

BILL

To consolidate and amend the laws relating to the regulation and control of exchanges and securities trading, the regulation and control of central securities depositories and the custody and administration of securities, and the prohibition of insider trading; to provide for the licensing of a clearing house and the approval of nominees; to provide for a code of conduct for authorised users; and to provide for matters connected therewith.

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

CHAPTER I

PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise –

“**advisory board**” means the Financial Markets Advisory Board referred to in section 6;

“**auditor**” means an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

“**authorised user**” means a person authorised by an exchange in terms of the exchange rules to buy or sell securities listed on that exchange, either for own account or on behalf of another person;

“**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, 1990 (Act No. 97 of 1990);

“**board of appeal**” means the board of appeal established by section 26 of the Financial Services Board Act, 1990;

“**central securities depository**” means a person who is licensed as a central securities depository under section 33;

“clear”, in relation to a transaction or group of transactions in listed 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;

“clearing house” means a person licensed in terms of section 67 as a clearing house and appointed by an exchange to provide clearing house services to such exchange;

“clearing house services” means either clearing services or settlement services or both clearing and settlement services provided to an exchange by a clearing house;

“client” means any person who –

- (a) buys or sells securities on an exchange through an authorised user or on behalf of whom an authorised user undertakes management of securities; or
- (b) deposits securities with a participant,
as the case may be;

“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 a self-regulatory organisation in accordance with its rules;

“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 97;

“exchange” means a person who constitutes, maintains or 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 exchange” means a person authorised to function as an exchange in terms of the laws of a country other than the Republic;

“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 unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), 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;
- (e) any intermediary rendering the services contemplated in section 72(1)(d) of the Long-term Insurance Act, 1998, or section 70(e) of the Short-term Insurance Act, 1998; and
- (f) a bank;

“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;

“index” means a statistical indicator that indicates changes in the average prices of securities, or groups of securities, on an exchange or external exchange;

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

“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;

“listed securities” means securities included in the list of securities kept by an exchange in terms of section 12;

“management of securities” means –

- (a) the giving of instructions, on behalf of another person, to buy or sell securities on behalf of that other person;

- (b) the buying or selling of securities on behalf of another person on the instructions of that other person;
- (a) an agreement to buy or sell securities on behalf of another person;
- (b) the furnishing of advice to any person in connection with the buying and selling of securities; or
- (c) the handling of another person's funds intended for the purchase of securities on behalf of that other person;

“Minister” means the Minister of Finance;

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

“participant” means a person who holds in custody and administers securities or an interest in securities and who has been accepted in terms of section 35 by a central securities depository as a participant in that central securities depository;

“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 Registrar or Deputy Registrar of Securities Services referred to in section 5;

“regulated person” means a self-regulatory organisation or any other person who provides or who previously provided securities services;

“regulation” means a regulation made under section 113;

“securities” –

(a) means –

- (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) units in a unit trust scheme as defined in the Unit Trusts Control Act, 1981, and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Unit Trust Companies in terms of section 37A of that Act;
- (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
- (viii) instruments based on an index;
- (ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange; and
- (x) an instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the *Gazette* to be a security for the purposes of this Act;

- (xi) rights in the securities referred to in subparagraphs (i) to (xi);
- (b) excludes -
 - (i) money market instruments except for the purposes of Chapter IV; and
 - (ii) any security contemplated in paragraph (a)(i) to (xi) specified by the registrar by notice in the *Gazette*;

“securities services” means services provided in terms of this Act in respect of –

- (a) the buying and selling of securities;
- (b) the custody and administration of securities;
- (c) the management of securities by an authorised user;
- (d) the clearing of transactions in listed securities; and
- (e) the settlement of transactions in listed securities;

“self-regulatory organisation” means an exchange or a central securities depository;

“settle” means to discharge the obligations arising from a transaction in listed securities;

“settling party” means a buyer or seller of listed securities who settles a transaction or any person appointed in terms of exchange rules by such buyer or seller to settle a transaction on such buyer or seller’s behalf;

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

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

“this Act” includes any measure prescribed by the Minister or by the registrar;

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

Objects of Act

2. This Act aims to –
 - (a) increase confidence between regulated persons and between regulated persons and clients 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) maintain the international competitiveness of securities services in the Republic.

Application of Act

3. (1) This Act applies to –
 - (a) (i) an exchange and its authorised users;
 - (ii) a central securities depository and its participants;
 - (iii) a clearing house;
 - (iv) a person who conducts the business of buying and selling unlisted securities,

and the securities services provided by those entities;

- (b) issuers;
 - (a) clients;
 - (d) market abuse; and
 - (e) matters incidental to the matters referred to in paragraphs (a) to (d).
- (2) This Act does not apply to –
- (a) a unit trust scheme regulated by or under the Unit Trusts Control Act, 1981; and
 - (b) the activities regulated by or under the Financial Advisory and Intermediary Services Act, ... ;
- (3) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.

Prohibitions

- 4.** (1) No person may –
- (a) operate as an exchange unless that person is licensed under section 10;
 - (b) operate as a central securities depository unless that person is licensed under section 33;
 - (c) operate as a clearing house unless that person is licensed under section 67;
 - (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 19;
 - (f) carry on the business of buying or selling unlisted securities if prohibited under section 20 or in contravention of conditions imposed or prescribed under that section;
 - (g) act as a participant unless accepted in terms of section 35 as a participant by a central securities depository;
 - (h) if the person is an authorised user, undertake management of securities unless that person complies with exchange rules regulating the management of securities.
- (2) Subject to any contrary provision in any other law, a person who is not –
- (a) licensed as an exchange, a central securities depository, or a clearing house;
 - (b) a participant; or
 - (c) an authorised user,
- may not purport to be an exchange, central securities depository, clearing house, participant, or authorised user, 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, clearing house, participant or authorised user, as the case may be.

CHAPTER II**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, 1990, 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 compliance with this Act by every regulated person.
- (3) In performing those functions the registrar –
- (a) must act in a manner which –
 - (i) is compatible with the objects of this Act; and
 - (ii) is most appropriate for meeting those objects;
 - (b) must have regard to –
 - (i) minimum 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 benefit intended to be conferred by that restriction;
 - (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 give written reasons for a decision to any person adversely affected by such decision;
- (d) may impose conditions that are consistent with this Act in respect of any licence, authorisation, approval, consent or permission granted by the registrar and may amend or withdraw such conditions.

Financial Markets Advisory Board

- 6.** (1) The Financial Markets Advisory Board established by section 3 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), continues to exist, despite the repeal of that Act by section 117.
- (2) The advisory board consists of –
- (a) a chairperson; and
 - (b) the other members, including persons representing regulated persons and clients,
- appointed by the Minister after consultation with the board.
- (3) The registrar is a member of the advisory board by virtue of the registrar's office but may not vote on matters on which the registrar is to be advised by the advisory board.
- (4) A member of the advisory board holds office for the period determined by the Minister when the appointment is made.

- (5) The board pays to a member of the advisory board who is not in the full-time employment of the State -
 - (a) the remuneration or allowances determined by the board; and
 - (b) the reimbursement of expenses incurred in the performance of the member's duties.
- (6) (a) (i) The chairperson of the advisory board must convene the first meeting of the advisory board after the commencement of this Act and thereafter the advisory board meets at a time and place determined by the advisory board.
 - (ii) The chairperson convenes a meeting following upon a meeting at which there was no quorum.
- (b) The quorum for a meeting of the advisory board is a majority of its members.
- (7) The advisory board may on its own initiative, and must, at the request of the Minister or the registrar, investigate and report or advise on, administrative and technical matters concerning regulated persons or the provision of securities services.
- (8) The advisory board may –
 - (a) appoint a subcommittee consisting of members of the advisory board and, if necessary, other persons, to investigate and advise on matters referred to the subcommittee by the advisory board;

- (b) call upon any person to assist it or to investigate a matter relating to regulated persons or securities services.
- (9) The registrar may submit to the advisory board any information that is relevant to any matter investigated by the advisory board.
- (10) The registrar is responsible for the administrative work incidental to the functions of the advisory board and a subcommittee of the advisory board.
- (11) (a) The board must pay the expenses connected with the functions of the advisory board.
(b) The advisory board must obtain the approval of the board before expenses are incurred.
- (12) The provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths and affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the changes required by the context to an investigation by the advisory board or a subcommittee thereof.

CHAPTER III

EXCHANGES

Definitions

- 7. In this Chapter, unless the context indicates otherwise –
“**list**” means the list of securities referred to in section 12;

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

Licensing of exchange

Application for exchange licence

8. (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) Despite section 30 of the Companies Act, 1973 (Act No.61 of 1973), an association consisting of 10 or more persons may apply for an exchange licence.
- (3) 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 9;
 - (c) be accompanied by –
 - (i) a copy of the proposed exchange rules that must comply with section 18;
 - (ii) a copy of the proposed listing requirements that must comply with section 12;
 - (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 Minister;
 - (d) be supplemented by any additional information that the registrar may reasonably require.
- (4) The registrar must give notice of an application for an exchange licence in two national newspapers at the expense of the applicant. 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

9. (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) have made arrangements for the proper supervision of all transactions effected through the exchange so as to ensure compliance with the exchange rules;
 - (c) have the infrastructure necessary for the sustained operation of an exchange in terms of this Act;

- (d) maintain security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange;
 - (e) have insurance, a guarantee or compensation fund or other warranty in place to enable it to provide compensation, subject to the exchange rules, to authorised users and clients; and
 - (f) 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 prescribe any of the requirements referred to in subsection (1) in greater detail.

Licensing of exchange

- 10.** (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 8 (4) and subject to any conditions which the registrar may consider appropriate, grant an exchange 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 an exchange licence.

- (2) The exchange licence must specify the services that the exchange may provide, 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 the licence and the conditions subject to which its licence was granted.

