

South Africa

## Financial Markets Act, 2012

Act 19 of 2012

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# Financial Markets Act, 2012

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# South Africa

## Financial Markets Act, 2012

### Act 19 of 2012

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**Assented to on 30 January 2013**

**Commenced on 3 June 2013 by Financial Markets Act, 2012: Commencement**

*[This is the version of this document as it was from 1 April 2018 to 31 March 2019.]*

*[Amended by Financial Services Laws General Amendment Act, 2013 (Act 45 of 2013) on 28 February 2014]*

*[Amended by Financial Sector Regulation Act, 2017 (Act 9 of 2017) on 9 February 2018]*

*[Amended by Financial Sector Regulation Act, 2017 (Act 9 of 2017) on 1 April 2018]*

(English text signed by the President.)

*[Note: the Act was amended by the substitution of the expression "Authority" for the expression "registrar", wherever it occurs, except in sections 1(1) and 1A(1), by section 290 of Act 9 of 2017]*

## ACT

**To provide for the regulation of financial markets; to license and regulate exchanges, central securities depositories, clearing houses, central counterparties and trade repositories; to regulate and control securities trading, clearing and settlement, and the custody and administration of securities; to prohibit insider trading, and other market abuses; to provide for the approval of nominees; to provide for conduct standards; to replace the Securities Services Act, 2004, as amended by the Financial Services Laws General Amendment Act, 2008, so as to align this Act with international standards; and to provide for matters connected therewith.**

*[long title substituted by section 290 of Act 9 of 2017]*

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

## Chapter I

### Preliminary provisions

#### 1. Definitions and interpretation

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

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

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

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

**"appeal board"** *[definition of "appeal board" deleted by section 290 of [Act 9 of 2017](#)]*

**"associated clearing house"** means a clearing house that clears transactions in securities on behalf of one or more exchanges in accordance with the rules of the relevant exchange and that does not approve or regulate clearing members;

**"attachment"** means a judicial act or process to freeze, restrict or impound the securities or interest in securities held in a central securities account or securities account, as the case may be, in order to enforce or satisfy a judgment or warrant of execution;

**"Auditing Profession Act"** means the Auditing Profession Act, 2005 ([Act No. 26 of 2005](#));

**"auditor"** means an auditor registered in terms of the Auditing Profession Act;

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

**"Authority"** means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;

*[definition of "authority" inserted by section 290 of [Act 9 of 2017](#)]*

**"bank"** means a bank as defined in the Banks Act, 1990 ([Act No. 94 of 1990](#)), a mutual bank as defined in the Mutual Banks Act, 1993 ([Act No. 124 of 1993](#)); or a co-operative bank as defined in the Co-operative Banks Act, 2007 ([Act No. 40 of 2007](#));

**"board"** *[definition of "board" deleted by section 290 of [Act 9 of 2017](#)]*

**"central counterparty"** means a clearing house that—

- (a) interposes itself between counterparties to transactions in securities, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and
- (b) becomes a counterparty to trades with market participants through novation, an open offer system or through a legally binding agreement;

*[definition of "central counterparty" inserted by section 290 of [Act 9 of 2017](#)]*

**"central securities account"** means an account that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities, held by a licensed central securities depository for a participant or external central securities depository in the name of—

- (a) a participant;
- (b) an external central securities depository; or



- (c) any other persons as determined in the depository rules;

**"central securities depository"** means a person who constitutes, maintains and provides an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities, and which infrastructure includes a securities settlement system;

**"certificated securities"** means securities evidenced—

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

**"clear"**, in relation to a transaction or group of transactions in securities, means—

- (a) to calculate and determine, before each settlement process—
- (i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller; and
- (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 or group of transactions by the buyer and the seller is underwritten from the time of trade to the time of settlement,

and "clearing" has a corresponding meaning;

**"clearing house"** means a person who constitutes, maintains and provides an infrastructure to clear transactions in securities;

**"clearing house directive"** means a directive issued by a licensed independent clearing house or a licensed central counterparty in accordance with its rules;

*[definition of "clearing house directive" substituted by section 290 of [Act 9 of 2017](#)]*

**"clearing house rules"** means the rules made by a licensed independent clearing house or a licensed central counterparty in accordance with this Act;

