have a central securities account with a central securities depository, and may—
 - (i) deposit securities with or withdraw securities from that central securities depository; or
 - (ii) transfer, attach, pledge, cede or give effect to any other lawful instruction in respect of a security or an interest in securities through that central securities depository;
- (j) must exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client;
- (k) must balance and reconcile the aggregate of the securities accounts with the central securities accounts on a daily basis;
- (l) must deposit securities held by it for its own account and for or on behalf of its clients in separate securities accounts and must ensure that securities held for or on behalf of its clients are identifiable as belonging to a specific person;
- (m) must, on a daily basis ensure that its securities accounts and central securities accounts do not show a debit balance; and
- (n) may perform securities services to the extent necessary to perform the functions referred to in this subsection.

Uncertificated securities

Uncertificated securities

- 33.** (1) Certificated securities may be converted to uncertificated securities and an issuer must issue uncertificated securities despite any contrary provision in—
- (a) any other law;
 - (b) the common law;
 - (c) an agreement;
 - (d) the articles of association of an issuer;
 - (e) a prospectus; or
 - (f) any other conditions applicable to the issuing of securities.

(2) An issuer and a central securities depository and its participants must make arrangements in accordance with depository rules for uncertificated securities to be evidenced by way of entry.

(3) An issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

Functions of issuer of uncertificated securities

34. An issuer of uncertificated securities must—

- (a) record in its register the number or nominal value of each kind of uncertificated securities issued by it in accordance with section 49(2) of the Companies Act;
- (b) maintain separate records for each central securities depository holding uncertificated securities unless all those securities are held by one central securities depository;
- (c) if required by section 35(1), record the name of that central securities depository or its wholly owned subsidiary as the registered holder of the uncertificated securities;
- (d) balance and reconcile with a central securities depository its securities register in respect of securities of the same kind—
 - (i) if that register has not changed, not less than once every month;
 - (ii) if the register has changed, on the business day after such change; and
- (e) where applicable, comply with sections 52 to 55 of the Companies Act.

Depository rules

Requirements with which depository rules must comply

35. (1) The depository rules must be consistent with this Act and sections 52 to 55 of the Companies Act.

(2) The depository rules—

- (a) must provide for equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interests of issuers and clients;
- (b) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;

- (c) must provide for adequate steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the depository rules, the interim depository rules or the self-regulatory organisation directives and must require a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;
- (d) must provide for the manner in which a participant who is believed to—
 - (i) be able to furnish any information on the subject of any investigation; or
 - (ii) have in that participant's possession or under that participant's control any document, which has bearing upon that subject,may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (e) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of—
 - (i) the participant's actual and potential liabilities;
 - (ii) conditional and contingent liabilities to the central securities depository; and
 - (iii) liabilities which existed before or accrue after a person has ceased to be a participant;
- (f) must provide for requirements in respect of corporate actions, including, but not limited to, that—
 - (i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to participants or clients and, if applicable, by participants to clients;
 - (ii) notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to participants or clients; and
 - (iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities account;
- (g) must require that where a participant agrees, or is otherwise required, to—

- (i) receive monies in respect of securities on behalf of clients from a central securities depository or issuer, such monies are paid to the clients concerned; and
 - (ii) give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;
- (h) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities account or central securities account, deliver a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities account or central securities account, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned;
- (i) must provide for requirements in respect of same day debit balances and prohibit debit balances at the end of a day in the securities accounts of a participant or nominee of a participant and in a participant's central securities account;
- (j) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
- (k) must provide for—
 - (i) the duty of persons for whom securities accounts or central securities accounts are kept to disclose to a participant or central securities depository, as the case may be, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited with the participant or central securities depository, as the case may be; and
 - (ii) the manner, form and frequency of such disclosure;
- (l) must provide for the manner in which a central securities depository or a participant must keep records of clients, or owners or beneficial owners of securities and limited or other interests in securities;
- (m) must provide for the manner in which participants must give instructions to a central securities depository;

- (n) if the central securities depository is appointed as a clearing house by an exchange, may regulate, consistent with the exchange rules, the clearing and settlement functions to be performed by participants in the clearing and settlement process;
- (o) must provide for the purposes for which a central securities depository may issue self-regulatory organisation directives;
- (p) must provide for the manner in which a participant must hold and administer securities;
- (q) must provide for the approval by the central securities depository of a nominee of a participant;
- (r) must provide that no participant may engage with a person whom the participant believes or suspects requires approval as a nominee under section 78 of this Act without having taken reasonable measures to ascertain that such person has the necessary approval;
- (s) for supervisory measures that enable the central securities depository to comply with section 30(1)(c) and 30(1)(d);
- (t) must provide for the manner in which complaints against a participant or officer or employee of a participant must be addressed;
- (u) must provide for the authority of, and the manner in and circumstances under which –
 - (i) a central securities depository may limit the revocation of any settlement instruction given by a participant or client; or
 - (ii) a central securities depository, participant or client may revoke any settlement instruction on the commencement of insolvency proceedings, but prior to settlement;
- (v) must provide for the administration of securities held for own account or on behalf of a client by a participant, including the settlement of unsettled transactions, under insolvency proceedings in respect of that participant; and
- (w) must provide, where a central securities depository has entered into an agreement with an external central securities depository referred to in section 30(1)(h), for –
 - (i) the identification of the supervisory authority that supervises that external central securities depository;

- (ii) the identification of the relevant laws that apply to each aspect of the relationship, including, but not limited to the laws regulating effectiveness against third parties and insolvency; and
- (iii) the effective operation of the relationship.

(3) (a) The depository rules may, with the approval of the registrar and subject to conditions that may be prescribed by the registrar, provide for the approval of external participants to be participants of the central securities depository.

(b) If the depository rules provide for this, the rules must provide for the identification of-

- (i) external participants that may be participants of the central securities depository; and
- (ii) those securities services that will be authorised and regulated by the central securities depository in terms of the depository rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external participant is authorised and supervised.

(4) A central securities depository may, with the approval of the registrar, make depository rules on matters additional to those listed in subsection (2).

(5) Subject to section 3(5), a depository rule made under this section is binding on the central securities depository, its participants, external central securities depositories, issuers of securities deposited with that central securities depository or any other person that has a central securities account with the central securities depository, and on their officers and employees, and clients of participants.

General provisions relating to custody and administration of securities

Registration of securities

36. (1) The registrar may direct that any securities held by a central securities depository must, unless they are bearer instruments, money market securities or recorded in a uncertificated securities register in accordance with section 50 of the Companies Act and the depository rules, be registered in the name of that central securities depository or its wholly owned subsidiary, as defined in section 1 of the Companies Act and approved by the registrar.

(2) (a) No central securities depository or participant may become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of—

- (i) a deposit of securities; or
- (ii) the registration in its name of—
 - (aa) securities;
 - (bb) limited rights in securities;
 - (cc) other rights in securities;
 - (dd) benefits in respect of securities; or
 - (ee) benefits accruing to securities.

(b) Paragraph (a) also applies to a wholly owned subsidiary as defined in section 1 of the Companies Act of a central securities depository or participant.

Ownership of securities

37. (1) Where securities of any kind are deposited with a participant or with a central securities depository, or accrue to the owner of securities held by a participant in a securities account or by a central securities depository in a central securities account, the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities account or central securities account, as the case may be.

(2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner.

(3) The interest of a co-owner client or participant in all the securities in a securities account or central securities account, as the case may be, must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner, client or participant and accruing to such securities, bears from time to time to the total number or nominal value of all securities of that kind held by the participant or central securities depository as the case may be.

(4) A written statement issued by or on behalf of a participant in respect of an owner of securities or of a client or by or on behalf of a central securities depository in respect of a

participant as the case may be, and specifying the interest of that owner, client or participant, is *prima facie* evidence of the title or interest of that person in such securities.

Transfer of uncertificated securities or an interest in uncertificated securities

38. (1) The transfer of uncertificated securities or of an interest in uncertificated securities held by a central securities depository or participant must be effected in the manner provided for in section 53 of the Companies Act by entry in the central securities account or securities account of the transferor and the transferee kept by the central securities depository or the participant, as the case may be.

(2) A central securities depository or participant, authorised user and nominee, as the case may be, must act in accordance with this section and the rules of the central securities depository to give effect to a transfer referred to in subsection (1).

(3) A transfer effected in accordance with subsection (1) is effective against third parties.

Pledge, or cession of securities to secure debt

39. (1) (a) A pledge or cession to secure a debt, in respect of securities or an interest in securities held by a central securities depository, participant, authorised user or nominee, as the case may be, may be effected by entry in the central securities account or the securities account, as the case may be, of—

- (i) the pledgor in favour of the pledgee specifying the name of the pledgee, the interest in the securities pledged and the date; or
- (ii) the cedent in favour of the cessionary specifying the name of the cessionary, the interest in the securities ceded and the date,

as the case may be.

(b) Securities or an interest in securities referred to in paragraph (a) may not be transferred without the written consent of the pledgee or cessionary.

(c) The pledgee or cessionary of securities or interest in securities referred to in paragraph (a) is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt.

(d) A pledge or cession to secure a debt effected in accordance with paragraph (a) is effective against third parties.

(2) Subsection (1) also applies, with the changes required by the context, to the pledge and cession to secure a debt by one participant to another of securities or an interest in securities held by a central securities depository in a central securities account.

(3) Section 53(4), (5) and (6) of the Companies Act, with the changes required by the context, applies to a pledge or cession referred to in subsection (1).

(4) This section does not apply to an out-and-out cession in respect of securities or an interest in securities and such a cession must be effected in accordance with section 38.

Ranking of interests in securities

40. (1) Despite any other law, if more than one interest or limited interest is entered against the same securities, priority must be granted to the interest or limited interest entered first in time in the securities account or central securities account, as the case may be.

(2) (a) Despite subsection (1), the order of priority in any interest or limited interest may be varied by agreement between the parties.

(b) Any variation referred to in paragraph (a), is not effective against third parties.

Withdrawal and delivery of securities

41. (1) Securities issued by a public company under the Companies Act may be withdrawn from the uncertificated securities register and a certificate in respect of the withdrawn securities must be issued in accordance with section 54 of the Companies Act, if such owner or participant has a sufficient unencumbered credit balance of those securities in that owner's securities account or in that participant's central securities account, as the case may be.

(2) The owner of an interest in securities issued by an issuer other than a public company under the Companies Act, held by a participant in a securities account or a participant holding an interest in securities in a central securities account, as the case may be, is at all times entitled, on written request for withdrawal, to delivery, within a reasonable time, by the participant or central securities depository concerned, of a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value

and of the same kind as the interest in securities held on such owner or participant's behalf, as long as such owner or participant has a sufficient unencumbered credit balance of those securities in that owner's securities account or in that participant's central securities account, as the case may be.

Records

42. If the records of a central securities depository are inconsistent with those of a participant regarding securities deposited with the central securities depository by the participant, the records of the central securities depository are deemed to be correct until the contrary is proved.

Warranty and indemnity

43. (1) Every person, whether a client or participant, who deposits securities with a participant or central securities depository, as the case may be, is deemed to warrant that such person is entitled to deposit the securities deposited by that person and that any document or instruction relating to such securities and lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by the participant or central securities depository arising out of such deposit or breach of warranty.

(2) A central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).

(3) Every person, whether a client, participant or central securities depository must provide the indemnities referred to in section 55 of the Companies Act.

Relationship of trust

44. A central securities depository, in performing its supervisory functions under this Act, is not obliged to recognise any relationship of trust or agency of its participants in respect of securities.

Attachment

- 45.** (1) The attachment of securities or an interest in securities is only complete when—
- (a) notice of the attachment has been given in writing by the sheriff to the person that holds the security on behalf of a client; and
 - (b) the central securities depository, participant or authorised user, as the case may be, has made an entry of the attachment on the central securities account or securities account, as the case may be.

(2) A central securities depository, participant or authorised user, as the case may be, must ensure that only the securities or interest in securities of the person against whom the warrant of execution was granted are attached.

Effectiveness in insolvency

46. Any transfer or other interest in securities that has become effective against third parties is effective against the insolvency administrator and creditors in any insolvency proceeding.

CHAPTER V CLEARING HOUSE

Licensing of clearing house

Application for clearing house license

47. (1) A person may apply to the registrar for an associated clearing house license or an independent clearing house license.

(2) An application for a license must —

- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements listed in section 48;
- (c) be accompanied by—
 - (i) the founding documents of the applicant;
 - (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;
 - (iii) the application fee prescribed by the registrar;

- (iv) in relation to an application for an associated clearing house license, particulars of the applicant's proposed appointment by an exchange; and
 - (v) in relation to an application for an independent clearing house license, a copy of the proposed clearing house rules that must comply with section 53; and
- (d) be supplemented by any additional information that the registrar may reasonably require.