Functions of exchange

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

- 11.** (1) An exchange –
- (a) must enforce the exchange rules and listing requirements;
 - (b) must supervise compliance by authorised users with this Act and the exchange rules;
 - (c) may issue directives;
 - (d) may amend or suspend the exchange rules in terms of section 62, and may amend its listing requirements in consultation with the registrar;
 - (e) (i) must make provision for the clearing and settlement of

- transactions in listed securities effected through the exchange;
- (ii) may appoint a clearing house licensed in terms of section 67 to perform clearing house services for the exchange in accordance with the exchange rules;
 - (iii) must consult with an appointed clearing house when making or amending exchange rules pertaining to clearing and settlement;
- (f) must supervise compliance by issuers of listed securities with the listing requirements, the exchange rules and this Act;
- (g) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and which 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

- 12.** (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 who 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 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 inspection conducted under section 93 or obtained by the Directorate of Market Abuse in an investigation under section 82.

- (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) 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 and any other conditions that it may determine, applications for the inclusion of securities in the list;
 - (c) may include securities issued by it in its own list subject to the approval of and the conditions prescribed by the registrar; and
 - (d) 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.

- (7) 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

- 13.** (1) An exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list or suspend the trading in listed securities if it will further 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, the conditions determined by an exchange in respect of the listing of securities or the exchange rules are not complied

with, 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 subsections (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 removal will not prejudice the interests of minority holders of the securities.
 - (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 12(6)(b), or under subsection (1) removes securities from the list or suspends the trading of listed securities, the issuer concerned must immediately notify every other exchange on which such securities are listed of the date of the refusal, removal or suspension.

- (b) No 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, removal or suspension has been withdrawn by the exchange concerned or set aside on appeal by the board of appeal in terms of section 111.
- (c) If an exchange withdraws a refusal, removal or suspension before the expiry of the period of six months, the issuer concerned must notify every other exchange on which the securities are listed accordingly.
- (d) An exchange referred to in paragraphs (a) and (b) must, if it is aware of the listing of the same securities on other exchanges, also notify those exchanges of the refusal, removal, suspension or withdrawal, as the case may be.

Application of new listing requirements and conditions to previously listed securities

- 14.** (1) Listing requirements or conditions determined by an exchange in respect of the listing of securities, may be applied by the exchange to securities listed before the determination of the listing requirements or conditions, by notice in writing to the issuer of such listed securities.
- (2) Listing requirements or conditions 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 or conditions take effect by not more than three months and must inform the exchange accordingly in writing.

Disclosure of information by issuers of listed securities

- 15.** (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 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.

Establishment and maintenance of compensation fund

- 16.** An exchange which maintains a fund for the compensation of authorised users and their clients in terms of the exchange rules, may impose a levy for the benefit of the fund on any person involved in a transaction in listed securities effected through the exchange.

Funds of exchange

- 17.** (1) 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.
- (2) If an exchange has assets which are surplus to its requirements it may distribute such assets to any person -
- (a) after providing for any liabilities of the exchange;
 - (b) in accordance with its founding documents; and
 - (c) with the written consent of the registrar.
- (3) If an exchange is a non-proprietary exchange, the distribution referred to in subsection (2) may be made despite contrary provisions of any law or the common law and without affecting the non-proprietary status of the exchange.

Exchange rules

Requirements with which exchange rules must comply

18. (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 and controlled 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) (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;

- (c) if there are different categories of authorised users, for the restriction of the activities of such categories subject to different conditions;
- (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;
- (e) for the manner in which transactions in listed securities must be cleared and settled;
- (f) for systems to be maintained by an exchange for the clearing and settlement of transactions if the exchange has not appointed a licensed clearing house, which clearing and settlement systems must comply with requirements prescribed by the registrar under section 66(1)(b);
- (g) for the circumstances in which a buyer or seller of listed securities may repudiate the transaction;
- (h) 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;
- (i) for the circumstances in which a transaction in listed securities may be declared void by the exchange;
- (j) for the conditions subject to which an authorised user may undertake management of securities for remuneration or benefit in any form;

- (k) that no authorised user may effect a transaction in securities with a person whom the authorised user believes or suspects requires 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;
- (l) for the approval by the exchange of a nominee of an authorised user which nominee –
 - (i) holds securities in a securities repository or central securities repository as defined in Chapter IV;
 - (ii) must comply with the requirements for nominees prescribed by the registrar under section 37;
- (m) for surveillance of any matter relevant for the purposes of this Act, the exchange rules and the directives;
- (n) for the conditions subject to which an 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 the 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;
- (o) for the circumstances in which trading in any listed security may be suspended;
- (p) for the manner in which an authorised user is required to conduct the business of buying and selling listed securities generally;

- (q) for the operation by an exchange or authorised user of a trust account contemplated in section 28;
- (r) for systems to be maintained by the exchange for -
 - (i) recording transactions effected through the exchange;
 - (ii) monitoring compliance by authorised users with this Act, the exchange rules and directives; and
 - (iii) surveillance of any matter relevant for the purposes of this Act, the exchange rules and the directives;
- (s) for the circumstances and manner in which an authorised user may advertise or canvass for business;
- (t) for the equitable settlement of disputes between authorised users and between authorised users and clients in respect of dealings in listed securities;
- (u) for the manner in which complaints against an authorised user or officer or employee of an authorised user or an issuer or a director, officer or agent of an issuer must be investigated;
- (v) for the steps to be taken by the exchange, or a person to whom the exchange has delegated its investigative and disciplinary functions, for the investigation and discipline of an authorised user or officer or employee of an authorised user who contravenes or fails to comply with this Act, the exchange rules , interim exchange rules or the directives and for a report on the disciplinary proceedings to be

furnished to the registrar within 30 days after the completion of such proceedings;

- (w) 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 (u) and (v); 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;
- (x) if a compensation fund referred to in section 16 is maintained, for –
 - (i) the persons who must contribute to the fund;
 - (ii) the amount of the levy imposed by the exchange;
 - (iii) different categories of claims that may be brought against the fund;
 - (iv) restrictions on the amount of any claim;
 - (v) the control and administration of the fund;
 - (vi) the ownership of the fund;
- (y) that authorised users must disclose to clients the fees for their services;
- (z) that authorised users may, in circumstances determined by an exchange, charge an administration fee for different categories of transactions;

- (aa) for the purposes for which an exchange may issue directives.
- (3) An exchange may, with the approval of the registrar, make exchange rules on matters additional to those listed in subsection (2).
- (4) An exchange rule made under this section is binding on an exchange, an authorised user, an issuer and their officers and employees, and on clients.

General provisions in relation to exchange

Buying and selling listed securities

- 19.** A person may carry on the business of buying or selling listed securities if that person –
- (a) is an authorised user;
 - (b) effects such buying or selling through an authorised user;
 - (c) is a financial institution transacting as principal with another financial institution also transacting as principal; 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 take-over 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.

Restriction on buying and selling unlisted securities

- 20.** (1) The registrar may –
- (a) prohibit a person from carrying on the business of buying or selling unlisted securities if that person carries on such business in a manner which defeats the objects of this Act referred to in section 2;
 - (b) impose conditions for the carrying on of such business;
 - (c) prescribe conditions in terms of which specified types of unlisted securities may be bought or sold.
- (2) A person who buys unlisted securities from or sells unlisted securities to a person who contravenes or fails to comply with a prohibition or condition referred to in subsection (1), may cancel the transaction.

Reporting of transactions in listed securities

- 21.** (1) A financial institution, whether it carries on the business of buying or selling listed securities or not, must report to the registrar any transaction in listed securities resulting in a change of beneficial ownership of those securities and concluded by it outside of an exchange.
- (2) The registrar may 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) The registrar must disclose information about a transaction reported in terms of subsection (1) to –
- (a) the exchange on which the securities are listed; and
 - (b) the public, unless the registrar is satisfied on reasonable grounds that such disclosure will be contrary to the objects of this Act referred to in section 2.
- (4) The exchange referred to in subsection (3) may publish any information disclosed to it in terms of that subsection.

Undesirable advertising or canvassing relating to securities

- 22.** (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 any business relating to the buying or selling of listed securities.
- (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.

False, misleading or deceptive statements, promises and forecasts

- 23.** No person may, directly or indirectly, make or publish in respect of listed securities, or in respect of the past or future performance of a public company –

- (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.

Certain written matter to bear names of certain persons

- 24.** 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.

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

- 25.** 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

- 26.** 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

- 27.** 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

- 28.** (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, 2001 (Act No. 28 of 2001), 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.

Use of designation “stockbroker” and related designations

- 29.** (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 agent or employee of 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 or agent or employee of 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.

CHAPTER IV

CUSTODY AND ADMINISTRATION OF SECURITIES

Definitions

- 30.** In this Chapter, unless the context indicates otherwise –
- “central securities account”** means an account kept by a central securities depository for a participant and reflecting the number or nominal value of

securities of each kind deposited and all entries made in respect of such securities;

“central securities repository” means a collection of securities of the same kind held by a central securities depository;

“certificated securities” means securities evidenced by a certificate or written instrument;

“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” includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other transaction in respect of securities;

“securities” includes certificated securities and uncertificated securities and money market instruments;

“securities account” means an account kept by or on behalf of a participant for a client and reflecting the number or nominal value of securities of each kind deposited 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 repository” means a collection of securities of the same kind held by a participant;

“subregister” means a subregister as defined in section 91A of the Companies Act, 1973;

“uncertificated securities” means securities that are not evidenced by a certificate or written instrument and are transferable by entry without a written instrument.

Licensing of central securities depository

Application for central securities depository licence

- 31.** (1) A person may apply to the registrar for a central securities depository licence.
- (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 32;
 - (c) be accompanied by –
 - (i) a copy of the proposed depository rules that must comply with section 40;
 - (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 Minister;
 - (d) be supplemented by any additional information that the registrar may reasonably require.