*[definition of "clearing house rules" substituted by section 290 of [Act 9 of 2017](#)]*

**"clearing member"** means—

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

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

and includes an external clearing member, where appropriate;

**"clearing services"** means services offered and activities performed by a clearing member in terms of the exchange rules or clearing house rules, as the case may be, to facilitate clearing of transactions in securities;

**"client"** means any person to whom a regulated person provides securities services, and includes a person that acts as an agent for another person in relation to those services in which case it will

include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;

"**Companies Act**" means the Companies Act, 2008 ([Act No. 71 of 2008](#));

"**conduct standard**" has the same meaning ascribed to it in terms of the Financial Sector Regulation Act;

*[definition of "conduct standard" inserted by section 290 of [Act 9 of 2017](#)]*

"**confidential information**" means personal information that belongs to a person and is not generally available to or known by others;

"**deposit**" means a deposit of securities, and includes a deposit by means of an entry in a securities account or a central securities account;

"**depository directive**" means a directive issued by a licensed central securities depository in accordance with its rules;

"**depository rules**" means the rules made by a licensed central securities depository in accordance with this Act;

"**derivative instrument**" means any—

- (a) financial instrument; or
- (b) contract,

that creates rights and obligations and whose value depends on or is derived from the value of one or more underlying asset, rate or index, on a measure of economic value or on a default event;

"**directive**" means a directive issued by the registrar in terms of [section 6\(4\)](#);

"**director**" means the Directorate of Market Abuse referred to in [section 85](#);

"**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;

"**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**" *[definition of "enforcement committee" deleted by section 290 of [Act 9 of 2017](#)]*

"**entry**" means an electronic recording of any issuance, deposit, withdrawal, transfer, attachment, pledge, cession *in securitatem debiti* or other instruction in respect of securities or an interest in securities;

"**exchange**" means a person who constitutes, maintains and provides an infrastructure—

- (a) for bringing together buyers and sellers of securities;
- (b) for matching bids and offers for securities of multiple buyers and sellers; and
- (c) whereby a matched bid and offer for securities constitutes a transaction;

"**exchange directive**" means a directive issued by a licensed exchange in accordance with its rules;

"**exchange rules**" means the rules made by a licensed exchange in accordance with this Act;

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

- (a) establish a regulatory framework equivalent to that established by this Act; and

- (b) are supervised by a supervisory authority;

**"external central counterparty"** means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a central counterparty as set out in this Act and who is subject to the laws of a country other than the Republic, which laws—

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

*[definition of "external central counterparty" inserted by section 290 of [Act 9 of 2017](#)]*

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

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

**"external clearing house"** means a foreign person who is authorised to perform a function or functions similar to one or more of the functions of a clearing house in terms of the laws of a country other than the Republic, which laws—

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

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

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

**"external exchange"** means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of an exchange as set out in this Act and who is subject to the laws of a country other than the Republic, which laws—

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

**"external market infrastructure"** means each of the following:

- (a) An external central counterparty;
- (b) an external central securities depository;
- (c) an external clearing house;
- (d) an external exchange;
- (e) an external trade repository;

*[definition of "external market infrastructure" inserted by section 290 of [Act 9 of 2017](#)]*

**"external participant"** means a foreign person who is authorised by a supervisory authority to perform a service or services similar to one or more of the services of a participant or an external central securities depository as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws—

- (a) establish a regulatory framework equivalent to that established by this Act; and

- (b) are supervised by a supervisory authority;

**"external trade repository"** means a foreign person who is authorised by a supervisory authority to perform a duty or duties similar to one or more of the duties of a trade repository as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws—

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

**"financial institution"** means—

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

**"Financial Institutions (Protection of Funds) Act"** means the Financial Institutions (Protection of Funds) Act, 2001 ([Act No. 28 of 2001](#));

**"Financial Intelligence Centre Act"** means the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#));

**"financial sector law"** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

*[definition of "financial sector law" inserted by section 290 of [Act 9 of 2017](#)]*

**"Financial Sector Regulation Act"** means the Financial Sector Regulation Act, 2017;

*[definition of "Financial Sector Regulation Act" inserted by section 290 of [Act 9 of 2017](#)]*

**"Financial Services Board Act"** *[definition of "Financial Services Board Act" deleted by section 290 of [Act 9 of 2017](#)]*