(3) The registrar must publish a notice of an application for a clearing house license in two national newspapers or on the official web site at the expense of the applicant. The notice must state—

- (a) the name of the applicant;
- (b) the period within which objections to the application may be lodged with the registrar.

General requirements applicable to applicant for clearing house license

- 48.** (1) An applicant for a clearing house license must—
- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of a clearing house in terms of this Act;
 - (b) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;
 - (c) comply with the requirements prescribed by the registrar for the provision of clearing services;
 - (d) as soon as it becomes aware thereof inform the registrar of any matter that it reasonably believes may pose systemic risk to the financial markets;
 - (e) have the infrastructure necessary for the sustained operation of a clearing house in terms of this Act; and
 - (f) maintain security and back-up procedures to ensure the integrity of its records of transactions cleared, settled or cleared and settled through the clearing house; and
 - (g) in relation to an application for an independent clearing house license -
 - (i) have made arrangements for the proper supervision of all transactions effected through the clearing house so as to ensure compliance with the clearing house rules and this Act;

(ii) make provision, to the satisfaction of the registrar, for the management of clearing and settlement risk.

(2) The registrar may –

- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
- (b) take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto; and
- (c) prescribe any of the requirements referred to in subsections (1)(a), (c), (d) and (e) in greater detail.

Licensing of clearing house

49. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 47(3) and subject to the conditions which the registrar may consider appropriate, grant a clearing house license if—

- (a) the applicant complies with the relevant requirements of this Act; and
- (b) the objects of this Act referred to in section 2 will be furthered by the granting of a clearing house license.

(2) The clearing house license –

- (a) must specify the securities services that may be provided by the clearing house and the securities in respect of which those securities services may be provided, the main office of the clearing house in the Republic and the places where the clearing house may be operated, and stipulate that the clearing house may not be operated at any other place without the prior written approval of the registrar; and
- (b) may specify that insurance, a guarantee, compensation fund or other warranty must be in place to enable the clearing house to provide compensation, subject to the clearing house rules, to clients of clearing members.

(3) A clearing house may at any time apply to the registrar for an amendment of the terms of the license and the conditions subject to which the license was granted.

(4) (a) The registrar must publish a notice of an application for an amendment of the terms of a clearing house license and the conditions subject to which the license was granted in two national newspapers or the official web site at the expense of the applicant.

(b) The notice must state—

- (i) the name of the applicant;
- (ii) the nature of the proposed amendments; and
- (iii) the period within which objections to the application may be lodged with the registrar.

(5) Chapter VI applies to an independent clearing house as a self-regulatory organisation.

(6) Sections 60 to 64, sections 66 to 68 and section 73, inclusive, apply, with the changes required by the context, to an associated clearing house.

Functions of independent clearing house

General functions of independent clearing house and power of registrar to assume responsibility for functions

50. (1) An independent clearing house—

- (a) must enforce the clearing house rules;
- (b) must supervise compliance by its clearing members with the clearing house rules;
- (c) must supervise compliance with this Act by its clearing members, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
- (d) may issue self-regulatory organisation directives;
- (e) may amend or suspend the clearing house rules in terms of section 68;
- (f) must manage the clearing or settlement of transactions or both through the clearing house;
- (g) may make different rules for clearing and settlement of different securities and different clearing members;
- (h) must consult relevant regulated persons when making or amending clearing house rules pertaining to clearing and settlement;
- (i) must disclose to clearing members the fees and charges required by it for its services;

- (j) must on request disclose to the registrar information on the exposures that a clearing member underwrites with the clearing house;
- (k) must, if a clearing member ceases to be a member, notify the registrar thereof as soon as possible;
- (l) must conduct its business in a prudent manner and with due regard to the rights of clearing members and their clients;
- (m) must perform the securities services for which it is licensed in an effective and efficient manner;
- (n) must establish and maintain effective, efficient and sustainable infrastructure to perform the securities services for which it is licensed;
- (o) may do all other things that are necessary for, incidental or conducive to the proper operation of a clearing house not inconsistent with this Act.

(2) (a) The registrar may assume responsibility for one or more of the functions referred to in subsection (1) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2.

- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)—
 - (i) inform the clearing house of the registrar's intention to assume responsibility;
 - (ii) give the clearing house the reasons for the intended assumption; and
 - (iii) call upon the clearing house to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar.

Maintenance of insurance, guarantee, compensation fund or other warranty

51. An independent clearing house required under section 50(2) to have insurance, a guarantee, compensation fund or other warranty in place, may impose a levy on any person involved in a transaction in listed or unlisted securities cleared or settled or both through the clearing house for the purpose of maintaining that insurance, guarantee or compensation fund or other warranty.

Funds of independent clearing house

52. An independent clearing house may require its members and their clients to contribute towards the funds of the clearing house for the purpose of carrying on the business of the clearing house.

Independent clearing house rules

Requirements with which clearing house rules must comply

- 53.** (1) The clearing house rules must be consistent with this Act.
- (2) The clearing house rules must provide—
- (a) for the criteria for authorisation and exclusion of clearing members and, in particular, that no person may be admitted as a clearing member or allowed to continue such person's business as a clearing member unless the person—
- (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
 - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the clearing house rules;
- (b) for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that a clearing member may provide and the type of securities that a clearing member may clear or settle, and if there are different categories of –
- (i) clearing members, for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that each category of clearing member may provide;
 - (ii) securities, for the authorisation and criteria for authorisation of the categories in respect of which a clearing member may provide one or more clearing services or settlement services or both clearing services and settlement services;
- (c) (i) for the capital adequacy, guarantee and risk management requirements with which a clearing member must comply;

- (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of clearing members or different activities of a clearing member's business;
- (d) if there are different categories of clearing members, for the restriction of the activities of such categories subject to different conditions;
- (e) for the manner in which and the terms and conditions subject to which transactions in listed and unlisted securities must be cleared or settled or cleared and settled through the clearing house;
- (f) for the monitoring of settlement obligations of clearing members and their clients;
- (g) for the circumstances in which the clearing house may refuse to settle or clear a transaction in securities;
- (h) for surveillance of any matter relevant for the purposes of this Act, the clearing house rules and the self-regulatory organisation directives;
- (i) for the manner in which a clearing member is required to conduct its business generally;
- (j) for the—
 - (i) recording of transactions cleared or settled by the clearing house; and
 - (ii) monitoring of compliance by clearing members with this Act, the clearing house rules and self-regulatory organisation directives;
- (k) for the equitable and expeditious resolution of disputes between clearing members and between clearing members and their clients in respect of the clearing or settlement of transactions in listed and unlisted securities;
- (l) for the manner in which complaints against a clearing member or officer or employee of a clearing member must be investigated;
- (m) for the steps to be taken by the clearing house, or a person to whom the clearing house has delegated its investigative and disciplinary functions, to investigate and discipline a clearing member or officer or employee of a clearing member who contravenes or fails to comply with the clearing house rules, the interim clearing house rules or the self-regulatory organisation directives and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;

- (n) for the manner in which a clearing member, officer or employee of a clearing member who is believed to—
 - (i) be able to furnish any information on the subject of any investigation referred to in this subsection; or
 - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject,may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (o) where appropriate, in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 52, for—
 - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
 - (ii) the amount of the levy imposed by the clearing house for this purpose;
 - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
 - (iv) restrictions on the amount of any claim;
 - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
 - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;
- (p) that clearing members must disclose to clients the fees for their services;
- (q) for the purposes for which a clearing house may issue self-regulatory organisation directives;
- (r) for supervisory measures that enable the clearing house to comply with section 51(1)(b) and 51(1)(c);
- (s) for the administration of securities held for own account or on behalf of a client by a clearing member, including the settlement of unsettled transactions, under insolvency proceedings in respect of that clearing member; and
- (t) for the recording by a clearing member of transactions or positions cleared by that member through the clearing house.

(3) Despite subsection (2), the rules of a clearing house only need to provide for matters relating to the settlement if the clearing house is licensed to settle transactions in securities.

(4) (a) The clearing house rules may provide for the –

- (i) approval of external clearing members to be clearing members of the clearing house;
- (ii) circumstances and manner in which a clearing member may advertise or canvass for business; and
- (iii) refusal by a clearing house to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities.

(b) If the clearing house rules provide for the approval of external clearing members to be clearing members of the clearing house, the rules must provide for the identification of those clearing services or settlement services or both that will be authorised and regulated by the clearing house in terms of the clearing house rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external clearing member is authorised and supervised.

(5) A clearing house may, with the approval of the registrar, make clearing house rules on matters additional to those listed in subsection (2).

(6) Subject to section 3(5), a clearing house rule made under this section is binding on the clearing house, its clearing members and on their officers and employees, and on clients of its clearing members.

General provision relating to associated clearing house

Amalgamation, merger, transfer or disposal of associated clearing house

54. (1) The registrar must approve -

- (a) any amalgamation or merger referred to in Chapter 5 of the Companies Act that involves an associated clearing house as one of the principal parties to the amalgamation or merger; and

(b) any transfer or disposal of more than 25 per cent of the assets, liabilities or assets and liabilities of an associated clearing house to another person.

(2) Section 61 is applicable with the changes required by the context to an amalgamation or transfer referred to in subsection (1).

CHAPTER VI TRADE REPOSITORIES

Application for trade repository licence

55. (1) A person may apply to the registrar for a trade repository licence for one or more types of unlisted securities referred to in the definition of “securities”.

(2) Such an application must —

- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements listed in section 74;
- (c) be accompanied by—
 - (i) the founding documents of the applicant;
 - (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar; and
 - (iii) the application fee prescribed by the registrar;
- (d) be supplemented by any additional information that the registrar may reasonably require.

(3) The registrar must publish a notice of an application for a trade repository licence in two national newspapers, at the expense of the applicant, or on the official web site. The notice must state—

- (a) the name of the applicant; and
- (b) the period within which objections to the application may be lodged with the registrar.

General requirements applicable to applicant for a trade repository licence

56. (1) Subject to subsection (2), an applicant for a trade repository licence must-

- (a) have robust governance arrangements, which include a clear organisational structure to ensure continuity and orderly functioning of the trade repository with well defined, transparent and consistent lines of responsibility;

- (b) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;
 - (c) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of a trade repository in terms of this Act;
 - (d) maintain reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository;
 - (e) maintain security and back-up procedures to ensure the integrity of its records of transactions;
 - (f) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;
 - (g) have objective, non-discriminatory and publicly disclosed requirements for access and participation;
 - (h) publicly disclose the prices and fees associated with services provided;
 - (i) identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks;
 - (j) establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations;
 - (k) ensure the confidentiality, integrity and protection of the information received; and
 - (l) regularly monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies.
- (2) The registrar may –
- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and

- (b) take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto; and
- (c) prescribe any of the requirements referred to in subsection (1) in greater detail.

Licensing of a trade repository

57. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 55(3) and subject to the conditions which the registrar may consider appropriate, grant a trade repository licence if—

- (a) the applicant complies with the relevant requirements of this Act; and
- (b) the objects of this Act referred to in section 2 will be furthered by the granting of a trade repository licence.

(2) The trade repository licence must specify the services that may be provided by the trade repository and the unlisted securities in respect of which those services may be provided, the main office of the trade repository in the Republic and the places where the trade repository may be operated, and stipulate that the trade repository may not be operated at any other place without the prior written approval of the registrar.

(3) A trade repository may at any time apply to the registrar for an amendment of the terms of its licence and the conditions subject to which its licence was granted.

(4) (a) The registrar must publish a notice of an application for an amendment of the terms of a trade repository licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant or the official web site.

- (b) The notice must state—
 - (i) the name of the applicant;
 - (ii) the nature of the proposed amendments; and
 - (iii) the period within which objections to the application may be lodged with the registrar.

(5) Sections 56 to 64 and sections 66 to 70, inclusive, apply, with the changes required by the context, to a trade repository.

Outsourcing and other services

58. (1) A trade repository may not, without the prior written approval of the registrar, outsource any of its operational functions.

Functions of a trade repository

59. (1) A trade repository must -

- (a) employ timely and efficient record keeping procedures;
 - (b) publish aggregate positions of classes of unlisted securities reported to it, including but not limited to, classes of derivatives contracts reported to it; and
 - (c) make the necessary information available to the registrar and other relevant supervisory authorities.
- (2) The registrar may prescribe additional functions or any of the functions referred to in subsection (1) in greater detail.

CHAPTER VII

GENERAL PROVISIONS APPLICABLE TO SELF-REGULATORY ORGANISATIONS

Expiry and renewal of license of self-regulatory organisation

60. (1) The license of a self-regulatory organisation (in this Chapter referred to as “a license”) expires on 31 December of the year for which it is issued but may be renewed on application to the registrar.