- (3) The registrar must give notice of an application for a central securities depository licence in two national newspapers at the expense of the applicant. 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 licence

- 32.** (1) An applicant for a central securities depository licence 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) have made arrangements for the proper supervision of compliance by participants with the depository rules;
 - (c) maintain security and back-up procedures to ensure the integrity of its records.
- (2) The registrar may prescribe any of the requirements referred to in subsection (1) in greater detail.

Licensing of central securities depository

- 33.** (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 31(3) and subject to the conditions which the registrar may consider appropriate, grant a central securities depository 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 such a licence.
- (2) The licence must specify the securities services that 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 licence and the conditions subject to which its licence was granted.

*Functions of central securities depository***Functions of central securities depository**

- 34.** A central securities depository –

- (a) must enforce the depository rules;
- (b) may amend or suspend the depository rules in terms of section 62;
- (c) must supervise compliance by participants with this Act and the depository rules;
- (d) may issue directives;
- (e) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities repository;
- (f) must maintain a central securities account with due regard to the interests of the participant and its clients;
- (g) must notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;
- (h) must balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer -
 - (i) in respect of each kind of certificated security, not less than once every six months;
 - (ii) in respect of each kind of uncertificated security –
 - (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;
- (i) must administer and maintain a record of uncertificated securities deposited with it;

- (j) may have access to the records of uncertificated securities administered and maintained by its participants;
- (k) may be appointed as a clearing house by an exchange if the central securities depository is licensed as a clearing house under section 67;
- (l) must disclose to participants and issuers the fees and charges required by it for its services;
- (m) must on request disclose to -
 - (i) the registrar information about the securities held by a participant in a central securities account;
 - (ii) an issuer information about the securities issued by that issuer and held by participants in central securities accounts;
- (n) must, if a participant ceases to be a participant, notify the registrar thereof as soon as possible;
- (o) must conduct its business in a prudent manner and with due regard to the rights of participants, clients and issuers.

Participant

Acceptance of participant

- 35.** 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****36.** A participant -

- (a) may, if securities are deposited with the participant, deposit them with a central securities depository unless the client expressly directs otherwise in writing;
- (b) must maintain a securities account for a client in respect of securities deposited;
- (c) must reflect the number or nominal value of each kind of securities 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 a subregister 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) an issuer information about the securities issued by that issuer and recorded in a securities account;

- (ii) the registrar information about the securities recorded in a securities account ;
- (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, pledge or cede 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.

Nominee

Approval of nominee

- 37.** (1) A nominee which is not approved as a nominee of –
- (a) an authorised user in terms of exchange rules; or
 - (c) a participant in terms of depository rules,
- 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.

- (2) The registrar must maintain a list of all nominees approved in terms of exchange rules or depository rules.

Uncertificated securities

Uncertificated securities

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

- 39.** 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;
- (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 41(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 the record referred to in paragraph (a) in respect of each kind of uncertificated security -
 - (i) if that record has not changed, not less than once every month;
 - (ii) if the record has changed, on the business day after such change;
- (e) if applicable, comply with section 91A of the Companies Act, 1973.

Depository rules

Requirements with which depository rules must comply

- 40.** (1) The depository rules must be consistent with this 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, for the investigation and discipline of a participant or officer or employee of a participant who contravenes or fails to comply with this Act, the depository rules, interim depository rules or the 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 require that -
 - (i) dividends paid and other payments made by issuers in respect of securities are paid to participants and by participants to their clients;
 - (ii) all notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to participants and 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 repository as provided for by this Chapter;
- (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;
 - (ii) convey to clients all information regarding rights and other benefits accruing to the securities held on behalf of such clients, such information is, in fact, conveyed; and
 - (iii) 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 repository or central securities repository, 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 repository or central securities repository, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned;
- (i) must require that a participant's central securities accounts do not show a debit balance;
 - (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 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;
 - (l) must provide for the manner in which participants must give instructions to a central securities depository;
 - (m) 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;
 - (n) must provide for the purposes for which a central securities depository may issue directives;
 - (o) must provide for the manner in which a participant must hold and administer securities.
- (3) A central securities depository may, with the approval of the registrar, make depository rules on matters additional to those listed in subsection (1).
- (4) A depository rule made under this section is binding on the central securities depository, a participant, an issuer of securities deposited with the central securities depository and their officers and employees, and clients.

General provisions relating to custody and administration of securities

Registration of securities

- 41.** (1) All securities held by a central securities depository must, unless they are bearer instruments or recorded in a subregister in accordance with section 91A of the Companies Act, 1973, 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, 1973, 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, 1973, of a central securities depository or participant.

Ownership of securities

42. (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 repository or by a central securities depository in a central securities repository, 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 repository or central securities repository, 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 repository or central securities repository, 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 in the securities repository or central securities repository, 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 securities

- 43.** Transfer of an interest in securities held by a participant must be effected by entry in the securities accounts of the transferor and the transferee with the participant concerned.

Pledge, or cession of securities to secure debt

- 44.** (1) A pledge or cession to secure a debt, in respect of an interest in securities held by a participant, must be effected by entry in the securities account of –
- (a) the pledgor in favour of the pledgee specifying the name of the pledgee, the interest in the securities pledged and the date; or
 - (b) 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.
- (2) Such interest in securities may not be transferred except with the written consent of the pledgee or cessionary.
- (3) The pledgee or cessionary of such interest in securities 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.
- (4) Section 43 and subsections (1), (2) and (3) of this section also apply, with the changes required by the context, to the transfer, pledge and cession to

secure a debt by one participant to another of an interest in securities held by a central securities depository.

Delivery of securities

- 45.** Subject to sections 42 and 44, the owner of an interest in securities held by a participant in a securities repository or a participant holding an interest in securities in a central securities repository, 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

- 46.** 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

- 47.** (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).

Relationship of trust

- 48.** A central securities depository is not obliged to recognise any relationship of trust or agency of its participants in respect of securities.

Attachment

- 49.** (1) The attachment of an interest in securities deposited with a participant and held in a securities repository or central securities repository is only complete when –
- (a) notice of the attachment has been given in writing by the sheriff to the participant;
 - (b) the sheriff has taken possession of any securities account as evidenced by a written acknowledgement issued by the participant or has certified that the sheriff has been unable, despite diligent search, to obtain possession of such written acknowledgement; and

- (c) the sheriff has made an entry of the attachment on such securities account or caused it to be made by such participant.
- (2) The sheriff may upon exhibiting the original of the warrant of execution to the participant enter upon the premises where such account is kept and make an inventory and valuation of the interest attached.

CHAPTER V

GENERAL PROVISIONS APPLICABLE TO SELF-REGULATORY ORGANISATIONS

Expiry and renewal of licence of self-regulatory organisation

- 50.** (1) The licence of a self-regulatory organisation (in this Chapter referred to as “a licence”) 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 licence must be –
- (a) made in the manner and contain the information prescribed by the registrar;
 - (b) accompanied by the application fee prescribed by the Minister; and
 - (c) supplemented by any additional information that the registrar may reasonably require.

Refusal of renewal of licence

- 51.** (1) The registrar may refuse to renew a licence 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 direction, request, condition or requirement of the registrar in terms of this Act; or
- (c) give effect to a decision of the board of appeal in terms of section 111,

and such failure has defeated the objects of this Act referred to in section 2 or is likely to defeat them.

- (2) The registrar must, before refusing to renew a licence –
 - (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 licence 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 licence

- 52.** (1) The registrar may, on conditions determined by the registrar, cancel or suspend a licence 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 direction, request, condition or requirement of the registrar in terms of this Act; or
- (iii) give effect to a decision of the board of appeal in terms of section 111,

and such failure has defeated the objects of this Act referred to in section 2 or is likely to defeat them;

- (b) after an inspection in terms of section 93 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 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 licence was obtained through misrepresentation.
- (2) The registrar must, before cancelling or suspending a licence –
- (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 licence should not be cancelled or suspended.
- (3) If the registrar cancels or suspends a licence 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.

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

- 53.** (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) If a self-regulatory organisation carries on business in addition to that regulated by or under this Act the registrar may, for the purpose of

minimising systemic risk, lay down requirements in respect of the carrying on of such business.

Demutualisation of self-regulatory organisation

- 54.** (1) A self-regulatory organisation which is not incorporated as a company having a share capital in terms of the Companies Act, 1973, may convert to such a 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) all the assets and liabilities of the unincorporated organisation, including any guarantee, trust or fidelity fund owned or maintained by the organisation to cover any liabilities of the members of the organisation to clients, vest in and become binding upon the company or such other entity acceptable to the registrar as the company may designate;
 - (b) the company has the same rights and is subject to the same obligations as were possessed by or binding upon the unincorporated organisation immediately before the conversion;
 - (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn by, with or in favour of the unincorporated organisation and in force immediately prior to the conversion remain of full force and effect, and are construed for all purposes as if they had been entered into, made, executed or drawn by, with or in favour of the company, as the case may be;

- (d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the unincorporated organisation which was in force immediately prior to the conversion, remains of full force, and is construed as a bond, pledge, guarantee or instrument given to or in favour of the company, as the case may be;
- (e) any claim, right, debt, obligation or duty accruing to any person against the unincorporated organisation or owing by any person to such organisation is deemed to be enforceable against or owing to the company as if so enforceable or owed since inception; and
- (f) the registrar must transfer the licence of the unincorporated organisation to the company if the company complies with all the requirements of this Act in respect of a self-regulatory organisation.

Amalgamation or transfer of self-regulatory organisation

- 55.** (1) Two or more exchanges, or two or more central securities depositories, may amalgamate or merge, or any of the assets and liabilities of an exchange or central securities depository may be transferred to or taken over by any other exchange or central securities depository, as the case may be, with the approval of the registrar and subject to the conditions that the registrar may prescribe.
- (2) If an amalgamation or transfer referred to in subsection (1) takes place –
- (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 guarantee, trust or fidelity fund owned or maintained by any of them to cover any liabilities of their members 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 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 prior to the amalgamation or transfer remain of full force, and are construed for all purposes as if they had been entered into, made, executed by or drawn, 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 of full 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 deemed to be enforceable against or owing to the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities, as if so enforceable or owed since inception.