**"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;

**"Governor"** means the Governor of the South African Reserve Bank appointed in terms of section 4 or 6(1)(a) of the South African Reserve Bank Act, 1989 ([Act No. 90 of 1989](#));

**"independent clearing house"** means a clearing house that clears transactions in securities on behalf of any person in accordance with its clearing house rules, and authorises and supervises its clearing members in accordance with its clearing house rules;

*[definition of "independent clearing house" substituted by section 290 of [Act 9 of 2017](#)]*

**"index"** means an indicator that reflects changes in the value of a group of securities on one or more exchanges or external exchanges;

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

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

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

**"in writing"**, in relation to anything which must be done in writing in terms of this Act, includes electronic actions;

**"inter-dealer broker"** means a person who acts as an intermediary between two authorised users or between an authorised user and another person in relation to the purchase and sale of securities;

**"issuer"** means an issuer of securities and, in Chapter IV, includes an issuer of money market securities;

**"joint standard"** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

*[definition of "joint standard" inserted by section 290 of [Act 9 of 2017](#)]*

**"juristic person"** means a person incorporated in terms of the Companies Act, a foreign company or another form of body corporate;

**"licensed central counterparty"** means a central counterparty licensed under [section 49](#);

*[definition of "licensed central counterparty" inserted by section 290 of [Act 9 of 2017](#)]*

**"licensed central securities depository"** means a central securities depository licensed under [section 29](#);

**"licensed clearing house"** means a clearing house licensed under [section 49](#);

**"licensed exchange"** means an exchange licensed under [section 9](#);

**"licensed external central counterparty"** means an external central counterparty licensed under [section 49A](#);

*[definition of "licensed external central counterparty" inserted by section 290 of [Act 9 of 2017](#)]*

**"licensed external trade repository"** means an external trade repository licensed under [section 56A](#);

*[definition of "licensed external trade repository" inserted by section 290 of [Act 9 of 2017](#)]*

**"licensed trade repository"** means a trade repository licensed under [section 56](#);

**"listing requirements"** means the requirements, determined by a licensed exchange and approved by the registrar, that must be met before a security may be included in the list of securities of that exchange, or be traded, or continue to be traded, on that exchange;

**"listed securities"** means securities included in the list of securities kept by an exchange in terms of [section 11](#);

**"management of securities and funds"** means—

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

**"market infrastructure"** means each of the following—

- (a) a licensed central counterparty;
- (b) a licensed central securities depository;
- (c) a licensed clearing house;
- (d) a licensed exchange;
- (e) a licensed trade repository;

*[definition of "market infrastructure" substituted by section 290 of [Act 9 of 2017](#)]*

**"Minister"** means the Minister of Finance;

**"money market securities"** means money market instruments that are uncertificated securities reflected in an uncertificated securities register;

**"National Payment System Act"** means the National Payment System Act, 1998 ([Act No. 78 of 1998](#));

**"nominal value"** means—

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

**"nominee"** means a person approved under [section 76](#) to act as the holder of securities or of an interest in securities on behalf of other persons;

**"official website"** *[definition of "official website" deleted by section 290 of [Act 9 of 2017](#)]*

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

*[definition of "participant" substituted by section 290 of [Act 9 of 2017](#)]*

**"prescribed"** means prescribed by the Minister by regulations, or by a conduct standard or a joint standard;

*[definition of "prescribed" inserted by section 290 of [Act 9 of 2017](#)]*

**"prescribed by the Minister"** *[definition of "prescribed by the Minister" deleted by section 290 of [Act 9 of 2017](#)]*

**"prescribed by the registrar"** *[definition of "prescribed by the registrar" deleted by section 290 of [Act 9 of 2017](#)]*

**"Prudential Authority"** means the authority established in terms of section 32 of the Financial Sector Regulation Act;

*[definition of "Prudential Authority" inserted by section 290 of [Act 9 of 2017](#)]*

**"prudential standard"** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

*[definition of "prudential standard" inserted by section 290 of [Act 9 of 2017](#)]*