(2) An application for renewal of a license must be—

- (a) made in the manner and contain the information prescribed by the registrar;
- (b) accompanied by the application fee prescribed by the registrar; and
- (c) supplemented by any additional information that the registrar may reasonably require.

Refusal of renewal of license

61. (1) The registrar may refuse to renew a license if during the year preceding the date of the application for renewal the applicant failed to—

- (a) comply with this Act or the rules of the self-regulatory organisation;
- (b) comply with a directive, request, condition or requirement of the registrar in terms of this Act; or
- (c) give effect to a decision of the appeal board in terms of section 112.

(2) The registrar must, before refusing to renew a license—

- (a) inform the applicant of the registrar's intention to refuse renewal;
- (b) give the applicant the reasons for the intended refusal; and
- (c) call upon the applicant to show cause within a period specified by the registrar why the renewal should not be refused.

(3) If the registrar refuses to renew a license the registrar must take such steps as are necessary to achieve the objects of this Act referred to in section 2, which steps may include—

- (a) the transfer of the business of the self-regulatory organisation to another similar self-regulatory organisation; or
- (b) the winding-up of the self-regulatory organisation in terms of section 107.

Cancellation or suspension of license

62. (1) The registrar may cancel or suspend a license if—

- (a) the self-regulatory organisation has failed to—
 - (i) comply with this Act or the rules of the self-regulatory organisation;
 - (ii) comply with a directive, request, condition or requirement of the registrar in terms of this Act; or
 - (iii) give effect to a decision of the appeal board in terms of section 112;
- (b) after an inspection in terms of section 102 of the affairs of the self-regulatory organisation the registrar is satisfied on reasonable grounds that the manner in which it is operated is—
 - (i) not in the best interests of clearing members of independent clearing houses, authorised users or participants, as the case may be, and their clients; or

- (ii) defeating the objects of this Act referred to in section 2;
- (c) the self-regulatory organisation has ceased to operate or has failed to commence operating within a reasonable period after being licensed; or
- (d) the registrar is satisfied on reasonable grounds that the license was obtained through misrepresentation.

(2) The registrar must, before cancelling or suspending a license—

- (a) inform the self-regulatory organisation of the registrar's intention to cancel or suspend;
- (b) give the self-regulatory organisation the reasons for the intended cancellation or suspension; and
- (c) call upon the self-regulatory organisation to show cause within a period specified by the registrar why its license should not be cancelled or suspended.

(3) If the registrar cancels or suspends a license the registrar must take such steps and may impose such conditions as are necessary to achieve the objects of this Act referred to in section 2, which steps may include—

- (a) the transfer of the business of the self-regulatory organisation to another similar self-regulatory organisation; or
- (b) the winding-up of the self-regulatory organisation in terms of section 107.

Juristic personality of self-regulatory organisation and carrying on additional business

63. (1) A self-regulatory organisation that is not a juristic person is, from the date on which it is licensed by the registrar, a juristic person capable of acquiring rights and duties and of acquiring, owning, burdening, hiring, letting and alienating property, and, subject to this Act, of doing such things as may be necessary for or incidental to the performance of its functions in terms of its rules.

(2) A self-regulatory organisation must consult the registrar prior to conducting any business, function or service not provided for under sections 11, 31 or 51, as the case may be, or which it is not licensed to provide under this Act.

(3) The registrar may, if the registrar is of the opinion that the business, function or service referred to in subsection (2) may pose systemic risk or give rise to a conflict of interest or perceived conflict of interest in respect of authorised users, participants or clearing

members, as the case may be, prohibit or lay down requirements in respect of the carrying on of such business, function or service.

Demutualisation of self-regulatory organisation

64. (1) A self-regulatory organisation which is not a public company or a private company as defined in section 1 of the Companies Act may convert to a public company or private company with the approval of the registrar and subject to the conditions that the registrar may prescribe.

(2) If a conversion referred to in subsection (1) takes place—

- (a) the self-regulatory organisation referred to in subsection (1) is deemed to be a company incorporated in terms of the Companies Act from a date determined by the registrar in consultation with the self-regulatory organisation;
- (b) the Companies and Intellectual Property Commission established by section 185 of the Companies Act, must accept the filed notice of incorporation of the self-regulatory organisation in terms of section 13 of that Act and register the self-regulatory organisation as a company in terms of section 14 of that Act on the date referred to in paragraph (a);
- (c) the continued corporate existence of the self-regulatory organisation from the date on which it was first licensed by the registrar is unaffected and any actions of the self-regulatory organisation before its conversion remain effectual;
- (d) the terms and conditions of service of employees of the self-regulatory organisation are not affected;
- (e) all the assets and liabilities of the self-regulatory organisation, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the organisation to cover any liabilities of the clearing members of independent clearing houses, authorised users or participants, as the case may be, to clients, remain vested in and binding upon the company or such other entity acceptable to the registrar as the company may designate;
- (f) the company has the same rights and is subject to the same obligations as were possessed by or binding upon the self-regulatory organisation immediately before its conversion;

- (g) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the self-regulatory organisation and in force immediately before the conversion remain in force and effectual, and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the company, as the case may be;
- (h) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the self-regulatory organisation which was in force immediately before the conversion remains in force, and is construed as a bond, pledge, guarantee or instrument given to or in favour of the company, as the case may be;
- (i) any claim, right, debt, obligation or duty accruing to any person against the self-regulatory organisation or owing by any person to such organisation is enforceable against or owing to the company, subject to any law governing prescription;
- (j) any legal proceedings that were pending or could have been instituted against the self-regulatory organisation before the conversion may be continued or instituted against the company, subject to any law governing prescription; and
- (k) the license of the self-regulatory organisation remains vested in the company if the company complies with all the requirements of this Act in respect of a self-regulatory organisation.

Amalgamation, merger, transfer or disposal

65. (1) (a) The registrar must approve -

- (i) any amalgamation or merger referred to in Chapter 5 of the Companies Act that involves a self-regulatory organisation as one of the principal parties to the amalgamation or merger; and
 - (ii) any transfer or disposal of more than 25 per cent of the assets, liabilities or assets and liabilities of a self-regulatory organisation to another person.
- (b) A self-regulatory organisation must -
- (i) prior to the making of any compulsory disclosures under any rules or national legislation in respect of any transaction referred to in subsection (1) inform the registrar of the proposed transaction;

- (ii) clearly state in any compulsory disclosures under any rules or national legislation, or any announcement or press release in respect of a transaction referred to in subsection (1), that the transaction is subject to the approval of the registrar; and
- (iii) on conclusion of the transaction, seek the approval of the registrar in accordance with subsection (1).

(2) The 25 per cent referred to in subparagraph (1)(a)(ii) must be calculated by aggregating the amount of the transferred assets, liabilities or assets and liabilities together with any previous transfer of assets, liabilities or assets and liabilities within the same financial year of the self-regulatory organisation concerned.

(3) (a) Subsection (1), does not apply if only assets are transferred and the amount of the transferred assets, together with any previous transfer of assets within the same financial year, aggregates to an amount that is more than 10 per cent but less than 25 per cent of the total on-balance-sheet assets of the transferring self-regulatory organisation.

(b) A self-regulatory organisation must notify the registrar of a transfer referred to in paragraph (a).

(4) The registrar may give approval referred to in subsection (1), if the registrar is satisfied that the transaction in question will not be detrimental to the objects of this Act.

(5) Upon the coming into effect of a transaction effecting an amalgamation, merger or the transfer of such part of the assets, liabilities or assets and liabilities as approved in terms of subsection (1) -

- (a) all the assets and liabilities of the amalgamating organisations (or in the case of a transfer of assets and liabilities, of the organisation by which the transfer is effected), including any insurance, guarantee, compensation fund or other warranty owned or maintained by any of them to cover any liabilities of clearing members of independent clearing houses, authorised users or participants, as the case may be, to clients, vest in and become binding upon the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities or such other entity acceptable to the registrar as the parties to the amalgamation may designate;
- (b) the amalgamated organisation (or in the case of a transfer of assets and liabilities, the organisation taking over such assets and liabilities) has the same rights and is subject

to the same obligations as were, immediately before the amalgamation or transfer, possessed by or binding upon the amalgamating organisations or, as the case may be, the organisation by which the transfer has been effected;

- (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamated organisations or, as the case may be, the organisation by which the transfer has been effected, and in force immediately before the amalgamation or transfer remain in force and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the amalgamated organisation or, as the case may be, the organisation taking over the assets and liabilities in question;
- (d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating organisations or, as the case may be, by the organisation transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, remains in force and is construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities; and
- (e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating organisations or owing by any person to any of such organisations is enforceable against or owing to the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities.

(6) Upon the coming into effect of a transaction effecting an amalgamation or merger, the licenses of the individual self-regulatory organisations that were parties to the amalgamation or merger are deemed to be cancelled and the registrar must license the self-regulatory organisation created by the amalgamation or merger.

Duty of members of controlling body of self-regulatory organisation

66. The provisions of the Companies Act relating to the duties of a director apply, with the necessary changes, to each member of the controlling body of a self-regulatory organisation that is not a company.

Appointment of members of controlling body of self-regulatory organisation

67. (1) No person may be appointed as a member of the controlling body of a self-regulatory organisation, if that person—

- (a) may not be appointed or act as a director in terms of section 69 of the Companies Act;
- (b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a self-regulatory organisation, which contravention involved dishonesty; or
- (c) does not meet the fit and proper requirements prescribed by the registrar.

(2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment.

(3) A self-regulatory organisation must, within 14 days of the appointment of a new member to its controlling body, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require.

(4) The provisions of subsection (3) may not be construed so as to render the appointment of a member of the controlling body of a self-regulatory organisation subject to the approval of the registrar.

(5) If it appears to the registrar that a member is disqualified in terms of subsection (1), the registrar may, subject to subsection (8), instruct the self-regulatory organisation to remove that member from its controlling body.

(6) The registrar must, before giving an instruction in terms of subsection (5)—

- (a) in writing inform the self-regulatory organisation and the particular member of the registrar's intention to give such an instruction;
- (b) give the self-regulatory organisation and the particular member written reasons for the intended instruction; and
- (c) call upon the self-regulatory organisation and the particular member to show cause within a period of 14 days why the instruction should not be given.

(7) If the registrar instructs the self-regulatory organisation to remove a member from its controlling body, the self-regulatory organisation must so remove the member within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the self-regulatory organisation.

(8) If a self-regulatory organisation fails to comply with subsection (7), the registrar may, in respect of such failure, impose a fine not exceeding R5 000 for every day during which such failure continues.

(9) Section 98(2), (3) and (4) is, with the changes required by context, applicable to the imposition of a fine under subsection (8).

Limitation on control of and certain shareholding or other interest in certain self-regulatory organisations

68. (1) For the purposes of this section “**associate**”, in relation to—

(a) a natural person, means—

- (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
- (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
- (iii) a parent or stepparent of that person;
- (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
- (v) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii) to (iv);
- (vi) a person whom is in a commercial partnership with that person;
- (vii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the self-regulatory organisation in question;

(b) a juristic person—

- (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof as defined in section 1 of the Companies Act;

- (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
 - (iii) which is not a company or close corporation means another juristic person which would have been its subsidiary or holding company—
 - (aa) had it been a company; or
 - (bb) in the case where that other juristic person is not a company either, had both it and that other juristic person been a company;
 - (iv) means any person in accordance with whose directions or instructions its board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts;
- (c) in relation to any person -
- (i) means any juristic person whose board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts in accordance with its directions or instructions;
 - (ii) means a trust controlled or administered by it.
- (2) For the purposes of this section, a person controls a self-regulatory organisation –
- (a) that is a company if that person, alone or with associates,—
 - (i) holds shares in the self-regulatory organisation of which the total nominal value represents more than 15 per cent of the nominal value of all the issued shares thereof;
 - (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
 - (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;
 - (b) that is a close corporation, if that 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

(c) that is a trust, if that 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.

(3) A person may not, without the prior approval of the registrar acquire or hold shares or any other interest in a self-regulatory organisation, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the self-regulatory organisation.

(4) A person may not, without the prior approval of the registrar, acquire shares or any other interest in a self-regulatory organisation, in excess of that approved under subsection (3), but not exceeding 49 per cent.

(5) (a) A person may not, without the prior approval of the Minister, acquire or hold shares or any other interest in a self-regulatory organisation, if the acquisition or holding results in the per cent referred to in subsection (2) exceeding 49 per cent.

(b) Any request for approval referred to in paragraph (a) must be submitted through the registrar to the Minister.