Duty of members of controlling body of self-regulatory organisation

56. Each member of the controlling body of a self-regulatory organisation owes a fiduciary duty and a duty of care and skill to the self-regulatory organisation.

Appointment of members of controlling body of self-regulatory organisation

57. (1) For the purposes of this section, a new member means a person not previously approved by the registrar as a member of the controlling body of a self-regulatory organisation including a person who was previously so approved but whose approval has been withdrawn.

- (2) The registrar must approve the appointment of each member of the controlling body of a self-regulatory organisation (whether such appointment is for the purpose of the filling of a casual vacancy or in any other circumstances) and, subject to subsection (3), no appointment of a member of a controlling body is effectual for the purposes of this Act unless the registrar has consented to such appointment.
- (3) The appointment of a member of a controlling body before the date of commencement of this Act, is deemed to be an appointment with the consent of the registrar.
- (4)
 - (a) A self-regulatory organisation must, not less than 30 days before the appointment of a new member of its controlling body, in writing furnish the registrar with the information set out in subsection (5) in respect of such new member.
 - (b) If the registrar fails to consent or object to the appointment of a new member in writing within 30 days from the date of the application for consent, such appointment is deemed to have been consented to.
- (5) A self-regulatory organisation must provide the registrar with the following information in respect of the appointment of a new member:
 - (a) The nature and extent of the new member's experience in the business operated by the self-regulatory organisation;
 - (b) whether the new member has ever been convicted or found guilty of a criminal or disciplinary offence involving dishonesty or a breach

of the rules of any professional organisation, including a self-regulatory organisation; and

- (c) any other information which the registrar may reasonably require in order to determine whether the new member is a fit and proper person to be a member of a controlling body.
- (6) If it appears to the Registrar that a member of a controlling body is no longer a fit and proper person to be such a member, the registrar may, subject to subsection (7), withdraw or suspend the registrar's consent to the appointment of such a member.
- (7) The registrar must in writing, before withdrawing or suspending the registrar's consent to the appointment of a member of a controlling body -
- (a) inform the self-regulatory organisation and the particular member of the registrar's intention to withdraw or suspend;
 - (b) give the self-regulatory organisation and the particular member the reasons for the intended withdrawal or suspension; and
 - (c) call upon the self-regulatory organisation and the particular member to show cause within a period of 14 days why the consent should not be withdrawn or suspended.
- (8) If the registrar withdraws or suspends the registrar's consent to the appointment of a member of a controlling body, that member ceases, from the date of his or her notification of the withdrawal or suspension, in the case of a –
- (a) withdrawal; or

- (b) suspension, until the expiration of the period of his or her suspension,
to be a member of the controlling body of the self-regulatory organisation and the self-regulatory organisation must ensure that the person in question does not in any way, whether directly or indirectly, be concerned or take part in the management of the self-regulatory organisation.
- (9) (a) If a self-regulatory organisation fails to comply with subsection (8), the registrar may, in respect of such failure, impose a fine not exceeding R5 000 for every day during which such failure continues.
- (b) Section 95(2), (3) and (4) is, with the changes required by the context, applicable to the imposition of a fine under paragraph (a).

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

- 58.** (1) For the purposes of this section “associate”, in relation to –
- (a) a natural person, means –
 - (i) that person’s spouse;
 - (ii) that person’s child, parent, stepchild or stepparent and any spouse of such person;
 - (iii) 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 concerned;
- (iv) a juristic person whose board of directors acts in accordance with that person's directions or instructions;
 - (v) a trust controlled or administered by that person;
- (b) a juristic person –
- (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof;
 - (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, too, is not a company, 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 acts;
 - (v) means another juristic person whose board of directors acts in accordance with its directions or instructions;

- (vi) means a trust controlled or administered by it.
- (2) For the purposes of this section a person is deemed to exercise control over a self-regulatory organisation, which is a company or close corporation, if that person, alone or with associates -
- (a) 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;
 - (b) holds shares which entitle that person to exercise more than 15 per cent of the voting rights attached to the issued shares of that self-regulatory organisation; or
 - (c) has the power to determine the appointment of more than 15 per cent of the directors of that self-regulatory organisation, including the power to –
 - (i) appoint or remove, without the concurrence of another person, more than 15 per cent of the directors; or
 - (ii) prevent a person from being appointed as a director without another person's consent.
- (3) No person may, subject to this section, without the approval of the registrar acquire or hold shares or any other interest in a self-regulatory organisation, which is a company or close corporation, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control over the self-regulatory organisation.

- (4) No person may acquire or control shares in a self-regulatory organisation, which is a company or close corporation, if the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and his or her associates, will amount to more than 15 per cent of the total nominal value of all the issued shares of the self-regulatory organisation concerned, without the prior approval of the registrar.
- (5) The approval referred to in subsection (3) –
- (a) may be given –
 - (i) 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;
 - (ii) subject to such other conditions as the registrar may determine;
 - (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 already owned shares in the self-regulatory organisation –
 - (i) of the aggregate nominal value; and
 - (ii) for the minimum period, not exceeding 12 months, that the registrar may determine.

- (6) If the registrar is satisfied on reasonable grounds that the retention of a particular shareholding by a particular shareholder will be prejudicial to the self-regulatory organisation, the registrar 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 such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding with a total nominal value not exceeding 15 per cent of the total nominal value of all the issued shares of the self-regulatory organisation; and
 - (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his or her shareholding to 15 per cent of the voting rights attached to all the issued shares of the self-regulatory organisation.

Delegation of functions

- 59.** (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 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) or (2) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

Report by self-regulatory organisation to registrar

60. Within four months after the financial year-end of a self-regulatory organisation, it 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

- 61.** (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 exchange rules and depository rules may be made, amended or suspended and penalties for contraventions of such rules

- 62.** (1) In this section “rules” means exchange rules and depository rules.
- (2) The registrar must as soon as possible after issuing a licence 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.
- (3) (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.
- (4) 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.
- (5) The registrar must as soon as possible after the receipt of a proposed amendment cause to be published in the *Gazette*, at the expense of the self-regulatory organisation, a notice of the proposed amendment 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.
- (6) If there are no such objections or if the registrar has considered the objections after consultation with the self-regulatory organisation and has decided to approve the proposed amendment in the form published in the *Gazette* in terms of subsection (5), the amendment comes into operation on a date determined by the registrar by notice in the *Gazette*.
- (7) If the registrar decides, after consultation with the self-regulatory organisation and as a result of the objections, to amend the proposed rules as published in the *Gazette* in terms of subsection (5), the proposed rules thus amended must be published by the registrar in the *Gazette* and come into operation on a date determined by the registrar by notice in the *Gazette*.

- (8) The registrar may –
- (a) if it is necessary to achieve the objects of this Act referred to in section 2;
 - (b) after consultation with the self-regulatory organisation concerned;
 - and
 - (c) with the consent of the Minister,
- by notice in the *Gazette* amend the rules of that self-regulatory organisation.
- (9) (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 in the *Gazette*.
- (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.
- (10) (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 an authorised user or participant;
 - (v) a restriction on the manner in which 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 may be published in the *Gazette*, other national newspapers 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 93;

- (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 as it may impose, vary or modify any penalty which it may previously have imposed upon any person, but that in modifying or varying such penalty the penalty may not be increased.
- (11) If a person fails to pay a fine or compensation referred to in subsection (10)(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.
- (12) This section does not prejudice the common law rights of a person aggrieved by a contravention 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 (10).
- (13) The rules must prescribe the purpose for which a fine referred to in subsection (10) must be appropriated.

Limitation of liability

63. 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; or

(b) an authorised user or participant,

in the *bona fide* or negligent performance of any function under or in terms of this Act, or the rules or directives of a self-regulatory organisation.

Disclosure of information by self-regulatory organisation

64. 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 the objects of this Act referred to in section 2.

CHAPTER VI

CLEARING HOUSE

Licensing of clearing house

Application for clearing house licence

65. (1) A person may apply to the registrar for a licence to provide clearing house

services to an exchange.

- (2) An application for such a licence must be –
 - (a) made in the manner and contain the information prescribed by the registrar;
 - (b) accompanied by –
 - (i) particulars of the applicant's proposed appointment by an exchange;
 - (ii) the application fee prescribed by the Minister; and
 - (iii) such other information as the registrar may reasonably require.
- (3) The registrar must give notice of an application for a clearing house licence in two national newspapers 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 licence

- 66.** (1) An applicant for a clearing house licence 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) comply with the requirements prescribed by the registrar for the provision of clearing house services;

- (c) maintain infrastructure for the sustained provision of clearing house services; and
 - (d) maintain security and back-up procedures to ensure the integrity of its records of transactions.
- (2) The registrar may prescribe any of the requirements referred to in subsection (1) (a), (c), and (d) in greater detail.

Licensing of clearing house

67. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 65 (3) and subject to the conditions which the registrar may consider appropriate, grant a clearing house 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 clearing house licence.
- (2) The clearing house licence must specify whether the clearing house may provide both clearing and settlement services, or either clearing or settlement services, the main office of the clearing house in the Republic and the places where the clearing house may be operated, and that the clearing house may not be operated at any other place without the prior written approval of the registrar.

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

Renewal, cancellation or suspension of clearing house licence

- 68.** Sections 50, 51 and 52 apply, with the changes required by the context, to the expiry, renewal, refusal of renewal, cancellation or suspension of a clearing house licence.

Limitation of liability

- 69.** Section 63 applies with the changes required by the context to a clearing house.

Amalgamation or transfer of clearing house

- 70.** (1) Two or more clearing houses may amalgamate or merge, or any of the assets and liabilities of a clearing house may be transferred to or taken over by any other clearing house with the approval of the registrar and subject to the conditions that he or she may prescribe.
- (2) Section 55 is applicable with the changes required by the context to an amalgamation or transfer referred to in subsection (1).