**"Register"** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;

*[definition of "Register" inserted by section 290 of [Act 9 of 2017](#)]*

**"registrar"** means the Registrar and Deputy Registrar of Securities Services referred to in [section 1A\(1\)](#);

*[definition of "registrar" substituted by section 290 of [Act 9 of 2017](#)]*

**"regulated person"** means—

- (a) a licensed central counterparty;
- (b) a licensed central securities depository;
- (c) a licensed clearing house;
- (d) a licensed exchange;
- (e) a licensed trade repository;
- (f) an authorised user;
- (g) a clearing member;
- (h) a nominee;
- (i) a participant;
- (j) except for purposes of [section 3\(6\)](#), [sections 74](#) and [75](#), [sections 89](#) to 92, and [sections 100](#) to 103, an issuer;
- (k) except for the purposes of [sections 89](#) to 92, and [sections 100](#) to 103, a licensed external central counterparty and a licensed external trade repository; or
- (l) any other person specified in regulations for this purpose;

*[definition of "regulated person" substituted by section 290 of [Act 9 of 2017](#)]*

**"regulation"** means a regulation made under section 5 or 107;

**"rules"** means exchange rules, depository rules or clearing house rules;

**"safeguarding"** means the activities performed by an authorised user—

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

**"securities"** means—

- (a) listed and unlisted—
  - (i) shares, depository receipts and other equivalent equities in public companies, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 ([Act No. 59 of 1980](#));
  - (ii) debentures, and bonds issued by public companies, public state-owned enterprises, the South African Reserve Bank and the Government of the Republic of South Africa;
  - (iii) derivative instruments;
  - (iv) notes;
  - (v) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 ([Act No. 45 of 2002](#)), and units or any other form of participation in a foreign collective investment scheme approved by the Authority in terms of section 65 of that Act; and  
*[subparagraph (v) substituted by section 290 of [Act 9 of 2017](#)]*
  - (vi) instruments based on an index;
- (b) units or any other form of participation in a collective investment scheme licensed or registered in a country other than the Republic;
- (c) the securities contemplated in paragraphs (a)(i) to (vi) and (b) that are listed on an external exchange;
- (d) an instrument similar to one or more of the securities contemplated in paragraphs (a) to (c) prescribed by the registrar to be a security for the purposes of this Act;
- (e) rights in the securities referred to in paragraphs (a) to (d), but excludes—
  - (i) money market securities, except for the purposes of Chapter IV; or if prescribed by the registrar as contemplated in paragraph (d);
  - (ii) the share capital of the South African Reserve Bank referred to in section 21 of the South African Reserve Bank Act, 1989 ([Act No. 90 of 1989](#)); and
  - (iii) any security contemplated in paragraph (a) prescribed by the registrar;

**"securities account"** means an account kept by—

- (a) a participant or an authorised user for its own account or for a client; or
- (b) a nominee for a person for whom it acts as a nominee,

which reflects the number or nominal value of securities of each kind held for its own account or on behalf of that client or person, as the case may be, and all entries made in respect of such securities;

**"securities of the same kind"** means securities of the same class and issued by the same issuer;



**"securities register"** means any register of securities required by any law to be established by an issuer and, in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in section 1 of that Act;

**"securities services"** means—

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

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

**"settle"** means—

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

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) in respect of money market securities, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules;
- (e) in respect of an unlisted derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument, unless otherwise prescribed by the registrar;
- (f) in respect of other securities, the discharge of the obligations arising from a transaction in such securities,

and "settling" or "settlement" has a corresponding meaning;

**"settlement services"** means any services offered and activities performed by an authorised user, a participant or a clearing member in terms of the relevant rules to facilitate settlement of transactions in securities;

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

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

**"systemic risk"** means the danger of a failure or disruption of the whole or a significant or substantial part of the Republic's financial system;

**"this Act"** includes the regulations, rules, and any notices or directives issued, exemption granted, determinations made, requirements determined or conditions imposed by the registrar, that have general application;

**"trade repository"** means a person who maintains a centralised electronic database of records of transaction data;

**"transaction"** means a contract of purchase and sale of securities;

**"transfer"** means the transfer of uncertificated securities or an interest in uncertificated securities by debiting the account in the uncertificated securities register from which the transfer is effected and crediting the account in the uncertificated securities register to which the transfer is effected in accordance with the depository rules, and in respect of securities issued in terms of the Companies Act, in the manner provided for in Part E of Chapter 2 of that Act;

**"Tribunal"** means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;

*[definition of "Tribunal" inserted by section 290 of [Act 9 of 2017](#)]*

**"uncertificated securities"** means—

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

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

**"uncertificated securities register"** means the record of uncertificated securities administered and maintained by a participant or a licensed central securities depository, as determined in accordance with the depository rules, and, in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in section 1 of that Act;

**"unlisted securities"** means securities that are not—

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

**"website"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 ([Act No. 25 of 2002](#)); and

**"withdraw"** means the conversion of uncertificated securities to certificated securities, and "withdrawal" has a corresponding meaning.