(6) The approval referred to in subsections (3), (4) or (5) —

(a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the registrar;

(b) may not be given if it will defeat the objects of this Act referred to in section 2; and

(c) may be refused if the person concerned, alone or with his or her associates, has not owned shares in the self-regulatory organisation —

(i) of the aggregate nominal value; and

(ii) for a minimum period, not exceeding 12 months, that the registrar or the Minister, as the case may be, may determine.

(7) If the registrar or the Minister, as the case may be, is satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the self-regulatory organisation, the registrar or the Minister, as the case may be, may apply to the court in whose area of jurisdiction the main office of the self-regulatory organisation is situated for an order—

- (a) compelling that person to reduce, within a period determined by the court, the shareholding or other interests in the self-regulatory organisation to a shareholding with a total nominal value not exceeding 15 or 49 per cent, as the case may be of the total nominal value of all the issued shares of the self-regulatory organisation; and
- (b) limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his or her shareholding or other interest in the self-regulatory organisation to 15 or 49 per cent of the voting or other rights attached to the shares or other interests, as the case may be.

Delegation of functions

69. (1) A self-regulatory organisation may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the self-regulatory organisation, or a division or department of the self-regulatory organisation, subject to the conditions that the self-regulatory organisation may determine.

(2) The registrar may delegate or assign any function entrusted to the registrar by or under this Act subject to the conditions that the registrar may determine.

(3) A self-regulatory organisation or the registrar, as the case may be, is not divested or relieved of a function delegated or assigned under subsection (1) and (2) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

Report by self-regulatory organisation to registrar

70. Within four months after the financial year-end of a self-regulatory organisation, that self-regulatory organisation must submit to the registrar an annual report containing the details prescribed by the registrar and audited annual financial statements that fairly present the financial affairs and status of the self-regulatory organisation.

Attendance of meetings by, and furnishing of documents to, registrar

71. (1) The registrar or a person nominated by the registrar may attend any meeting of the controlling body of a self-regulatory organisation or a committee of the controlling body and may take part, but may not vote, in all the proceedings at such meeting.

(2) A self-regulatory organisation must furnish the registrar with all notices, minutes and documents which are furnished to members of the controlling body of the self-regulatory organisation or a committee of the controlling body, as if the registrar were a member of that body or committee.

Manner in which the rules of a self-regulatory organisation may be made, amended or suspended and penalties for contraventions of such rules

72. (1) The registrar must as soon as possible after issuing a license to a self-regulatory organisation cause the rules made by that organisation to be published in the *Gazette* at the expense of the organisation concerned.

(2) (a) A self-regulatory organisation may, subject to this section, amend or suspend its rules.

(b) The registrar may, subject to this section, amend the rules or issue an interim rule.

(3) (a) A proposed amendment, other than a suspension, of the rules must be submitted to the registrar for approval and must be accompanied by an explanation of the reasons for the proposed amendment.

(b) The registrar must as soon as possible after the receipt of a proposed amendment publish –

(i) the amendment on the official web site; and

(ii) a notice in the *Gazette* that the proposed amendment is available on the official web site,

calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the registrar within a period of 14 days from the date of publication of the notice.

(c) If there are no such objections or if the registrar has considered the objections after consultation with the exchange and has decided to approve or amend the proposed amendment, the registrar must publish -

(i) the amendment and the date on which it comes into operation on the official web site; and

(ii) a notice in the *Gazette*, which notice must state –

(aa) that the amendment to the rules has been approved;

- (bb) that the rules as amended are available on the official web site and the web site of the self-regulatory organisation;
- (cc) the date on which the amendment will come into operation.

(4) The registrar, by notice in the *Gazette* and on the official web site, may amend the rules of that self-regulatory organisation —

- (a) if there is an urgent imperative under exceptional circumstances;
- (b) if it is necessary to achieve the objects of this Act referred to in section 2; and
- (c) after consultation with the self-regulatory organisation concerned..

(5) (a) Subject to the prior approval of the registrar a self-regulatory organisation may suspend any of the rules of that organisation for a period not exceeding 30 days at a time after reasonable notice of the proposed suspension has been advertised on the official web site.

(b) The registrar may, for the period of such suspension, issue an interim rule by notice in the *Gazette* to regulate the matter in question.

(c) Any contravention of or failure to comply with an interim rule has the same legal effect as a contravention of or failure to comply with a rule.

(6) (a) The rules may prescribe that a self-regulatory organisation, or a person to whom the self-regulatory organisation has delegated its disciplinary functions, may impose any one or more of the following penalties for any contravention thereof or failure to comply therewith:

- (i) A reprimand;
- (ii) censure;
- (iii) a fine not exceeding R5 million;
- (iv) suspension or cancellation of the right to be a clearing member of an independent clearing house, an authorised user or participant;
- (v) a restriction on the manner in which clearing member of an independent clearing house, an authorised user or participant may conduct business or may utilise an officer, employee or agent;
- (vi) the payment of compensation to clients prejudiced by the contravention or failure.

(b) The rules may prescribe that—

- (i) full particulars regarding the imposition of a penalty must be published in the *Gazette*, other national newspapers, the web site of the self-regulatory organisation or through the news service of the self-regulating organisation, if any;
- (ii) any person who has contravened or failed to comply with the rules may be ordered to pay the costs incurred in an investigation or hearing conducted in terms of the rules;
- (iii) a self-regulatory organisation may take into account at a disciplinary hearing any information obtained by the registrar in the course of an inspection conducted under section 101;
- (iv) a self-regulatory organisation, or a person to whom a self-regulatory organisation has delegated its disciplinary functions, may, upon good cause shown and subject to the conditions it may impose vary or modify any penalty which it may previously have imposed upon any person but that in varying or modifying such penalty the penalty may not be increased.

(7) If a person fails to pay a fine or compensation referred to in subsection (6)(a) the self-regulatory organisation may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed or compensation payable, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the self-regulatory organisation for a liquid debt in the amount specified in the statement.

(8) This section does not prejudice the common law rights of a person aggrieved by a contravention of or failure to comply with a rule to claim any amount except to the extent that any portion of such amount has been recovered under subsection (6)

(9) The rules must prescribe the purpose for which a fine referred to in subsection (6) must be appropriated.

Limitation of liability

73. (1) No self-regulatory organisation, chief executive officer, other officer, employee or representative of a self-regulatory organisation, or any member of a controlling body or

committee of a controlling body of a self-regulatory organisation, is liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by—

- (a) the self-regulatory organisation, chief executive officer, other officer, employee, representative or member in the *bona fide* or negligent (excluding grossly negligent) performance of an obligation or function under or in terms of this Act, the listing requirements of an exchange or the rules or self-regulatory organisation directives; or
- (b) a clearing member, an authorised user or participant.

(2) An authorised user that fails to comply with section 17(2)(i) or a participant that fails to comply with section 36(2)(r) does not incur liability to a third party for financial loss or damages because of that failure, unless the failure was grossly negligent or willful.

Disclosure of information by self-regulatory organisation

74. Despite any contrary provisions in any other law, a self-regulatory organisation may disclose information relating to or arising from its functions to any other self-regulatory organisation or supervisory authority, whether domestic or foreign, if such disclosure will further one or more of the objects of this Act referred to in section 2.

CHAPTER VIII CODE OF CONDUCT

Code of conduct for authorised users, participants or clearing members of independent clearing houses

75. (1) The registrar may in an appropriate consultative manner prescribe a code of conduct for authorised users, participants or clearing members of independent clearing houses.

(2) A code of conduct is binding on authorised users, participants or clearing members of independent clearing houses, as the case may be, and on their officers and employees and clients.

Principles of code of conduct

76. (1) A code of conduct must be based on the principle that —

- (a) an authorised user, participant or clearing member of an independent clearing house must –
 - (i) act honestly and fairly, with due skill, care and diligence and in the interests of a client;
 - (ii) uphold the integrity of the securities services industry;
 - (iii) have and effectively employ the resources, procedures and technological systems for the conduct of its business;
- (b) an authorised user, in addition to paragraph (a), must –
 - (i) seek information from a client regarding his or her financial position, investment experience and objectives in connection with the securities service required; and
 - (ii) act fairly in a situation of conflicting interests.
- (2) A code of conduct may provide for—
 - (a) the disclosure to a client of relevant material information, including the disclosure of actual or potential own interests;
 - (b) proper record-keeping;
 - (c) avoidance of fraudulent and misleading advertising, canvassing and marketing;
 - (d) proper safekeeping, separation and protection of funds and transaction documents of clients; and
 - (e) any other matter which is necessary or expedient to be regulated in a code of conduct for the achievement of the objects of this Act.

CHAPTER IX

GENERAL PROVISIONS RELATING TO (LISTED AND UNLISTED) SECURITIES

Securities services in respect of unlisted securities

- 77.** (1) The registrar may—
- (a) prohibit a person from providing any securities services in respect of unlisted securities if that person provides any securities services in a manner which defeats one or more of the objects of this Act referred to in section 2;

- (b) impose conditions and prescribe requirements for providing securities services in respect of unlisted securities, including, but not limited to, prescribing a code of conduct and imposing reporting requirements;
- (c) prescribe standards in accordance with which securities services in respect of unlisted securities must be carried on;
- (d) prescribe conditions in terms of which securities services in respect of specified types of unlisted securities may be provided, including, but not limited to, the manner in which clearing and settlement of securities must take place.

(2) A person who receives securities services in respect of unlisted securities from, or provides securities services in respect of unlisted securities to, another person who contravenes or fails to comply with subsection (1) is not liable for any obligations resulting from such securities services.

Approval of nominee

78. (1) (a) A nominee of an authorised user must be approved as a nominee by the exchange in terms of exchange rules;

(b) a nominee of a participant must be approved as a nominee by the central securities depository in terms of depository rules.

(2) The criteria for the approval of a nominee of an authorised user or a participant must be approved by the exchange or the central securities depository, as the case may be, and must be equivalent to that applied by the registrar when approving a nominee under subsection (3).

(3) (a) A nominee that is not approved as a nominee in terms of subsection (1) must be approved by the registrar and must comply with the requirements which the registrar may prescribe for nominees, before it can function as a nominee in terms of this Act.

(b) The registrar must maintain a list of all nominees approved under paragraph (a).

Undesirable advertising or canvassing relating to securities

79. (1) No person, other than an authorised user or an officer or employee of an authorised user, who is so permitted in terms of exchange rules, may in any manner, directly or indirectly, advertise or canvass for carrying on the business of an authorised user.

(2) Despite any contrary law, the registrar may, if an advertisement, brochure or other document relating to securities is misleading or for any reason objectionable, direct that the advertisement, brochure or other document not be published or the publication thereof be stopped or that such amendments as the registrar considers necessary be effected.

Certain written matter to bear names of certain persons

80. No person may publish or circulate any written comment which relates to the trading results of a public company or which may influence the value of the listed securities of a company unless such comment is accompanied by—

- (a) the name of the person or persons who compiled it or the name of the person or persons on the editorial staff of a newspaper or periodical who, in the opinion of the editor thereof, compiled it; or
- (b) disclosure of the source from which it was obtained.

CHAPTER X MARKET ABUSE

Definitions

81. In this Chapter, unless the context indicates otherwise—

“**claims officer**” means the person appointed by the board to be responsible for considering and determining claims in terms of section 86(10) and (11) and section 87(4) and (5);

“**court of competent jurisdiction**” includes the court within whose jurisdiction the regulated market has its principal place of business or head office or in which any element of the dealing or offence occurred and it is not necessary to make any attachment to found or confirm jurisdiction;

“**deal**” includes conveying or giving an instruction to deal;

“**document**” includes a book, record, security or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, electro-mechanically or optically or in any other form;

“**executive director**” means a person appointed as such in terms of section 92(12);

“inside information” means specific or precise information, which has not been made public and which—

- (a) is obtained or learned as an insider; and
- (b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;

“insider” means a person who has inside information;

- (a) through—
 - (i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or
 - (ii) having access to such information by virtue of employment, office or profession; or
- (b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);

“market abuse rules” means the rules made under section 91(2)(f);

“market corner” means any arrangement, agreement, commitment or understanding involving the purchasing selling or issuing of securities listed on a regulated market—

- (a) by which a person, or a group of persons acting in concert, acquires direct or indirect beneficial ownership of, or exercises control over, or is able to influence the price of, securities listed on a regulated market; and
- (b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of the securities listed on a regulated market, as reflected through the facilities of a regulated market, is or is likely to be abnormally influenced or arbitrarily dictated by such person or group of persons in that the said trading price deviates or is likely to deviate materially from the trading price which would otherwise likely have been reflected through the facilities of the regulated market on which the particular securities are traded;

“person” includes a partnership and any trust; and

“regulated market” means any market, whether domestic or foreign, which is regulated in terms of the laws of the country in which the market conducts business as a market for dealing in securities listed on that market.