CHAPTER VII

CODE OF CONDUCT

Code of conduct for authorised users

- 71.** (1) The registrar must prescribe a code of conduct for authorised users.

- (2) The code of conduct is binding on authorised users, their officers and employees and clients.

Principles of code of conduct

- 72.** (1) The code of conduct must be based on the principle that an authorised user must -
- (a) act honestly and fairly, with due skill, care and diligence and in the interest of a client;
 - (b) uphold the integrity of the securities services industry;
 - (c) have and effectively employ the resources, procedures and technological systems for the conduct of its business;
 - (d) seek information from a client regarding his or her financial position, investment experience and objectives in connection with the securities service required; and
 - (e) act fairly in a situation of conflicting interests.
- (2) The code of conduct must in particular provide for -
- (a) the disclosure to a client of relevant material information, including disclosure of actual or potential own interests of the authorised user;
 - (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;

- (e) where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover; and
- (f) any other matter which is necessary or expedient to be regulated in the code of conduct for the achievement of the objects of this Act.

CHAPTER VIII

MARKET ABUSE

Definitions

73. 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 77(7) and for the distributions referred to in section 77(6) and (8);

“**deal**” includes conveying instructions to deal;

“**director**” means the Directorate of Market Abuse referred to in section 83;

“**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 83(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 source of the information was a person contemplated in paragraph (a);

“market abuse rules” means the rules made under section 82(2);

“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;

“public sector body” means -

- (a) all spheres of the government of the Republic or of any other country or territory;
- (b) the South African Reserve Bank; or
- (c) the central bank of any country or territory outside the Republic, but does not include the Public Investment Commissioners established by section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);

“regional court” means a court established for a regional division under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“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

- 74.** (1) (a) An insider who knows that he or she has inside information and who deals directly or indirectly, 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 was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act, 1973.
- (2) (a) An insider who knows that he or she has inside information and who 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, 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 –
- (i) that he or she is an authorised user and was acting on specific instructions from a client, save where the inside information was disclosed to him or her by that client;
 - (ii) that he or she was acting on behalf of a public sector body in pursuit of monetary policy, policies in respect of exchange

rates, the management of public debt or external exchange reserves; or

(iii) that he or she was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act, 1973.

- (3) (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 in the proper performance of the functions of his or her employment, office or profession and at the same time disclosed that the information was inside information.
- (4) 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

- 75.** (1) 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:

- (a) When the information is published in accordance with the rules of the relevant regulated market for the purpose of informing clients and their professional advisers;
 - (b) when the information is contained in records maintained by the relevant statutory regulator which by virtue of any enactment are open to inspection by the public; or
 - (c) when the information can be readily acquired by those likely to deal in any listed securities -
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
 - (d) when the information is derived from information which has been made public.
- (2) Inside information may be regarded as having been made public even though –
- (a) it can be acquired only by persons exercising diligence or observation, or having expertise;
 - (b) it is communicated only on payment of a fee; or
 - (c) it is only published outside the Republic.

Prohibited trading practices

- 76.** (1) No person may –
- (a) either for such person's own account or on behalf of another person, directly or indirectly use or knowingly participate in the use of any manipulative, improper, false or deceptive practice

of trading in a security listed on a regulated market which practice creates 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 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 of substantially the same size at substantially the same time and at substantially the same price, has 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 the 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 or insider trading for the purposes of section 74.

- (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 an 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 an interest in those securities after the purchase or sale.

Civil liability

Civil liability resulting from insider trading

- 77. (1) An insider who knows that he or she has inside information and who -
 - (a) deals directly or indirectly, 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, the defence set out in section 74(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 subparagraph (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 74(2)(b) on a balance of probabilities,

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 subparagraph (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) 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 74(3)(b),

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

- (i) if the other person dealt 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 subparagraph (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.
- (4) 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 liable, at the suit of the board in any court of competent jurisdiction, to pay to the board -
- (a) if the other person dealt 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.
- (5) 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 which must have regard to factors such as the consideration for the dealing referred to in subsections (2), (3) and (4), the time between the relevant dealing and the publication of the inside information and any other relevant factors.
- (6) 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 (7) 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 (7) in accordance with subsection (8);

- (c) any amount not paid out in terms of paragraph (b) accrues to the board.
- (7) The balance referred to in subsection (6)(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 inviting persons who are affected by the dealings referred to in subsections (1) to (4) 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 (4); and
 - (ii) in the case where the inside information was made public during the period from the time the insider referred to in subsections (1) and (2), or the other person referred to in subsections (3) and (4) dealt, to the same time five trading days later, 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).
- (8) Subject to subsection (9), 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, that the claimant would have dealt at 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 (6)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (7) 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.

- (9) An amount awarded in proceedings contemplated in section 85 must be deducted from any amount claimed in terms of this section.
- (10) The common law principles of vicarious liability apply to the civil liability established by this section.

Powers of directorate in civil proceedings

- 78.** (1) The directorate may withdraw, abandon or compromise any civil proceedings instituted in terms of section 77 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

Jurisdiction

- 79.** (1) Only a High Court or a regional court has jurisdiction to try any offence referred to in sections 74 and 76 and to impose a penalty up to the maximum set out in section 115(a).
- (2) For the purposes of subsection (1) and sections 77 and 81 a 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.

Assessment of fines and penalties

- 80.** (1) In the assessment of any penalty in terms of section 115(a), the court must take into account any award previously made under section 77 which arises from the same cause.
- (2) In the assessment of any award under section 77, the court must take into account any penalty, which arises from the same cause, previously imposed in terms of section 115(a).

Attachments and interdicts

- 81.** (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 section 77.
- (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

- 82.** (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, 1990, the board may –
- (a) investigate any matter relating to an offence referred to in sections 74 and 76, including insider trading in terms of section 440F of the Companies Act, 1973, and the Insider Trading Act, 1998 (Act No. 135 of 1998), committed before the repeal of that section and that Act;
 - (b) institute such proceedings as are contemplated in this Chapter;

- (c) administer the proof of claims and distribution of payments in terms of section 77;
- (d) 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
- (e) 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;
- (f) in relation to a matter investigated in terms of paragraph (a), on the authority of a warrant, at any time 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;

- (g) make market abuse rules –
 - (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 77, 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;
 - (h) 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)
 - (a) A warrant contemplated in subsection (2)(f) may be issued, on application of the board, by a judge or magistrate who has jurisdiction in the area where the premises in question are located.
 - (b) 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), is kept at the premises in question.
 - (c) Any person from whom a document has been seized under subsection (2)(f), 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) Despite subsection (1) –
 - (a) the power to institute any civil proceedings under this Chapter vests in the directorate;
 - (b) no rule may be made or amended without the prior consent of the directorate;

- (c) the directorate also has the powers contemplated in subsection (2)(d), (e) and (f).
- (5) 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 and such person has the powers set out in subsection (2)(d), (e) and (f).
- (6) 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.
- (7) If there are no such objections or if the board has, in 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 (6), the rule or amendment comes into operation on a date determined by the board by notice in the *Gazette* .
- (8) If the board has, after considering such objections, decided in consultation with the directorate to amend the proposed rule or amendment as published in the *Gazette* in terms of subsection (6), 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*.

- (9) A rule made under subsection (2) is binding on regulated persons and members of the public.
- (10) 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.
- (11) 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 subsection (2)(a), (d) and (e).

Composition and functions of directorate

- 83.** (1) (a) The Insider Trading Directorate established by section 12 of the Insider Trading Act, 1998, continues to exist, despite the repeal of that Act by section 117, as a committee of the board to exercise the power of the board to institute any civil proceedings as contemplated in this Chapter in the name of the board and to investigate any matter relating to an offence referred to in sections 74 and 76.
- (b) The directorate is not intended to act as an administrative body when exercising its powers referred to in paragraph (a).
 - (c) As from the commencement of this Act the Insider Trading Directorate referred to in paragraph (a) is known as the Directorate of Market Abuse and 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.

- (2) The Minister must appoint as members of the directorate –
 - (a) the executive officer of the board or his or her deputy;
 - (b) one person and an alternate nominated by each of the regulated markets in the Republic;
 - (c) one commercial lawyer of appropriate experience and an alternate nominated by the Law Society of South Africa;
 - (d) one accountant of appropriate experience and an alternate nominated by the South African Institute of Chartered Accountants;
 - (e) one person of appropriate experience and an alternate nominated by the life assurance industry;
 - (f) one person of appropriate experience and an alternate nominated by the banking industry;
 - (g) one person of appropriate experience and an alternate nominated by the fund management industry;
 - (h) one person of appropriate experience and an alternate nominated by the Share Holders Association;
 - (i) two business persons and alternates.
- (3) The Minister may, in addition, appoint two persons of appropriate experience to serve as members of the directorate.

- (4) The persons referred to in subsections (2) and (3) are nominated by reason of their availability and knowledge of financial markets and may not be practising authorised users.
- (5) The chairperson of the directorate must be a member of the directorate nominated by the directorate to exercise the powers and perform the duties of the chairperson.
- (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 person presiding at a meeting of the directorate must determine the procedure of the meeting.
- (10) The decision of a majority of the members of the directorate at any meeting at which there are at least four members present 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, appointed by the board in consultation with the directorate, who may attend all meetings of the directorate but may not vote at such meetings.

Financing of directorate

- 84.** 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, 1990.

General provisions

Protection of existing rights

- 85.** 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 77.

Confidentiality and sharing of information

- 86.** (1) No person may, subject to subsections (2) and (3), disclose to any other person any information acquired in the performance of functions under this Chapter.