- (2) For purposes of the definition of "insolvency proceeding", a proceeding referred to in that definition commences—
- (a) in relation to business rescue proceedings, as contemplated in section 132(1) of the Companies Act;
  - (b) in relation to a judicial proceeding, other than a judicial proceeding under paragraph (a), on the filing at court of an application for an insolvency proceeding; and
  - (c) in relation to an administrative proceeding, other than an administrative proceeding under paragraph (a), on the filing of a resolution by a company, or the appointment of an insolvency administrator, as the case may be, in accordance with national legislation or the laws of a country other than the Republic.
- (3) Where in this Act any supervisory authority is required to take a decision in consultation with the Authority, such decision requires the concurrence of the Authority.
- [subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*
- (4) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.
- [subsection (4) added by section 290 of [Act 9 of 2017](#)]*

### 1A. Relationship between Act and Financial Sector Regulation Act

- (1) If the Minister has determined by notice in the *Gazette* that the amendments of this Act contained in Schedule 4 to the Financial Sector Regulation Act must come into operation before the provisions of the Financial Sector Regulation Act in terms of which the Authority is established come into operation, then until the date on which the Authority is established—
- (a) a reference to "Authority" must be read as a reference to the executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act, who are the Registrar and the Deputy Registrar of Securities Services, respectively; and
  - (b) the Registrar and Deputy Registrar of Securities Services exercise the powers and perform the functions of the Authority.
- (2) If the Minister has determined by notice in the *Gazette* that the amendments of this Act contained in Schedule 4 to the Financial Sector Regulation Act must come into operation before the provisions of the Financial Sector Regulation Act in terms of which the Prudential Authority is established come into operation, then until the date on which the Prudential Authority is established—
- (a) a reference to "Prudential Authority" must be read as a reference to the Registrar of Banks; and
  - (b) the Registrar of Banks designated under section 4 of the Banks Act, 1990 ([Act No. 94 of 1990](#)) exercises the powers and performs the functions of the Prudential Authority.
- (3) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.
- (4) A reference in this Act to the Authority determining or publishing a matter by notice in the *Gazette* must be read as including a reference to the Authority determining or publishing the matter by notice in the Register.
- (5) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being—
- (a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard, or a joint standard; or

- (b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.
- (6)
  - (a) A reference in this Act to an on-site visit in terms of a provision of this Act, must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.
  - (b) A reference to an inspection in terms of a provision of this Act other than [section 79\(b\)](#) must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.
- (7)
  - (a) A reference in this Act to the Authority announcing or publishing information or a document on a website must be read as a reference to the Authority publishing the information or document in the Register.
  - (b) The Authority may also publish the information or document on the Authority's website.
- (8) *[Editorial note: the insertion of subsection (8) comes into force at a later date.]*
- (9) A reference in this Act to an appeal of a decision of the Authority or a market infrastructure to the appeal board must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.
- (10) For the purposes of the Financial Sector Regulation Act, conduct standards made in terms of [section 74](#) are regulatory instruments.

*[[section 1A](#) inserted by section 290 of [Act 9 of 2017](#)]*

## 2. Objects of Act

This Act aims to—

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

## 3. Application of Act and rules

- (1) [Sections 100](#) to 103 do not apply in relation to the South African Reserve Bank, or a bank.
  - (2) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.
  - (3) Despite any other law, if there is an inconsistency between any provision of this Act and a provision of any other national legislation, except the Financial Intelligence Centre Act and the Financial Sector Regulation Act, this Act prevails.
- [subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*
- (4) Without affecting the generality of subsection (3), the provisions of this Act and the rules relating to insolvency proceedings and settlement effectiveness of entries in a central securities account and securities account, prevail over any other law, legislation, agreement or founding document of any person, and are binding on any person.