Offences

Insider trading

82. (1) (a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.

(b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—

- (i) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider;
- (ii) was acting in pursuit of a private transaction, in respect of which -
 - (aa) all the parties to the transaction had possession of the same inside information;
 - (bb) trading was limited to the parties referred to in subparagraph (aa); and
 - (cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security resulting from the inside information.

(2) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly or through an agent for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.

(b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—

- (i) is an authorised user and was acting on specific instructions from a client, and did not know or did not have reason to suspect that the client was an insider at the time;
- (ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider;

- (iii) was acting in pursuit of a private transaction, in respect of which -
 - (aa) all the parties to the transaction had possession of the same inside information;
 - (bb) trading was limited to the parties referred to in subparagraph (aa); and
 - (cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security resulting from the inside information.

(3) (a) Any person who deals for any other person directly or indirectly or through an agent in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, who knew or had reason to suspect that such other person is an insider, commits an offence.

(b) A person is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if the person on whose behalf the dealing was done had any of the defences available to him or her as set out in subsection (2)(b)(ii) and (iii).

(4) (a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence.

(b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.

(5) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.

Publication

83. For the purposes of the definition of “inside information”, information is regarded as having been made public in circumstances which include, but are not limited to, the following:

- (1) When the information is published in accordance with the rules of the relevant regulated market;
- (2) when the information is contained in records which by virtue of any enactment are open to inspection by the public; or
- (3) when the information is derived from information which has been made public.

Prohibited trading practices

84. (1) No person may—

- (a) either for such person's own account or on behalf of another person, directly or indirectly use or participate in the use of any manipulative, improper, false or deceptive practice of trading in a security listed on a regulated market, which practice, to his or her knowledge or in respect of which he or she has reason to suspect will, if executed, create or might create—
 - (i) a false or deceptive appearance of the trading activity in connection with; or
 - (ii) an artificial price for,

that security;

- (b) place an order to buy or sell listed securities which, to his or her knowledge or in respect of which he or she has reason to suspect will, if executed, have the effect contemplated in paragraph (a)

(2) A person who contravenes subsection (1) commits an offence.

(3) Without limiting the generality of subsection (1), the following are deemed to be manipulative, improper, false or deceptive trading practices:

- (a) Approving or entering on a regulated market an order to buy or sell a security listed on that market which involves no change in the beneficial ownership of that security;
- (b) approving or entering on a regulated market an order to buy or sell a security listed on that market with the knowledge that an opposite order or orders at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating—
 - (i) a false or deceptive appearance of active public trading in connection with; or
 - (ii) an artificial market price for,that security;

- (c) approving or entering on a regulated market orders to buy a security listed on that market at successively higher prices or orders to sell a security listed on that market at successively lower prices for the purpose of unduly or improperly influencing the market price of such security;
- (d) approving or entering on a regulated market an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of a security listed on that market;
- (e) approving or entering on a regulated market an order to buy or sell a security listed on that market during any auctioning process or pre-opening session and cancelling such order immediately prior to the market opening, for the purpose of creating or inducing a false or deceptive appearance of demand for or supply of such security;
- (f) effecting or assisting in effecting a market corner;
- (g) maintaining at a level that is artificial the price for dealing in securities listed on a regulated market;
- (h) employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the facilities of a regulated market; or
- (i) engaging in any act, practice or course of business in respect of dealings in securities listed on a regulated market which is deceptive or which is likely to have such effect:

Provided that the employment of price-stabilising mechanisms that are regulated in terms of the rules or listing requirements of an exchange does not constitute a manipulative, improper, false or deceptive trading practice for the purposes of this section.

(4) A purchase or sale of securities listed on a regulated market does not, for the purposes of subsection (3)(a), involve a change in the beneficial ownership if a person who has a beneficial interest in those securities before the purchase or sale, or a person associated with that person in relation to those securities, directly or indirectly holds a beneficial interest in those securities after the purchase or sale.

False, misleading or deceptive statements, promises and forecasts

85. (1) No person may, directly or indirectly, make or publish in respect of securities traded on a regulated market, or in respect of the past or future performance of a company whose securities are listed on a regulated market—

- (a) any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the person knows, or ought reasonably to know, is false, misleading or deceptive; or
 - (b) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the person knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.
- (2) A person who contravenes subsection (1) commits an offence.

Civil liability

Compensation obligation resulting from insider trading

- 86.** (1) An insider who knows that he or she has inside information and who—
- (a) deals directly or indirectly or through an agent, for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
 - (b) makes a profit or would have made a profit if he or she had sold the securities at any stage, or avoids a loss, through such dealing; and
 - (c) fails to prove, on a balance of probabilities, any one of the defences set out in section 82(1)(b),

is liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—

- (i) the equivalent of the profit or loss referred to in paragraph (b);
 - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
 - (iii) interest; and
 - (iv) costs of suit on such scale as may be determined by the court.
- (2) An insider who knows that he or she has inside information and who—
- (a) deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;

- (b) makes a profit for that other person or would have made a profit if the securities had been sold at any stage, or avoids a loss, through such dealing; and
- (c) fails to prove any one of the defences set out in section 82(2)(b) on a balance of probabilities, is, subject to subsection (5),

liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—

- (i) the equivalent of the profit or loss referred to in paragraph (b);
- (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
- (iii) interest;
- (iv) the commission or consideration received for such dealing; and
- (v) cost of suit on such scale as may be determined by the court.

(3) Any person who—

- (a) deals for any other person directly or indirectly or through an agent in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
- (b) who knew or had reason to suspect that such other person is an insider;

is liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—

- (i) the equivalent of the profit or loss that such other person referred to in subparagraph (a) made or would have made if he or she had sold the securities at any stage, or the loss avoided by such person through such dealing;
- (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
- (iii) interest; and
- (iv) costs of suit on such scale as may be determined by the court.

- (c) A person is, despite paragraphs (a) and (b), not liable if the person on whose behalf the dealing was done had any of the defences available to him or her as set out in section 82(2)(b)(ii) and (iii).

(4) An insider who knows that he or she has inside information and who—

- (a) discloses the inside information to any other person; and

(b) fails to prove on a balance of probabilities the defence set out in section 82(4)(b), is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—

- (i) if the other person dealt directly or indirectly in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;
- (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
- (iii) interest;
- (iv) the commission or consideration received for such disclosure; and
- (v) cost of suit on such scale as may be determined by the court.

(5) An insider who knows that he or she has inside information and who encourages or causes any other person to deal in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it is, subject to subsection (6), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—

- (a) if the other person dealt directly or indirectly in such securities, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;
- (b) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (a);
- (c) interest;
- (d) the commission or consideration received for such encouragement; and
- (e) cost of suit on such scale as may be determined by the court.

(6) If the other person referred to in subsections (2), (4) and (5) is liable as an insider in terms of subsection (1), the insider referred to in subsections (2), (4) and (5) is jointly and severally liable together with that other person to pay the amounts set out in subsection (2)(c)(i), (iii) and (v), (4)(a), (c), (d) and (e) and (5)(a), (c), (d) and (e), as the case may be.

(7) If the insider referred to in subsection (3) is liable as an insider in terms of subsection (1), the person who dealt for him or her is jointly and severally liable together with such insider to pay the amounts set out in subsection (3)(b)(i), (iii) and (iv).

(8) The profit made, or the profit that would have been made if the listed securities had been sold at any stage, or the loss avoided, is determined in the discretion of the court.

(9) Any amount recovered by the board as a result of the proceedings contemplated in this section or as a result of an agreement of settlement must be deposited by the board directly into a specially designated trust account and—

- (a) the board is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (10) and an additional sum equal to 10% of the gross amount so recovered less any amount of costs actually recovered from the other party prior to the finalisation of the distribution account;
- (b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (10) in accordance with subsection (11);
- (c) any amount not paid out in terms of paragraph (b) accrues to the board.

(10) The balance referred to in subsection (9)(b) must be distributed to all claimants who—

- (a) submit claims to the directorate within 90 days from the date of publication of a notice in two national newspapers or on the official web site inviting persons who are affected by the dealings referred to in subsections (1) to (5) to submit their claims; and
- (b) prove to the reasonable satisfaction of the claims officer that—
 - (i) they were affected by the dealings referred to in subsections (1) to (5); and
 - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in subsection (1), (2) and (3), or the other person referred to in subsections (4) and (5) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or
 - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day as the insider or other person referred to in subparagraph (ii).

(11) Subject to subsection (12), a claimant must receive an amount—

- (a) equal to the difference between the price at which the claimant dealt and the price, determined by the court or a settlement, that the claimant would have dealt if the inside information had been published at the time of dealing; or
- (b) equal to the pro rata portion of the balance referred to in subsection (9)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (10) by claimants,

whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.

(12) An amount awarded in proceedings contemplated in section 90 must be deducted from any amount claimed in terms of this section.

(13) The common law principles of vicarious liability apply to the civil liability established by this section.

Compensation obligations resulting from sections 84 or 85 contraventions

87. (1) The board may institute a civil claim in any court of competent jurisdiction against a person that acted or on whose behalf another person acted in contravention of sections 84 or 85, or both such persons, who as a result –

- (a) made a profit or would have made a profit, or avoided a loss;
- (b) caused a loss to another person,

to pay to the board—

- (i) the equivalent of any profit made or loss avoided or that would have been made or avoided;
- (ii) the equivalent of any loss caused to another person;
- (iii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
- (iv) interest; and
- (v) costs of suit on such scale as may be determined by the court.

(2) A person that acted or on whose behalf another person acted in contravention of sections 84 or 85 is jointly and severally liable to pay the amounts referred to in subsection (1).

(3) Any amount recovered by the board as a result of the proceedings contemplated in this section or as a result of an agreement of settlement must be deposited by the board directly into a specially designated trust account and—

(a) the board is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (4) and an additional sum equal to 10% of the gross amount so recovered less any amount of costs actually recovered from the other party prior to the finalisation of the distribution account;

(b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (4) in accordance with subsection (5);

(c) any amount not paid out in terms of paragraph (b) accrues to the board.

(4) The balance referred to in subsection (3)(b) must be distributed to all claimants who—

(a) submit claims to the directorate within 90 days from the date of publication of a notice in two national newspapers or on the official web site inviting persons who are affected by the action referred to in subsection (1) to submit their claims; and

(b) prove to the reasonable satisfaction of the claims officer that they were affected by the action referred to in subsection (1).

(5) Subject to subsection (6), a claimant must receive an amount—

(a) equal to the difference between the price at which the claimant dealt and the price, determined by the court or a settlement, that the claimant would have dealt if the contravention of sections 84 or 85 did not take place; or

(b) equal to the pro rata portion of the balance referred to in subsection (3)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (4) by claimants,

which ever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.

(6) An amount awarded in proceedings contemplated in section 95 must be deducted from any amount claimed in terms of this section.

(7) The common law principles of vicarious liability apply to the civil liability established by this section.

Powers of directorate in civil proceedings

88. (1) The directorate may withdraw, abandon or compromise any civil proceedings instituted in terms of sections 86 or 87 but any agreement of compromise must be made an order of court and the amount of any payment made in terms of such compromise must be made public.

(2) Where civil proceedings have not been instituted, any agreement of compromise may, on application to the court by the board after due notice to the other party or parties, be made an order of court and the parties to the agreement and the amount of any payment made in terms of such agreement must be made public.

Procedural matters

Assessment of fines and penalties

89. (1) In the assessment of any penalty in terms of section 115(a), the court must take into account any award previously made under sections 86 or 87 which arises from the same cause.

(2) In the assessment of any award under sections 86 or 87, the court must take into account any penalty which arises from the same cause and previously imposed in terms of section 115(a).

Attachments and interdicts

90. (1) On application by the board, a court may order the attachment of assets or evidence to prevent their concealment, removal, dissipation or destruction.

(2) The board may institute any interdict or interlocutory proceedings against a person who made a profit or avoided a loss or whom the board reasonably believes may have made a profit or avoided a loss as contemplated in sections 86 or 87.

(3) Such proceedings may include proceedings to obtain an interdict to prevent the disposal of assets or of evidence.

Administration of this Chapter

Powers and duties of Financial Services Board

91. (1) The board is responsible for the supervision of compliance with this Chapter.