- (2) Disclosure of the information referred to in subsection (1) does not constitute a contravention of that subsection if made by –
- (a) a person for the purpose of performing functions in terms of this Chapter;
 - (b) a person for the purpose of any legal proceedings under this Chapter;
 - (c) a person when required to do so by a court or any other law;
 - (d) the directorate or the board, if it is necessary to achieve the objects of this Act referred to in section 2; or
 - (e) the directorate by publishing the status and outcome of investigations under this Chapter.
- (3) Despite any provision to the contrary in any law, the institutions which have nominated persons to the directorate, the Securities Regulation Panel constituted in terms of section 440B of the Companies Act, 1973, the South African Reserve Bank, the Public Accountants' and Auditors' Board constituted in terms of the Public Accountants' and Auditors' Act, 1991, and all self-regulatory organisations may share information concerning any matter dealt with in terms of this Chapter with each other and with the persons, whether inside the Republic or elsewhere, responsible for investigating or prosecuting contraventions or offences so as to assist them in fulfilling their regulatory or statutory duties.

Offences committed in terms of section 440F of Companies Act and Insider trading Act

- 87.** (1) Despite the repeal of section 440F of the Companies Act, 1973, and the Insider Trading Act, 1998, the board is responsible for investigating alleged offences in terms of that section and the latter Act that were committed before the repeal, and for that purpose it has the powers and duties referred to in section 82.
- (2) The Securities Regulation Panel constituted in terms of section 440B of the Companies Act, 1973, must disclose to the board all information in its possession relating to an alleged offence in terms of this Chapter.
- (3) The board may disclose information received in terms of subsection (2) to any of the institutions or persons referred to in section 86(3).

CHAPTER IX

GENERAL PROVISIONS

Auditing

Auditor

- 88.** (1) 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 and clearing house and may withdraw the approval if it is necessary.

Accounting records and audit

89. A regulated person must –

- (a) maintain accounting records on a continual basis and prepare annual financial statements that conform with generally accepted accounting practice and contain the information prescribed by the registrar;
- (b) cause such records and annual financial statements to be audited not later than three months after the financial year end of the regulated person, or such later date as the registrar may allow, by an auditor appointed in terms of section 88; 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

- 90.** (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 or participant, 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 the results of the operations of the regulated person; and
 - (b) on the matters prescribed by the registrar.
- (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 or other document or particulars contemplated in section 20(5)(b) of the Public Accountants' and Auditors' Act, 1991, 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 or clearing house, or to the self-regulatory organisation in question, if the auditor is the auditor of an authorised user or participant.

- (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 or clearing house or to the self-regulatory organisation in question, if the auditor is the auditor of an authorised user or participant, 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 20(5)(a) of the Public Accountants' and Auditors' Act, 1991, 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

- 91.** (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

- 92.** (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.

Powers of registrar and court

Powers of registrar to investigate or conduct inspection

- 93.** If the registrar receives a complaint, charge or allegation that a person (hereinafter referred to as the respondent) who provides securities services (whether the respondent is licensed or authorised in terms of this Act or not) is contravening or is failing to comply with any provision of this Act, or if the registrar has reason to believe that such a contravention or failure is taking place, the registrar may investigate the matter by—
- (a) directing that respondent in writing to –

- (i) provide the registrar with any information, document or record reasonably required by the registrar about such services;
- (ii) appear before the registrar at a specified time and place; or
- (b) instructing an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), to carry out an inspection of the affairs of the respondent.

Powers of registrar after investigation or inspection

94. After an investigation or inspection has been done under section 93, 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 346 of the Companies Act, 1973, for the winding-up of the respondent as if the registrar were a creditor of the respondent;
 - (ii) apply to the court under section 427(2) of the Companies Act, 1973, for a judicial management order 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, 2001, 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 doing or continuing to do any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the investigation or inspection;

- (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) refer the matter to the enforcement committee to be dealt with in accordance with sections 102 to 105;
- (f) 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.

Power of registrar to impose penalties

- 95.** (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 board of appeal.
- (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

- 96.** (1) If a court –
- (a) convicts an authorised user or participant, 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

Establishment of enforcement committee

- 97.** There is hereby established a body as a committee of the board to be known as the enforcement committee which –
- (a) is a committee of record; and

- (b) must perform its functions in accordance with this Act.

Composition of enforcement committee

- 98.** (1) The board must, on the date that this Act comes into operation, appoint as members of the enforcement committee –
- (a) so many members of the board; or
 - (b) so many other persons; or
 - (c) so many members of the board and other persons,
- as the board may consider necessary: Provided that a minimum of two members are persons qualified in law.
- (2) The enforcement committee may, as the need arises and on an *ad hoc* basis, co-opt one or more persons with appropriate knowledge and experience as an additional member or members of the enforcement committee.
- (3) No member of the enforcement committee who was involved in the investigation of a matter may participate in a decision on that matter by the enforcement committee.
- (4) The board must designate from the members of the enforcement committee a chairperson and 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.
- (5) The board may at any time dissolve or reconstitute the enforcement committee.

Functions of enforcement committee

- 99.** If the registrar refers a matter to the enforcement committee under section 94 the enforcement committee must deal with the matter in accordance with sections 102 to 105 to the extent that those sections are applicable to the matter in question.

Enforcement committee proceedings

- 100.** (1) The chairperson of the enforcement committee, with the assistance of employees of the board designated by the registrar, is responsible to manage the caseload of the enforcement committee and must assign each matter referred to the enforcement committee to a panel composed of the chairperson or deputy chairperson and at least two members of the enforcement committee.
- (2) A panel determines its own procedure for the performance of its functions.
- (3) The decision of the majority of the members of a panel on a matter assigned to it is the decision of the panel, and must be in writing and include reasons for the decision.
- (4) A decision contemplated in subsection (3) is for the purposes of this Act regarded as the decision of the enforcement committee.

Referral of matter

- 101.** (1) After the completion of an investigation or inspection referred to in section 93 the registrar may, if the investigation or inspection reveals evidence of a contravention of or failure to comply with this Act, refer the matter to the enforcement committee.

- (2) The registrar may at any time withdraw the referral of a matter to the enforcement committee.
- (3) Subsection (1) does not affect the power of the board to institute civil proceedings in a court under section 77 against a person who has contravened section 74.

Consideration of matter by enforcement committee

- 102.** (1) The referral of a matter to the enforcement committee, must be accompanied by a report on the investigation or inspection referred to in section 93 and all other evidence relevant to the alleged contravention or failure and in the possession of the registrar.
- (2) The enforcement committee must serve a copy of the report and evidence referred to in subsection (1), together with particulars of the alleged contravention or failure to comply with this Act, on the respondent and direct him or her to respond thereto by way of affidavit within a time specified by the enforcement committee.
 - (3) The panel to which a specific matter has been assigned must consider the documentary evidence before it without hearing further evidence, subject to subsection (4).
 - (4) The panel may, in exceptional circumstances and when it is necessary to come to a just decision, by written notice summon a person to appear before the panel to be questioned or to produce a document specified in the summons.

Admission by respondent

- 103.** (1) If a respondent admits that he or she has committed the contravention or failure of which the respondent is charged and the panel and the respondent agree on the amount of an appropriate fine, the panel may impose that fine and the respondent must pay the fine to the board within the time specified by the panel.
- (2) If the respondent fails to pay the agreed amount within the specified time, the registrar may file with the clerk or registrar of any competent court a statement certified by him or her as correct, stating the agreed amount of the fine, 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.

Imposition of administrative fine

- 104.** (1) If a panel is satisfied that a respondent has contravened or failed to comply with this Act and –
- (a) the respondent did not admit as contemplated in section 103; or
 - (b) if the panel and the respondent could not agree on the amount of an appropriate fine in terms of that section,
- the enforcement committee must cause to be delivered by hand to that respondent a written notice that must contain the particulars contemplated in subsection (2).
- (2) A notice referred to in subsection (1) must –
- (a) specify the name and address of the respondent;
 - (b) specify the particulars of the contravention or failure;

- (c) set out the reasons for the panel's decision to impose an administrative fine;
 - (d) specify the amount, which the panel considers appropriate in the circumstances, of the administrative fine;
 - (e) inform the respondent that, not later than 30 days after the date of the notice referred to in subsection (1), the respondent may –
 - (i) pay the administrative fine; or
 - (ii) appeal in terms of section 111 against the imposition of the administrative fine to the board of appeal; and
 - (f) state that a failure to comply with the requirements of the notice within the time permitted, will result in the administrative fine becoming recoverable as contemplated in subsection (3).
- (3) If the respondent fails to comply with the requirements of a notice referred to in subsection (2), 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 administrative fine imposed on the respondent, 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.
- (4) The enforcement committee may not impose a fine contemplated in this section if the respondent has been charged with a criminal offence in respect of the same set of facts.

- (5) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court must take into account any administrative fine imposed under this section in respect of the same set of facts.
- (6) An administrative fine imposed and paid in terms of this section does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (7) When determining an appropriate administrative fine a panel must consider the following factors:
 - (a) The nature, duration, seriousness and extent of the contravention or failure;
 - (b) the extent to which the contravention or failure was deliberate or reckless;
 - (c) whether the person on whom the fine is to be imposed is a natural person;
 - (d) any loss or damage suffered as a result of the contravention or failure;
 - (e) the level of profit derived from the contravention or failure;
 - (f) whether the respondent has previously been found in contravention of this Act;
 - (g) any other factor that the panel considers relevant.

Payment of compensatory amount

- 105.** (1) If a panel is satisfied that a respondent has contravened or failed to

comply with section 74 the panel may require the respondent to pay to the board a compensatory amount.

- (2) The procedure prescribed by sections 103 and 104 in respect of the imposition of administrative fines is with the changes required by the context, and subject to subsection (3), applicable when a panel requires the respondent to pay a compensatory amount.
- (3) Section 77 is with the changes required by the context applicable to the determination and distribution of a compensatory amount.
- (4) Such compensatory amount is composed of the equivalent of the profit or loss, the penalty for compensatory and punitive purposes, interest, and where applicable, commission or consideration as if it were determined under section 77.
- (5) No civil proceedings in respect of the same set of facts may be instituted under section 77 against a respondent if the respondent has paid a compensatory amount in terms of this section.