- (5) Despite any other law, if other national legislation confers a power on or imposes a duty upon an organ of state, other than the South African Reserve Bank or the Prudential Authority, in respect of a matter regulated under this Act, that power or duty must be exercised or performed in consultation with the Authority, and any decision taken in accordance with that power or duty must be taken with the concurrence of the Authority.

*[subsection (5) substituted by section 290 of [Act 9 of 2017](#)]*

- (6) Despite the provisions of the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), that Act does not apply to any activities of a regulated person, or goods or services provided by a regulated person, that are subject to this Act.

#### **4. Prohibitions and adherence to authorisation by authorised users, participants and clearing members**

- (1) No person may—

- (a) act as an authorised user unless authorised by a licensed exchange in terms of the exchange rules;
- (b) carry on the business of buying or selling listed securities unless that person complies with [section 24](#);
- (c) provide securities services in respect of unlisted securities in contravention of conditions imposed or prescribed under [section 6\(7\)](#);
- (d) act as a participant unless authorised as a participant by a licensed central securities depository in terms of [section 31](#);
- (e) act as a clearing member unless authorised by a licensed exchange, a licensed independent clearing house, a licensed central counterparty, a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of [section 49A](#), as the case may be;

*[paragraph (e) substituted by section 290 of [Act 9 of 2017](#)]*

- (f) act as a nominee unless that person is approved under [section 76](#);
- (g) perform the functions of or operate as a trade repository unless that person is licensed under [section 56](#) or [section 56A](#), as the case may be; or

*[paragraph (g) substituted by section 290 of [Act 9 of 2017](#)]*

- (h) in any manner, directly or indirectly, advertise or canvass for carrying on the business of an authorised user, participant or clearing member, unless that person is an authorised user, participant or clearing member, or an officer or employee of an authorised user, participant or clearing member, who is so permitted in terms of exchange rules, depository rules or clearing house rules, as the case may be.

- (2) A person who is not—

- (a) licensed as an exchange, a central securities depository, a trade repository, a clearing house or a central counterparty;
- (b) a participant;
- (c) an authorised user;
- (d) a clearing member;
- (e) an approved nominee;
- (f) an issuer of listed securities;

- (g) licensed as an external central counterparty, or exempt from the requirement to be licensed in terms of [section 49A](#); or
- (h) licensed as an external trade repository,

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

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

- (3) An authorised user may only provide the securities services for which it is authorised by a licensed exchange in terms of the exchange rules.
- (4) A participant may only provide the securities services for which it is authorised by a licensed central securities depository in terms of the depository rules.
- (5)
  - (a) A clearing member may only provide the clearing services or settlement services for which it is authorised by a licensed exchange, licensed independent clearing house, or a licensed central counterparty, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.
  - (b) A clearing member may only provide clearing services or settlement services for which it is authorised by a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of [section 49A](#), with the joint prior written approval of the Authority, the Prudential Authority and the South African Reserve Bank.

*[subsection (5) substituted by section 290 of [Act 9 of 2017](#)]*

## Chapter II

### Regulation and supervision of financial markets

#### 5. Powers of the Minister

- (1) The Minister may prescribe, in accordance with [section 107\(2\)](#),—
  - (a) requirements for the regulation of unlisted securities;
  - (b) a category of regulated persons, other than those specifically regulated under this Act, if the securities services provided, and the functions and duties exercised, whether in relation to listed or unlisted securities, by persons in such category, are not already regulated under this Act, and if, in the opinion of the Minister, it would further the objects of the Act in [section 2](#) to regulate persons in such categories;

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

  - (c) the securities services that may be provided, and the functions and duties that may be exercised, by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external clearing member, external central counterparty or external trade repository, as the case may be.

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*
- (2) An external authorised user, external exchange, external participant, external central securities depository, external clearing house, or external clearing member may only provide those securities

services or exercise functions or duties, as the case may be, prescribed by the Minister in terms of subsection (1)(c).

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

- (3) In performing the Minister's functions, the Minister must take into account the objects of the Act and the principle that competition between regulated persons should not be impeded or distorted.