(2) In addition to its powers in terms of the Financial Services Board Act the board may, subject to section 92—

- (a) investigate any matter relating to an offence referred to in sections 82, 83 and 84, including insider trading in terms of the Insider Trading Act committed before the repeal of that Act;
- (b) at the request of a supervisory authority, investigate or assist that supervisory authority in an investigation into possible offences similar to those referred to in paragraph (a), regulated in terms of the laws of a country other than the Republic that the supervisory authority administers;
- (c) institute such proceedings as are contemplated in this Chapter;
- (d) administer the proof of claims and distribution of payments in terms of sections 86 or 87;
- (e) by notice on the official web site or by means of any other appropriate public media, may make known—
 - (i) the status and outcome of an investigation referred to under paragraphs (a) or (b);
 - (ii) the details of an investigation if disclosure is in the public interest;
- (f) make market abuse rules after consultation with the directorate—
 - (i) concerning the administration of this Chapter by the board and the directorate;
 - (ii) concerning the manner in which investigations in terms of this Chapter are to be conducted;
 - (iii) concerning the notification of amounts received in terms of sections 86 or 87, the procedure for the lodging and proof of claims, the administration of trust accounts and the distribution of payments in respect of claims;

- (iv) concerning meetings of the directorate;
 - (v) which are generally designed to ensure that the board and the directorate are able to perform their functions in terms of this Chapter;
 - (vi) dealing with the manner in which inside information should be disclosed and, generally, with the conduct expected of persons with regard to such information;
- (g) after consultation with the relevant regulated markets in the Republic, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter.

(3) The Board, when investigating a matter referred to in subsection (2)(a) and (b), may—

- (a) Summon any person who is believed to be able to furnish any information on the subject of any investigation or to have in such person's possession or under such person's control any document which has bearing upon that subject, to lodge such document with the board, or to appear at a time and place specified in the summons, to be interrogated or to produce such document; and
- (b) Interrogate any such person under oath or affirmation duly administered, and examine or retain for examination any such document: Provided that any person from whom any document has been taken and retained under this subsection must, so long as such document is in possession of the board, at that person's request and expense be allowed to make copies thereof or to take extracts therefrom at any reasonable time and under the supervision of the person in charge of the investigation;
- (c) Any person who has been duly summoned under subsection (3)(a) and who, without sufficient cause -
 - (i) fails to appear at the time and place specified in the summons;
 - (ii) fails to remain in attendance until excused from further attendance;
 - (iii) refuses to take the oath or to make an affirmation as contemplated in subsection (3)(b);
 - (iv) fails to answer fully and satisfactorily any question lawfully put to him or her under subsection (3)(b); or
 - (v) fails to furnish information or to produce a document in terms of subsection (3)(a),

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

- (d) In relation to a matter investigated, on the authority of a warrant, without prior notice -
- (i) enter any premises and require the production of any document;
 - (ii) enter and search any premises for any document;
 - (iii) open any strongroom, safe or other container which he or she suspects contains any document;
 - (iv) examine, make extracts from and copy any document or, against the issue of a receipt, remove such document temporarily for that purpose;
 - (v) against the issue of a receipt, seize any document;
 - (vi) retain any seized document for as long as it may be required for criminal or other proceedings,
- but the board may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph;
- (e) A warrant contemplated in subsection (3)(c) may be issued, on application by the board, by a judge or magistrate who has jurisdiction in the area where the premises in question are located.
- (f) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the matter being investigated in terms of subsection (2)(a) or (b), is kept at the premises in question.
- (g) Any entry upon or search of any premises in terms of subsection (3)(c) must be conducted with strict regard to decency and good order, including-
- (i) a person's right to, respect for and the protection of dignity;
 - (ii) the right of a person to freedom and security; and
 - (iii) the right of a person to personal privacy.
- (h) An investigator may be accompanied and assisted by a police officer during the entry and search of any premises under subsection (3)(c).
- (i) Any entry and search under subsection (3)(c) must be executed by day, unless the execution thereof by night is justifiable and necessary.

(j) Any person from whom a document has been seized under subsection (3)(c)(5), or such person's authorised representative, may examine such document and make extracts therefrom under the supervision of the board during normal office hours,

(4) The board may, subject to the conditions it may determine, delegate the power to investigate an alleged contravention of this Chapter to any fit person.

(5) The board must cause the publication in the *Gazette* of a notice of any proposed market abuse rule or amendment of such a rule, calling upon all interested persons who have any objections to the proposed rule or amendment, to lodge their objections with the board within a period of 14 days from the date of publication of the notice.

(6) If there are no such objections or if the board has, after consultation with the directorate, considered the objections and has decided to introduce the proposed rule or amendment in the form published in the *Gazette* in terms of subsection (5), the rule or amendment comes into operation on a date determined by the board by notice in the *Gazette*.

(7) If the board has, after considering such objections, decided after consultation with the directorate to amend the proposed rule or amendment as published in the *Gazette* in terms of subsection (5), the proposed rule or amendment thus amended must be published by the board in the *Gazette* and comes into operation on a date determined by the board by notice in the *Gazette*.

(8) A rule made under subsection (2) is binding on regulated persons and members of the public.

(9) If the Director of Public Prosecutions declines to prosecute for an alleged offence in terms of this Chapter, the board may prosecute in respect of such offence in any court competent to try that offence and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to such a prosecution.

(10) The board must, at the request of the directorate, investigate any matter and summon and interrogate any person in respect of the matters referred to in subsections (2)(a) and (b).

Composition and functions of directorate

92. (1) (a) The Directorate established by section 12 of the Insider Trading Act, 1998 (Act No. 135 of 1998), and that continued to exist under the Securities Services Act, 2004, continues to exist under the name Directorate of Market Abuse, despite the repeal of those Acts.

(b) A reference to the Insider Trading Directorate in any law must, unless clearly inappropriate, be construed as a reference to the Directorate of Market Abuse.

(c) The directorate exercises the powers of the board—

(i) to institute any civil proceedings as contemplated in this Chapter;

(ii) to investigate any matter relating to an offence referred to in section 91(2)(a) and (b); and

(iii) contemplated in section 91(2)(c) in the name of the board.

(d) The directorate is not intended to act as an administrative body when exercising its powers referred to in paragraph (c).

(e) The directorate must—

(i) report quarterly to the board and the Minister on its activities in terms of this Chapter; and

(ii) furnish the board and the Minister, at their request, with copies of such documents and records of proceedings of the directorate, as the board or the Minister may direct.

(2) (a) The directorate consists of the chairperson and the other members and alternate members appointed by the Minister.

(b) A member and alternate member hold office for such period, not exceeding three years, as the Minister may determine at the time of his or her appointment and is eligible for reappointment upon the expiry of his or her term of office: Provided that if on the expiry of the term of office of a member reappointment is not made or a new member is not appointed, the former member must remain in office for a further period of not more than six months.

(c) The Minister may remove the chairperson from his or her office or terminate the membership of any other member on good cause shown and after having given the chairperson or member, as the case may be, sufficient opportunity to show why he or she should not be removed or why his or her membership should not be terminated.

(3) The Minister must appoint as members of the directorate—

- (a) the executive officer of the board or his or her deputy, or both;
- (b) one person and an alternate from each of the regulated markets in the Republic;
- (c) one commercial lawyer of appropriate experience and an alternate;
- (d) one accountant of appropriate experience and an alternate;
- (e) one person of appropriate experience and an alternate from the insurance industry;
- (f) one person of appropriate experience and an alternate from the banking industry;
- (g) one person of appropriate experience and an alternate from the fund management industry;
- (h) one person of appropriate experience and an alternate nominated by the Share Holders' Association of South Africa or any other similar organisation chosen by the Minister;
- (i) one person of appropriate experience and an alternate nominated by the SA Reserve Bank; and
- (j) two other persons of appropriate experience and alternates.

(4) The persons referred to in subsection (3) are nominated by reason of their availability and knowledge of financial markets and may not be practising authorised users.

(5) The directorate must designate from its members a deputy chairperson who performs the functions of the chairperson when the office of chairperson is vacant or when the chairperson is unable to perform his or her functions.

(6) The members of the directorate may co-opt one or more persons as additional members of the directorate.

(7) All members of the directorate, other than the additional members, have one vote in respect of matters considered by the directorate, but an alternate member only has a vote in the absence from a meeting of the member whom the alternate is representing.

(8) The meetings of the directorate are held at such times and places as the chairperson may determine, but four members of the directorate may by notice in writing to the chairperson of the directorate demand that a meeting of the directorate be held within seven business days of such notice.

(9) The chairperson must determine the procedure of a meeting of the directorate.

(10) The decision of a majority of the members of the directorate constitutes the decision of the directorate.

(11) No proceedings of the directorate are invalid by reason only of the fact that a vacancy existed on the directorate or that any member was not present during such proceedings or any part thereof.

(12) The directorate is, in the performance of its functions, assisted by an executive director who is appointed by the board after consultation with the directorate and who may attend all meetings of the directorate but may not vote at such meetings.

Financing of directorate

93. The costs of performing the functions of the board and those of the directorate in terms of this Chapter are paid out of levies imposed by the board on exchanges under section 15A of the Financial Services Board Act.

General provisions

Protection of existing rights

94. Nothing in this Chapter prejudices the common law rights of any person aggrieved by any dealing or offence contemplated in this Chapter to claim any amount save to the extent that any portion of such amount has been recovered by such person under section 86 or 87.

Confidentiality and sharing of information

95. (1) The directorate may share information concerning any matter dealt with in terms of this Chapter with the institutions which have nominated persons to the directorate, the Takeover Regulation Panel, established by section 196 of the Companies Act, the South African Reserve Bank, the Independent Regulatory Board for Auditors constituted in terms of the Auditing Professions Act, all self-regulatory organisations, the Financial Intelligence Centre established by the Financial Intelligence Centre Act, the National Treasury, the Minister and with the persons, whether inside the Republic or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses.

(2) The Takeover Regulation Panel, the South African Reserve Bank, the Independent Regulatory Board for Auditors, all self-regulatory organisations and the Financial Intelligence Centre must disclose to the board all information in its possession relating to an alleged offence in terms of this Chapter.

CHAPTER XI

AUDITING

Auditor

96. (1) Despite the provisions of any law, a regulated person must appoint and at all times have an auditor who engages in public practice and who has no direct or indirect financial interest in the business in respect of which the auditor is so appointed.

(2) No firm of auditors, or a member of such firm, in which a regulated person or director, officer or employee of a regulated person has any financial interest, may be appointed as an auditor of a regulated person.

(3) The registrar must approve the appointment of the auditor of every self-regulatory organisation, trade repository and clearing house and may withdraw the approval if it is necessary.

Accounting records and audit

97. A regulated person must—

- (a) maintain on a continual basis the accounting records prescribed by the registrar and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be prescribed by the registrar;
- (b) cause such accounting records and annual financial statements to be audited by an auditor appointed under section 96, within a period prescribed by the registrar or such later date as the registrar may allow on application by a regulated person; and
- (c) preserve such records, which may be in electronic form, in a safe place for a period of not less than five years as from the date of the last entry therein.

Functions of auditor

98. (1) The auditor must, in conformity with generally accepted auditing standards, examine the accounting records and annual financial statements and be satisfied that the accounting records comply with the requirements of this Act and that the financial statements are properly drawn up so as to fairly present the financial position, cash flows and the results of the operations of the regulated person.

(2) When an auditor of a regulated person has conducted an audit in terms of subsection (1), the auditor must, subject to subsection (3), report to the regulated person or to the self-regulatory organisation if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house, and on request to the registrar—

- (a) to the effect that the auditor has examined the accounting records and the annual financial statements in accordance with generally accepted auditing standards and in the manner required by this Act and that in the auditor's considered opinion they fairly present the financial position, cash flows and results of the operations of the regulated person; and
- (b) on the matters prescribed by the registrar, including matters relating to the nominees of those regulated persons.

(3) If the auditor is unable to make such a report or to make it without qualification, the auditor must include in the auditor's report a statement explaining the facts or circumstances that prevented the auditor from making a report or from making it without qualification.

(4) When the auditor of a regulated person furnishes copies of a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Professions Act, the auditor must, despite any contrary law, also furnish a copy thereof to the registrar, if the auditor is the auditor of a self-regulatory organisation, trade repository or associated clearing house, or to the self-regulatory organisation in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house.

(5) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must—

- (a) submit to the registrar, if the auditor is the auditor of a self-regulatory organisation, trade repository or associated clearing house or to the self-regulatory organisation in

question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house, a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination;

(b) if the auditor would, but for that termination, have had reason to submit to the regulated person a report contemplated in section 45(1)(a) and (3)(c) of the Public Auditing Professions Act, submit such a report to the registrar or the self-regulatory organisation, as the case may be.

(6) An auditor must inform the registrar or the self-regulatory organisation, as the case may be, in writing of any matter relating to the affairs of the regulated person of which the auditor became aware in the performance of the auditor's functions and which, in the opinion of the auditor, is irregular or may prejudice the regulated person's ability to meet its liabilities at all times.