Confidentiality

- 106.** (1) Subject to subsection (2), no member of the enforcement committee or employee of the board may disclose to any person, except for the purposes of the performance of functions in terms of this Act or when required to do so before a court, any information acquired in the performance of functions and relating to the proceedings or a decision of the enforcement committee.

- (2) If a respondent does not appeal against a decision of the enforcement committee within the period specified in section 104(2)(e), the registrar must make the decision of the enforcement committee public, unless such publication will be contrary to the objects of this Act referred to in section 2, or unless there are exceptional circumstances that justify the preservation of the confidentiality of the decision.

Winding-up, judicial management and curatorship

Winding-up or sequestration by court

- 107.** (1) 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 or a central securities depository, one or more authorised users or participants, as the case may be;
 - (d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);
 - (e) the provisional judicial manager or final judicial manager 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 by the court, subject to section 110, according to the Companies Act, 1973, and the estate of a regulated person who is a natural person or partnership, may be sequestrated according to the Insolvency Act, 1936 (Act No. 24 of 1936).
- (3) For the purposes of subsection (2) –
- (a) section 346(3) of the Companies Act, 1973, must be construed as if after the words “except an application by” there were inserted the words “the Registrar of Securities Services or”;
 - (b) section 346(4)(a) of the Companies Act, 1973, must be construed as if after the words “lodged with the Master” there were inserted the words “and the Registrar of Securities Services”;
 - (c) section 346(4)(b) of the Companies Act, 1973, must be construed as if after the word “Master” there were inserted the words “or the Registrar of Securities Services”; and
 - (d) section 357 of the Companies Act, 1973, must be construed as if the registrar were included among the persons to whom notice is required to be given under subsection (1)(b) of that section.
- (4) An order for the winding-up or sequestration of a regulated person may not be made unless the court is satisfied that –
- (a) if the regulated person is a company or other corporate body, it is not desirable that the regulated person be placed under judicial management in terms of the Companies Act, 1973, or curatorship

in terms of the Financial Institutions (Protection of Funds) Act, 2001;

- (b) if the regulated person is not a company, it is not desirable that the regulated person be placed under curatorship in terms of the Financial Institutions (Protection of Funds) Act, 2001.

Judicial management

- 108.** (1) The court may grant a judicial management order in respect of a regulated person which is a company or other corporate body on the application of the persons, except a provisional or final judicial manager or curator, referred to in section 107, and section 107(4)(a) and (b) applies, with the changes required by the context, to an application for a judicial management order.
- (2) The Companies Act, 1973, applies, subject to section 110, to the judicial management of a regulated person that is a company.

Appointment of curator

- 109.** (1) The court may appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act, 2001, in respect of any regulated person.
- (2) The Financial Institutions (Protection of Funds) Act, 2001, applies to the management and control of a regulated person by a curator appointed under this section.

Appointment of liquidator and judicial manager

- 110.** Despite the provisions of the Companies Act, 1973, the Master of the High Court may only after consultation with the registrar appoint a liquidator or judicial manager in respect of a regulated person.

Miscellanea

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) the enforcement committee to impose an administrative fine or to require the payment of a compensatory amount;
 - (c) an exchange to refuse an application by that person to be admitted as an authorised user;
 - (d) 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;
 - (e) an exchange on any matter relating to the listing of securities on that exchange;
 - (f) a central securities depository to refuse an application by a person to be accepted as a participant;
 - (g) 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;

- (h) an exchange or central securities depository to impose a penalty on an authorised user, issuer or participant, as the case may be, or on an officer or employee of an authorised user, issuer or participant;
- (i) the claims officer referred to in Chapter VIII,

may appeal to the board of appeal on the conditions determined by or under section 26 of the Financial Services Board Act, 1990, and subject to this section.

- (2) The board of appeal must conduct its hearings in public.
- (3) In an appeal against a decision of the enforcement committee the registrar must act as the respondent.
- (4) The registrar may appeal to the board of appeal 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.
- (5) In deciding an appeal the board of appeal must take into account –
 - (a) the reasons for the decision appealed against;
 - (b) the grounds of appeal;
 - (c) the documentary or verbal evidence submitted or given by any person at the request or with the permission of the board of appeal;
and
 - (d) any other information at the disposal of the board of appeal.

- (6) The board of appeal must within a reasonable time –
 - (a) confirm, amend or set aside the decision appealed against; and
 - (b) make such award as to costs as it may consider appropriate.
- (7) (a) The decision of the board of appeal is binding on the parties to the appeal.
- (b) Neither this Act nor the rules of a self-regulatory organisation may be construed so as to limit the right of any interested person to have a decision of a self-regulatory organisation or the board of appeal reviewed by a court of competent jurisdiction, subject to the obligation on such person to have first exhausted his or her remedies in terms of this Act.

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.** The Minister may make regulations regarding –
- (a) all matters which by this Act are required or permitted to be

prescribed by the Minister;

- (b) generally, all matters which are necessary or expedient to be prescribed in order that the objects of this Act may be achieved.

Fees

- 114.** (1) The Minister may prescribe fees after consultation with the registrar 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 74 or 76 is liable on conviction to a fine not exceeding R25 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 92(2) is liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment;
 - (c) contravenes or fails to comply with section 4(1) or (2), 19, 20, 21, 22, 23 or 29 commits an offence and is liable on conviction to a fine

or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment.

Savings

- 116.** (1) The licence, registration or authorisation of a regulated person who immediately before the date of commencement of this Act was licensed, registered or authorised under an act repealed by this Act –
- (a) shall have effect as from the date of commencement of this Act as if granted under a corresponding provision of this Act;
 - (b) in the case of a licence, registration or authorisation, which expires after 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.
- (2) The repeal by this Act of the Financial Markets Control Act, 1989, does not affect the recognition of a clearing house under the latter Act: Provided that such a clearing house must apply for a clearing house licence in terms of section 65 within six months from the date of commencement of this Act.
- (3) The rules of a self-regulatory organisation made under an act 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.

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

Amendment and repeal of laws

- 117.** The laws referred to in the Schedule are amended or repealed to the extent specified in the third column thereof.

Short title and commencement

- 118.** This Act is called the Securities Services Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED OR REPEALED

(Section 117)

| No. and year of act | Short title | Extent of amendment or repeal |
|---------------------|--|--|
| Act No.1 of 1985 | Stock Exchanges Control Act, 1985 | The repeal of the whole |
| Act No.55 of 1989 | Financial Markets Control Act, 1989 | The repeal of the whole |
| Act No.85 of 1992 | Custody and Administration of Securities Act, 1992 | The repeal of the whole |
| Act No.135 of 1998 | Insider Trading Act, 1998 | The repeal of the whole |
| Act No.61 of 1973 | Companies Act, 1973 | <p>1. The amendment of section 1 –</p> <p>(a) by the insertion after the definition of “external company” of the following definition:</p> <p>“Financial Services Board’ means the board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);”;</p> <p>(b) by the substitution for the definition of “Minister” of the following definition:</p> <p>“Minister’ <u>means</u>, in relation to –</p> <p>(a) any matter to be dealt with in the office of a Master in connection with the winding-up or judicial management of companies, [means] the Minister of Justice;</p> |

(b) any matter which in sections 141 to 179 and sections 253 to 256 is connected with conduct in respect of securities in a public company, the Minister of Trade and Industry after consultation with the Minister of Finance; and

(c) [in relation in to] any other matter, the Minister of [Industries, Commerce and Tourism] Trade and Industry;”.

2. The amendment of section 8 by the substitution for subsection (1) of the following subsection:

“(1) No act or omission whatever by the Registrar or any officer or other person in the employment of the State, having duties to perform under this Act, shall subject the State, or the Registrar, the Financial Services Board, or any such officer or person to any liability for any loss or damage sustained by any person in consequence of any such act or omission unless such act or omission was *mala fide* or was due to want of reasonable care or diligence.”.

3. The amendment of section 17 by the substitution for subsection (1) of the following subsection:

“(1) The Minister may by notice in the *Gazette* from time to time amend or add to the provisions of the Schedules to this Act provided that Schedule 3 may be amended only after consultation with the Minister of Finance.”.

4. The repeal of sections 73A, 73B, 73C and 73D.

5. The amendment of section 91A –

(a) by the substitution in subsection (1) for –

(i) the definition of “central securities depository” of the following definition:

“**central securities depository**’ means a central securities depository as defined in section 1 of the [Custody and administration of Securities Act, 1992 (Act No. 85 of 1992)] Securities Services Act, 2002 (Act No. ... of 2002)”;

(ii) the definition of “participant” of the following definition:

“**participant**’ means a [depository institution accepted by a central securities depository as a participant in terms of the Custody and Administration of Securities Act, 1992 (Act No.85 of 1992)] a participant as defined in section 1 of the Securities Services Act, 2002 (Act No. ... of 2002)”;

(iii) the definition of “uncertificated securities” of the following definition:

“**uncertificated securities**’ means uncertificated securities as defined in section [1] 30 of the [Stock Exchanges Control Act, 1985 (Act No.1 of 1985)] Securities Services Act, 2002 (Act No. ... of 2002), which are entered in the relevant company’s register of members as uncertificated securities [by

virtue] in terms of [this] subsection (3)(a)

[transferable without a written instrument and are not evidenced by a certificate];”;

(b) by the insertion in subsection (1) after the definition of “central securities depository” of the following definition:

“ ‘certificated securities’ means certificated securities as defined in section 30 of the Securities Services Act, 2002 (Act No. of 2002;”;

(c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) Where any provision of this Act is not expressly or impliedly amended by this section, this Act shall apply in respect of uncertificated securities in the same manner as it applies to certificated securities [in certificated form].”;

(d) by the substitution in the Afrikaans text of section 91A for the expression “ongesertifiseerde effekte”, wherever it occurs, of the expression “ongesertifiseerde sekuriteite”; and

(e) by the substitution for paragraph (a) of subsection (10) of the following paragraph:

“(a) Subject to subparagraph (b), when any new offer of securities is made by a company, [the offeree may elect whether all or any part of] the securities offered [to him, her or it] must be issued in [certificated or] uncertificated form.”.