Furnishing of information in good faith by auditor

99. (1) The furnishing, in good faith, by an auditor of a report or information in terms of this Act does not constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.

(2) The failure, in good faith, by an auditor to furnish a report or information in terms of this Act does not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

Power of registrar to request audit

100. (1) The registrar may at any time by written notice direct a regulated person to have its accounts, records and financial statements audited and to submit the results of such an audit to the registrar within the time specified in the notice.

(2) A person who, pursuant to subsection (1), gives information, an explanation or access to records knowing that the information, explanation or records are false or misleading, commits an offence.

CHAPTER XII GENERAL PROVISIONS

Powers of registrar and court

Powers of registrar to conduct on-site visit or inspection

101. (1) The registrar may –

- (a) authorise any suitable person to conduct an on-site visit of the business and affairs of a regulated person to determine compliance with this Act; or
- (b) instruct an inspector under section 3 of the Inspection of Financial Institutions Act, 1998.

(2) A person conducting an on-site visit in terms of paragraph (a) may -

- (a) at any time during business hours -
 - (i) enter the premises of the regulated person and the regulated person must upon request provide any document;
 - (ii) search the premises of the regulated person for any document;
 - (iii) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;
 - (iv) seize any document against the issue of a receipt, which may furnish proof of any failure to comply with the provisions of this Act;
- (b) require the regulated person to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the regulated person;
- (c) require any person that is holding or is accountable for any document, to provide information and an explanation of that information.

(3) The registrar may at the request of a supervisory authority, investigate or assist that supervisory authority in an investigation into possible contraventions or failures similar to contraventions or failures that may occur under this Act that is regulated in terms of the laws of a country other than the Republic that that supervisory authority administers.

Powers of registrar after on-site visit or inspection

102. After an on-site visit or inspection has been done under section 101, the registrar may in order to achieve the objects of this Act referred to in section 2—

- (a) if the respondent is a company—

- (i) apply to the court under section 81 of the Companies Act for the winding-up of the respondent as if the registrar were a creditor of the respondent;
 - (ii) apply to the court under section 131 of the Companies Act to begin business rescue proceedings in respect of the respondent as if the registrar were a creditor of the respondent;
- (b) subject to section 5 of the Financial Institutions (Protection of Funds) Act, apply to the court for the appointment of a curator for the business of the respondent;
- (c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the on-site visit or inspection: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act.
- (d) direct the respondent to prohibit or restrict specified activities, performed in terms of this Act, of a director, managing executive, officer or employee of the respondent, if the registrar believes that the director, managing executive, officer or employee is not fit and proper to perform such activities;
- (e) hand the matter over to the National Director of Public Prosecutions provided that the contravention or failure constitutes an offence in terms of this Act; or
- (f) by notice on the official web site or by means of any other appropriate public media, may make known-
 - (i) the status and outcome of an inspection;
 - (ii) the details of an inspection if disclosure is in the public interest;
 - (iii) the outcome and details of an on-site visit if disclosure is in the public interest.

Power of registrar to impose penalties

103. (1) The registrar may impose a fine in the case of any failure by a regulated person to submit to the registrar within any period specified by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

(2) The registrar must, before imposing a fine, by written notice to the regulated person—

- (a) inform the regulated person of the registrar's intention to impose a fine;
- (b) specify the particulars of the alleged failure;
- (c) set out the reasons for the intended imposition of a fine;
- (d) specify the amount of the fine intended to be imposed; and
- (e) call upon the regulated person to show cause within a period specified by the registrar why the fine should not be imposed.

(3) If the registrar, after consideration of representations made by the regulated person, decides to impose a fine, the registrar must by written notice inform the regulated person that, not later than 30 days after the date of the notice, the regulated person may—

- (a) pay the fine; or
- (b) appeal in terms of section 111 against the imposition of the fine to the appeal board.

(4) If a regulated person fails to pay the fine or note an appeal in terms of subsection (3), the registrar may file with the clerk or registrar of any competent court a statement certified by him or her as correct, stating the amount of the fine imposed on the regulated person, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board for a liquid debt in the amount specified in the statement.

Power of court to declare person disqualified

104. (1) If a court—

- (a) convicts an authorised user, participant or clearing member of an independent clearing house, or an officer or employee of those entities, of an offence under this Act or of an offence of which any dishonest act or omission is an element; or
- (b) finds, in proceedings to which a person referred to in paragraph (a) is a party or in which his or her conduct is called into question, that he or she has been guilty of reckless or dishonest conduct,

the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the person concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on business or being employed in a capacity of trust.

(2) The court may, on good cause shown, vary or revoke a declaration made under subsection (1).

(3) The registrar of the court that has made a declaration under subsection (1) or varied or revoked a declaration under subsection (2), must as soon as possible notify the registrar, and the self-regulatory organisation concerned, thereof.

(4) No declaration made under subsection (1) affects any power of a self-regulatory organisation to take disciplinary action in terms of its rules against the person concerned.

Enforcement committee

Referral to enforcement committee

105. The registrar may, despite and in addition to taking any step he or she may take under this Act, refer any contravention of this Act to the enforcement committee.

Winding-up, business rescue and curatorship

Winding-up or sequestration by court

106. (1) Despite any other law, an order for the winding-up or sequestration of the estate of a regulated person may be granted by the court on the application of—

- (a) the regulated person;
- (b) one or more of the regulated person's creditors;
- (c) if the regulated person is an exchange, a central securities depository or an independent clearing house, one or more authorised users, participants or clearing members, as the case may be;
- (d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);
- (e) the business rescue practitioner of the regulated person;
- (f) the provisional curator or curator of a regulated person; or
- (g) the registrar.

(2) A regulated person which is a company or other corporate body may be wound-up, subject to section 110, according to the Companies Act, and the estate of a regulated

person who is a natural person or partnership may be sequestrated according to the Insolvency Act.

(3) Despite the Companies Act, -

- (a) any resolution or court application made under the Companies Act must be filed with or served on the registrar, as the case may be, and must be approved by the registrar prior to the filing or serving thereof;
- (b) in relation to a court application, the registrar may file affidavits and other documents relating to, and may appear and be heard at the hearing of the application;
- (c) a company may file a resolution under section 80 of the Companies Act only after the registrar has approved the resolution; and
- (d) the certificate referred to in section 82(1) of the Companies Act must also be filed with the registrar.

(4) A court may not grant a liquidation order in respect of a regulated person without the approval of the registrar.

(5) If the registrar does not approve the resolutions of the regulated person made under section 80 of the Companies Act, the registrar may apply –

- (a) for the liquidation and winding-up of the regulated person under section 81 of that Act; or
- (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

(6) A regulated person may not be placed in liquidation or sequestration while under curatorship, unless the curator applies for such liquidation or sequestration.

Business rescue

107. (1) The court may grant a business rescue order in respect of a regulated person which is a company or other corporate body on the application of the persons, except a curator, referred to in section 106(1).

(2) (a) Sections 106(3), (4), (5) and (6) applies, with the changes required by the context, to a court application for or a resolution on business rescue.

(b) Any reference to section 80 of the Companies Act in the sections referred to in subsection (1A) must be construed as a reference to section 129 of that Act and any

reference to liquidation or sequestration in those sections must be construed as a reference to business rescue.

(3) The Companies Act applies, subject to section 109, to business rescue proceedings relating to a regulated person that is a company.

Appointment of curator

108. (1) Despite any other law, the court may appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any regulated person.

(2) The Financial Institutions (Protection of Funds) Act applies to the management and control of a regulated person by a curator appointed under this section.

(3) If a curator is appointed under this section, no business rescue or liquidation proceedings under the Companies Act or sequestration proceedings under the Insolvency Act may be commenced in respect of that regulated person until the appointment of the curator is terminated.

Appointment of business rescue practitioner or liquidator and approval of business rescue plan

109. (1) Despite the provisions of the Companies Act, the registrar must approve the appointment of a business rescue practitioner or liquidator of a regulated person and must approve the business rescue plan referred to in section 150 of the Companies Act..

(2) Despite the provisions of the Companies Act, if the registrar does not approve the business rescue plan referred to in subsection 150(1) of the Companies Act, the registrar may apply –

- (a) for the liquidation and winding-up of the regulated person under section 81 of that Act;
- or
- (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

Miscellanea

110. General interpretation of Act.— This Act must be interpreted and applied in a manner that gives effect to the objects of the Act set out in section 2.

Right of appeal

111. (1) A person aggrieved by a decision of—

- (a) the registrar under a power conferred or a duty imposed upon the registrar by or under this Act;
- (b) an exchange to refuse an application by that person to be admitted as an authorised user;
- (c) an exchange to withdraw the authorisation of an authorised user or to direct an authorised user to terminate the access to the exchange by an officer or employee of such authorised user;
- (d) an exchange to defer, refuse or grant an application for the inclusion of securities in the list or to remove securities from the list or to suspend the trading in listed securities;
- (e) a central securities depository to refuse an application by a person to be accepted as a participant;
- (f) a central securities depository to terminate the participation of a participant or to direct a participant to terminate the access to the central securities depository by an officer or employee of a participant;
- (g) an independent clearing house to refuse an application by a person to be admitted as a clearing member;
- (h) an independent clearing house to withdraw the authorisation of a clearing member or to direct a clearing member to terminate the access to the independent clearing house by an officer or employee of such clearing member;
- (i) an exchange, central securities depository or independent clearing house to impose a penalty on an authorised user, issuer, participant or clearing member of an independent clearing house, as the case may be, or on an officer or employee of an authorised user, issuer, participant or clearing member of an independent clearing house;
- (j) the claims officer referred to in Chapter IX,

may appeal to the appeal board on the conditions determined by or under section 26A of the Financial Services Board Act and subject to this section.

(2) The registrar may appeal to the appeal board against a decision of a self-regulatory organisation if the self-regulatory organisation fails to respond to a written request by the registrar to review the decision within a reasonable period.

Evidence

112. A record, including an electronic record, purporting to have been made in the ordinary course of the business of a regulated person, or a copy or printout of or an extract from such record certified to be correct by an officer in the service of such regulated person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under this Act, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and *prima facie* proof of the facts contained in such record, copy, printout or extract.

Regulations

113. (1) The Minister may make regulations not inconsistent with this Act with regard to—

- (a) any matter that is required or permitted to be prescribed in terms of this Act, and
- (b) any other matter necessary for the better implementation and administration of this Act or a function or power provided for in this Act.

Fees

114. (1) The registrar may prescribe fees in respect of matters contemplated in this Act and, in relation to such fees as well as fees payable in terms of this Act, the person by whom the fee must be paid, the manner of payment thereof and, where necessary, the interest payable in respect of overdue fees.

(2) Fees payable in terms of this Act and interest so payable in respect of overdue fees may be recovered by the registrar by civil action in a competent court.

Offences and penalties

115. A person who—

- (a) commits an offence referred to in section 82, 84 or 85 is liable on conviction to a fine not exceeding R50 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment;
- (b) commits an offence referred to in section 100(2) is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment;
- (c) contravenes or fails to comply with section 4(1), (2), (3), (4) or (5), 24, 25, 26, 77 or 79 or commits an offence and is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

Savings

116. (1) The license, registration or authorisation of a regulated person who immediately before the date of commencement of this Act was licensed, registered or authorised under the Securities Services Act, 2004, repealed by this Act, shall have effect from the date of commencement of this Act as if granted under a corresponding provision of this Act: Provided that a license, registration or authorisation granted for a specified period, shall remain in force, subject to this Act, for so much of that period as falls after the date of commencement of this Act only.

(2) The rules of a self-regulatory organisation made under the Securities Services Act, 2004, repealed by this Act and in force immediately before the date of commencement of this Act, continue in force so far as they are not inconsistent with this Act: Provided that a self-regulatory organisation must, within six months from the date of commencement of this Act, amend or replace its rules so as to comply with the requirements of this Act.

(3) Subsection (2) applies with the changes required by the context to the listing requirements of an exchange.

(4) Section 91 and 92 of this Act applies to any investigation of alleged non-compliance with or offences under the Securities Services Act, 2004, instituted after its repeal by this Act.

Amendment of laws

117. The laws referred to in the Schedule are hereby amended to the extent specified in the third column thereof.

Short title and commencement

118. This Act is called the Financial Markets Act, 2011, and comes into operation on a date fixed by the Minister by proclamation in the *Gazette*.