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| | | <p>6 The amendment of section 142 by the insertion after the definition of “promoter” of the following definition:</p> <p><u>“publish’, in relation to a prospectus or rights offer, means to advertise or deliver the prospectus or rights offer, electronically or otherwise, to a shareholder or member of the public;”</u>.</p> <p>7 The amendment of section 145 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No person shall make any offer to the public for the subscription for shares unless it is accompanied by a prospectus <u>that</u> –</p> <p><u>(a) [complying] complies</u> with the requirements of this Act;</p> <p><u>(b) is approved by the Financial Services Board;</u></p> <p>and</p> <p><u>(c) is registered in the Companies Registration Office,</u></p> <p>and no person shall <u>[issue] publish</u> such a prospectus which has not been so <u>approved and registered.</u>”.</p> <p>8 Amendment of section 145A by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No person shall <u>[issue, distribute or deliver] publish</u> or cause to be <u>[issued, distributed or delivered] published</u> a letter of allocation unless it is accompanied by such documents as are</p> |
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required and have been approved by the stock exchange concerned.”.

9 The amendment of section 146A –

(a) by the substitution for subsection (1) of the following subsection:

“(1) A company desiring to issue a letter of allocation shall lodge with the [Registrar for registration] Financial Services Board the signed, original letter [a copy thereof] together with the [prescribed] fee prescribed after consultation with the Minister of Finance and a copy thereof and of every document referred to in section 145A and every such copy shall be certified, by not less than two directors of the company, as a true copy of the original approved by the stock exchange concerned.”;

(b) by the insertion after subsection (2) of the following subsection:

“(2A) As soon as the Financial Services Board has approved, under the signature of the executive officer or deputy executive officer of the Financial Services Board, the documents referred to in subsections (1) and (2), the company concerned shall lodge them, together with the prescribed fee, with the Registrar for registration.”.

10 The amendment of section 147 by the substitution for subsection (1) of the following subsection:

“(1) No person [shall issue, distribute or deliver or cause to be issued, distributed or delivered] may publish or cause to be published, any form of application in respect of shares of a company, unless the form –

(a) is physically or electronically attached to a copy of a prospectus [a copy of] which has been registered in the Companies Registration Office; and

(b) bears on the face of it the date of registration of the prospectus:

Provided that this subsection shall not apply if it is shown that the form of application was issued either –

(i) in connection with a *bona fide* invitation to enter into an underwriting agreement with respect to the shares; or

(ii) in relation to shares which were not offered to the public.”.

11 The amendment of section 149 by the substitution for subsection (1) of the following subsection:

“(1) Every prospectus [issued] published shall state on the face of it that a copy thereof has been registered as required by this Act and shall specify or refer to statements included therein specifying any documents required by sections 151 and 152 to be endorsed on or attached to or to accompany a prospectus when lodged for registration.”.

12 The amendment of section 151 –

(a) by the substitution for subsection (1) of the following subsection:

“(1) No prospectus which includes any statement or reference to any statement purporting to be made by an expert, shall be approved by the Financial Services Board and registered by the Registrar unless –

- (a) the expert has given, and has not before the lodging of a copy of the prospectus for approval or registration [in the Companies Registration Office] withdrawn his written consent to the [issue] publication thereof with the statement or reference included in the form and context in which it is included;
- (b) a statement that the expert has given and has not so withdrawn his consent appears in the prospectus; and
- (c) such written consent is endorsed on or attached to the copy of the prospectus lodged for approval and registration [in the Companies Registration Office].”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Financial Services Board shall not approve and the Registrar shall not register my prospectus which names any person as the auditor, attorney, banker or broker of a company unless it is

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| | | <p>accompanied by the consent in writing of the person so named to act in the capacity stated and to his name being stated in the prospectus.”.</p> <p>13 The amendment of section 152 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No prospectus shall be <u>approved</u> and registered unless there is attached to it a copy of any material contract required by Schedule 3 to be stated in a prospectus or, in the case of such a contract not reduced to writing, a memorandum giving full particulars thereof.”.</p> |
| | | <p>14 The amendment of section 153 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No prospectus containing a statement to the effect that the whole or any portion of the issue of the shares offered to the public, has been or is being underwritten shall be <u>approved and registered</u> until there is lodged with the <u>Financial Services Board and the Registrar</u> a copy of the underwriting contract and a sworn declaration by the person named as underwriter or, if such person is a company, by each of two directors of such company, or if such company has only one director, by that director, that to the best of the deponent’s knowledge and belief the underwriter is and will be in a position to carry out his obligations even if no shares are applied for.”.</p> |
| | | <p>15 The amendment of section 160 -</p> |

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| | <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Where shares are offered to the public for sale in pursuance of a prospectus, every person –</p> <p>(a) who has made the said offer;</p> <p>(b) who under section 154(3) is deemed to have authorized the [issue] <u>publication</u> of such prospectus; or</p> <p>(c) who is in relation to the company the shares of which are so offered, a person referred to in subsection (1)(a), (b), (c), (d) or (e),</p> <p>shall be liable to pay compensation to all persons who have acquired any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof or [issued] <u>published</u> therewith, or by reference incorporated therein.”; and</p> |
| | <p>(b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:</p> <p>“(b) with respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from the report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation and that the defendant had reasonable ground to believe and did up to the time of the [issue]</p> |

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| | | <p><u>publication</u> of the prospectus believe that the person making the statement was competent to make it, and that the said person had given the consent required by this Act to the [issue] <u>publication</u> of the prospectus or the making of the offer and had not withdrawn that consent before lodgement of a copy of the prospectus for <u>approval and registration</u> or, to the defendant's knowledge, before allotment thereunder or before the acceptance of the offer; and”.</p> |
| | | <p>16 The amendment of section 168 –</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) No allotment of shares or acceptance of an offer in respect of shares of a company shall be made in pursuance of a prospectus, and no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the third day after that on which the prospectus is first [issued] <u>published</u> or such later time (if any) as may be specified in the prospectus.”; and</p> |
| | | <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) For the purposes of subsection (1), the reference therein to the day on which the prospectus is first [issued] <u>published</u> shall be construed as a reference to the day on which it is first [issued] <u>published</u> as a newspaper</p> |

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| | | <p>advertisement, or, if it is not <u>[issued] published</u> as a newspaper advertisement before the third day after that on which it is first <u>[issued] published</u> in any other manner, as a reference to the day on which it is first <u>[issued] published</u> in such other manner.”.</p> |
| Act No.24 of 1936 | Insolvency Act, 1936 | <p>1 The amendment of section 35A by the substitution in subsection (1) for –</p> <p>(a) the definition of “exchange” of the following definition:</p> <p>“‘exchange’ means <u>[a licensed stock] an exchange as defined in section 1 and licensed under section 10 of the [Stock Exchanges Control Act, 1985 (Act No.1 of 1985), or a financial exchange] Securities Services Act, 2002 (Act No. of 2002), and for the purposes of this section includes a central securities depository as defined in section 1 of that Act and which is also licensed as a clearing house under section 67 of that Act, or a clearing house as defined in section 1 of [the Financial Markets Control Act, 1989 (Act No.55 of 1989)] that Act;”;</u></p> <p>(b) the definition of “market participant” of the following definition:</p> <p>“‘market participant’ means <u>[a stockbroker or a member as defined in section 1 of the Stock Exchanges Control Act, 1985, or a financial</u></p> |

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| | | <p>instrument principal or a financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989, or a client of such a stockbroker, member or financial instrument trader] <u>an authorised user, a participant, a client or a settling party as defined in section 1 of the Securities Services Act, 2002 (Act No. of 2002), or any other party to a transaction;</u>”;</p> <p>(c) the definition of “rules of an exchange” of the following definition:</p> <p>“ <u>[rules of an exchange] ‘exchange rules’ means [rules made pursuant to either section 12 of the Stock Exchanges Control Act, 1985, or section 17 of the Financial Markets Control Act, 1989] the exchange rules and depository rules as defined in section 1 of the Securities Services Act, 2002 (Act No. ... of 2002);</u>” .</p> |
| | <p>2</p> | <p>The amendment of section 35B by the substitution for subsections (1) to (3) of the following subsections –</p> <p>“(1) <u>Subject to the provisions of subsection (2), in this section “agreement” means –</u></p> <p><u>(a) an agreement which provides that, in the event of the estate of a party thereto or the estate of a party to two or more agreements with the same counter party, being liquidated before such party has performed fully in terms of the agreement or</u></p> |

two or more of the agreements –

(i) all unperformed obligations of the parties terminate or may be terminated;

(ii) the termination values of the unperformed obligations are determined or may be determined; and

(iii) the values referred to in subparagraph (ii) are netted or may be netted, so that only a net amount (whether in South African currency or some other currency) is payable to or by a party; or

(b) any agreement declared by the Minister after consultation with the Minister of Finance, by notice in the *Gazette* to be an agreement for the purposes of this section.

(2) In this section “agreement” does not include –

(a) a transaction contemplated in section 35A; or

(b) a netting arrangement as contemplated in the National Payment Systems Act, 1998 (Act No. 78 of 1998); or

(c) any agreement declared by the Minister after consultation with the Minister of Finance, by notice in the *Gazette* to not be an agreement for the purposes of this section.

(3) Upon the liquidation of the estate of a party to an agreement all unperformed obligations arising out of such agreement or all such

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| | | <p><u>agreements between the same parties shall, notwithstanding any conflicting rule of the common law, automatically be terminated as at the date of liquidation, termination values be calculated at market value at that date and a net amount be payable.”</u></p> |
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