Schedule
LAWS AMENDED
(Section 117)

<i>No. and year of act</i>	<i>Short title</i>	<i>Extent of amendment or repeal</i>
Act No. 36 of 2004	Securities Services Act	The whole.
Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2000	<p>1. <i>To replace section 45(1)(a)(i) with the following:</i></p> <p>(1) The provisions of this Act do not apply to the rendering of financial services by -</p> <p style="padding-left: 40px;">(a) (i) any “authorised user”, “clearing house”, “clearing member”, “central securities depository” or “participant” as defined in section 1 of [the Securities Services Act, 2004] <u>the Financial Markets Act, 2011</u> , or exchange licensed under section [10] 11 of that Act <u>to the extent that the rendering of those services are specifically supervised under that Act;</u>”</p>
Act No. 89 of 1998	Competition Act, 1998	<p>1. <i>To replace section 18(2) with the following:</i></p> <p>(2) Despite anything to the contrary in <i>this Act</i>, the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b), and the Competition Tribunal may not make an order in terms of section 16(2), if the—</p> <p style="padding-left: 40px;">(a) merger constitutes—</p> <p style="padding-left: 80px;">(i) an acquisition of shares for which permission is required in terms of</p>

		<p>section 37 of the Banks Act, 1990 (Act No. 94 of 1990); [or]</p> <p>(ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990); [and]</p> <p>(iii) <u>an acquisition of shares for which approval is required in terms of section [54] 62 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2011; or</u></p> <p>(iv) <u>a transaction for which approval is required in terms of section [57] 65 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2011; and</u></p> <p>(b) Minister of Finance has, in the <i>prescribed</i> manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that—</p> <p>(i) the merger is a merger contemplated in paragraph (a)(i) or (ii); and</p> <p>(ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990) <u>or the Financial Markets Act, 2011, only.</u></p>
Act No.	Financial Institutions	1. <i>To delete section 8.</i>

28 of 2001	(Protection of Funds) Act, 2001	<p>2. To replace section 6A(2) with the following:</p> <p>(2) The directorate may, after an investigation carried out by the directorate under Chapter IX of the Financial Markets Act, 2011, refer an alleged contravention to the enforcement committee.</p> <p>3. To replace section 6D(2)(b)(ii) with the following:</p> <p>(ii) if the respondent contravened section [73, 75 or 76 of the Securities Services Act, 2004]<u>79, 81 or 82 of the Financial Markets Act, 2011</u>, order the respondent to pay to the board a compensatory amount calculated in accordance with section [771), (2), (3) or (4)] <u>83 or section 84</u> of that Act.</p>
Act No. 71 of 2008	Companies Act, 2008	<p>1. To amend section 1 as follows:</p> <p style="padding-left: 40px;"><i>(i) to substitute the definition of “central securities depository” with the following definition:</i></p> <p>“‘central securities depository’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>;</p> <p style="padding-left: 40px;"><i>(ii) to substitute the definition of “exchange” with the following definition:</i></p> <p>“‘exchange’ when used as a noun, has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>;</p> <p style="padding-left: 40px;"><i>(iii) to substitute the definition of “listed”</i></p>

		<p>securities” with the following definition:</p> <p>“listed securities’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>;</p> <p>(iv) to substitute the definition of “nominee” with the following definition:</p> <p>“nominee’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>;</p> <p>(v) to substitute the definition of “participant” with the following definition:</p> <p>“participant’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>;</p> <p>(vi) to substitute the definition of “securities” with the following definition:</p> <p>“securities’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2011</u>, and includes shares held in a private company;</p> <p>(vii) to substitute the definition of “uncertificated securities” with the following definition:</p> <p>“uncertificated securities’ means any securities defined as such in section [29 of the Securities Services Act, 2004 (Act No. 36 of 2004)] <u>1 of the Financial Markets Act, 2011</u>.”</p>
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		<p>2. To amend section 5(4)(b)(i) of the Act, by substituting the following subitem for subitem (ff):</p> <p style="padding-left: 40px;">“(ff) [Securities Services Act, 2004 (Act 36 of 2004)] <u>Financial Markets Act, 2011;</u>”.</p> <p>3. To amend section 69(8)(b)(iv) of the Act, by substituting the following subitem for subitem (cc):</p> <p style="padding-left: 40px;">“(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the [Securities Services Act, 2004 (Act 36 of 2004)] <u>Financial Markets Act, 2011,</u> or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);”.</p> <p>4. To replace section 116(4)(a)(iii) with the following:</p> <p style="padding-left: 40px;">(iii) has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act <u>or obtained the approval of the registrar of Securities Services in terms of section 62 of the Financial Markets Act, 2011,</u> if so required by that Act; and</p> <p>5. To replace section 116(9) with the following:</p> <p style="padding-left: 40px;">(9) If, with respect to a transaction involving a company that is regulated in terms of the Banks Act <u>or the Financial Markets Act, 2011,</u> there is a conflict between a provision of subsection (7) and a provision of section 54 of [that] <u>the Banks Act or the Financial Markets Act, 2011 Act,</u> as the case</p>
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		<p>may be, the provisions of [that Act]those Acts prevail.</p>
<p>Act No. 24 of 1936</p>	<p>Insolvency Act, 1936</p>	<p>1. To replace section 35A with the following:</p> <p>35A. Transactions [on exchange]in securities.—(1) In this section—</p> <p>["exchange"] “market infrastructure provider” means :-</p> <p>(a) an exchange as defined in section 1 and licensed under section [10]11 of the [Securities Services Act, 2004]Financial Markets Act, 2011;[,] and</p> <p>(b) a central securities depository as defined in section 1 of that Act [and which is also licensed as a clearing house under section 66 of that Act,]; or</p> <p>(c) a clearing house as defined in section 1 of that Act and licensed under section 51 of that Act;</p> <p>["exchange rules"] “rules” means the exchange rules, and depository rules or clearing house rules, as defined in section 1 of the [Securities Services Act, 2004]Financial Markets Act, 2011;</p> <p>“market participant” means an authorised user, a participant, a clearing member or a client [or a settling party]as defined in section 1 of the [Securities Services Act, 2004]Financial Markets Act, 2011, or any other party to a transaction;</p> <p>“transaction” means any transaction to which the [rules of an exchange] rules apply.</p>

		<p>(2) If upon the sequestration of the estate of a market participant the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the [exchange in question] <u>market infrastructure provider</u> in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall in accordance with the [rules of an exchange] <u>rules</u> applicable to any such transaction be entitled to [terminate]<u>revoke</u> all such transactions and the trustee of the insolvent estate of the market participant shall be bound by such [termination]<u>revocation</u>.</p> <p>(3) No claim as a result of the [termination]<u>revocation</u> of any transaction as contemplated in subsection (2) shall exceed the amount due upon [termination]<u>revocation</u> in terms of the [rules of an exchange]<u>rules</u> in question.</p> <p>(4) Any [rules of an exchange] <u>rules</u> and the practices thereunder which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to</p>
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		<p>be settled on a date occurring after the sequestration, or settlement of which was overdue on the date of sequestration.</p> <p>(5) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in accordance with the [rules of an exchange] <u>rules</u>.</p>
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MEMORANDUM ON THE OBJECTS OF THE FINANCIAL MARKETS BILL, 2010

1. BACKGROUND

1.1 The Financial Markets Bill, 2010 (“the Bill”) replaces the Securities Services Act, 2004 (Act No. 36 of 2004).

1.2 The Bill gives effect to the outcomes of a regular legislative review of the Securities Services Act (“the SSA”). The SSA took effect on 1 February 2005. It governs the regulation of securities services in South Africa and primarily focuses on the regulation of securities exchanges, central securities depositories, clearing houses and their members. It consolidated the South African regulatory framework relating to capital markets and aligned the regulation and supervision of South African financial markets with the then prevailing international developments and regulatory standards.

1.3 Subsequent to its enactment, the SSA had not been subjected to a comprehensive review to assess if it is still sufficiently robust to meet its objectives and the objectives of securities regulation in general. Further, local and international developments, the recent global financial crisis and implementation challenges demanded a review of the appropriateness and effectiveness of the regulatory approach and framework provided for in the SSA.

1.4 A review of the SSA was therefore undertaken. The review assessed if the SSA was still sufficiently robust to continue to meet its objectives and the objectives of securities regulation in general, was aligned with relevant local and international developments and standards, and was and is effective in mitigating the impact of the financial crisis and any potential future financial crisis.

1.5 The review highlighted *a number of critical provisions* that must be given effect to in legislation to ensure that the integrity of the regulatory framework of the South African financial markets is maintained, and more specifically that the regulatory framework continues to meet its objectives and the objectives of financial regulation in general, is aligned with local and international developments and standards, and remains effective in mitigating potential impacts of any possible future financial crisis.

1.6 Due to the number of amendments to the SSA necessitated by the review, and the need to update references to legislation and institutions, address interpretational and

operational challenges, align with the Companies Act, 2008 (Act No. 71 of 2008) and to incorporate certain principles of the UNIDROIT Convention on Substantive Rules regarding Intermediated Securities into domestic legislation, it was deemed appropriate, in the interest of simplicity and legal certainty, to replace the SSA, rather than propose a complex amendment Bill. [UNIDROIT, set up in 1926 as an auxiliary organ of the League of Nations, was re-established in 1940 based on a multilateral agreement, the UNIDROIT Statute. South Africa is one of its 59 Member States. UNIDROIT's purpose is to study needs and methods for modernising, harmonising and coordinating private and, in particular, commercial law between states and groups of states.]

2. OBJECTS OF BILL

The Bill aims to -

- 2.1 increase confidence in the South African financial markets by –
 - requiring that securities services be provided in a fair, efficient and transparent manner; and
 - contributing to the maintenance of a stable financial market environment;
- 2.2 promote the protection of regulated persons and clients;
- 2.3 reduce systemic risk; and
- 2.4 promote competition in and the international competitiveness of securities services in the Republic.

3. SUMMARY OF BILL

The Bill has 12 chapters, which can be summarised as follows:

- 3.1 Chapter I contains the relevant definitions and sets out the objects of the Bill. It also indicates how and to whom the Bill and rules made thereunder apply, and prohibits certain activities.
- 3.2 Chapter II provides for the powers and functions of the Registrar and Deputy Registrar of Securities Services (both referred to as “the registrar”).
- 3.3 Chapter III deals with the licensing of an exchange, the functions of an exchange, the funding of an exchange, the rules of an exchange, listing requirements, removal of listings and disclosures by issuers of listed securities, the specific obligations of authorised users and

the use of the term “stockbroker”. It also deals with the buying and selling of listed securities and the reporting of off-market transactions in listed securities.

3.4 Chapter IV deals with the custody and administration of securities. It also deals with the licensing of a central securities depositories (“CSD”), the functions of a CSD, the rules of a CSD and the functions of participants. It further deals with uncertificated securities, and the functions of an issuer of uncertificated securities.

3.5 Chapter V deals with the licensing of a clearing house as an independent or associated clearing house. It also deals with the functions of a clearing house, the rules of an independent clearing house and the amalgamation, merger, transfer or disposal of an associated clearing house.

3.6 Chapter VI provides for the establishment of a trade repository, to which all trades in unlisted instruments will be reported. In doing so, it lays out the licensing and operational requirements of the trade repository, as well as its function.

3.7 Chapter VII deals with self-regulatory organisations. The Bill confers the status of a self-regulatory organisation on exchanges, CSDs and independent clearing houses. This Chapter also deals with –

- matters relating to the licenses, corporate form, ownership, amalgamation, merger, transfer or disposal of self-regulatory organisations;
- requirements for and obligations of a member of the controlling body of a self-regulatory organisation;
- the rules of a member of a self-regulatory organisation; and
- the reporting and disclosures by a self-regulatory organisation.

3.8 Chapter VIII provides that the registrar may prescribe a code of conduct for authorised users, participants or clearing members of independent clearing houses.

3.9 Chapter IX deals with general provisions relating to listed and unlisted securities. It authorises the registrar to regulate trading in unlisted transactions and prohibit undesirable advertising or canvassing relating to securities.

3.9 Chapter X prohibits market abuse and deals with the functions of the Directorate of Market Abuse in dealing with market abuse related offences.

3.10 Chapter XI obliges regulated persons to have audited financial statements, deals with the role and functions of the auditor, the powers of the registrar and the Courts in ensuring

compliance with the legislation (such as inspections, on-site visits, referrals to the enforcement committee, orders, winding-up, business rescue and the like).

3.11 Chapter XII provides for general provisions, which include offences and penalties and matters relating to fair administrative action, right to appeal, the certification of documents, regulations, savings and the like.

4. DEPARTMENTS OR BODIES CONSULTED

4.1 The National Treasury and FSB have engaged extensively with the JSE Ltd and Strate Ltd, in their capacity as self-regulatory organisations.

4.2 The dti has been consulted in the context of its legislation and the impact of this on financial services regulation more generally.

4.3 The FMB was presented at the Economic Sector and Employment Director-General and Ministerial clusters, on the 2nd and 17th of March 2011 respectively, where it received general support from the represented departments.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Ministry of Finance are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

6.2 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.