## 6. Authority

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

(1) *[subsection (1) deleted by section 290 of [Act 9 of 2017](#)]*

(2) *[subsection (2) deleted by section 290 of [Act 9 of 2017](#)]*

(3) In performing its functions in terms of this Act, the Authority—

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

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

(j) may, on the written request of a regulated person, extend any period within which any documentation, information or report must be submitted to the Authority;

(k) may issue guidance notices on the application and interpretation of this Act;

*[paragraph (k) substituted by section 290 of [Act 9 of 2017](#)]*

(l) may take any measures he or she considers necessary for the proper performance and exercise of his or her functions, or for the implementation of this Act;

(m) may exempt, for a specified period which may be renewed, any person or category of persons from the provisions of a section of this Act if the Authority is satisfied that—

(i) the granting of the exemption will not—

(aa) conflict with the public interest; or

(bb) frustrate the achievement of the objects of this Act; and

(ii) the application of the section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and

(iii) in relation to an external market infrastructure, and with the concurrence of the South African Reserve Bank and the Prudential Authority, the applicant—

(aa) is based in an equivalent jurisdiction in terms of [section 6A](#) and is authorised by the supervisory authority of such jurisdiction;

(bb) complies with any criteria prescribed in joint standards for the exemption of such persons; and

(cc) undertakes to cooperate and share information with the Authority, the South African Reserve Bank and the Prudential Authority to assist with the performance of functions and the exercise of powers in terms of financial sector law;

*[paragraph (m) substituted by section 290 of [Act 9 of 2017](#)]*

(n) must inform the Minister and the Governor of any matter that in the opinion of the Authority may pose systemic risk;

*[paragraph (n) substituted by section 290 of [Act 9 of 2017](#)]*

(o) *[paragraph (o) deleted by section 290 of [Act 9 of 2017](#)]*

*[subsection (3) amended by section 290 of [Act 9 of 2017](#)]*

(4) (a) The Authority may, in order to ensure the implementation and administration of this Act, compliance with this Act or achieving of the objects of this Act, issue a directive to any person, including a regulated person—

(i) to implement specific practices, procedures or processes;

(ii) to take specific actions or measures;

(iii) to desist from undertaking specific practices, procedures, processes, actions or measures; or

(iv) prohibiting certain practices, procedures, processes, actions or measures.

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

(i) apply to any person, regulated person or securities services generally;



- (ii) apply to a specific person, regulated person or securities service; or
- (iii) be limited in its application to a particular kind or type of person, regulated person or securities service.
- (c) A directive issued in terms of paragraph (a) takes effect on the date determined by the Authority in the directive, and may take effect immediately.
- (d) The Authority may cancel or revoke any previously issued directives.
- (5) The Authority must, where an exemption or a directive applies to all persons, regulated persons or securities services generally, publish the directive in the *Gazette* and on the Authority's website, and a copy of the published exemption or directive must be tabled in Parliament.

*[subsection (5) substituted by section 290 of [Act 9 of 2017](#)]*

- (6) *[subsection (6) deleted by section 258 of [Act 45 of 2013](#)]*
- (7) The Authority may, with the concurrence of the Prudential Authority, and in accordance with the requirements prescribed by the Minister under [section 5\(1\)\(a\)](#), in conduct standards or joint standards for, or in respect of, securities services—
  - (a) prescribe criteria for the authorisation of persons providing securities services in respect of unlisted securities;
  - (b) prescribe conditions and requirements for the provision of securities services in respect of unlisted securities, including, but not limited to, imposing reporting requirements;*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
  - (c) prescribe standards in accordance with which securities services in respect of unlisted securities must be carried on;
  - (d) prescribe conditions and requirements in terms of which securities services in respect of specified types of unlisted securities may be provided, including the manner in which clearing and settlement of such securities must take place;*[paragraph (d) substituted by section 290 of [Act 9 of 2017](#)]*
  - (e) prescribe criteria for the authorisation of issuers of unlisted securities; and
  - (f) prohibit a person from providing any securities services in respect of unlisted securities if that person provides securities services in a manner which defeats one or more of the objects of this Act referred to in [section 2](#).

*[subsection (7) amended by section 290 of [Act 9 of 2017](#)]*

- (8) In relation to the persons in the category prescribed in terms of [section 5\(1\)\(b\)](#), standards may—
  - (a) prescribe criteria for the authorisation of such persons;
  - (b) prescribe conditions and requirements for the provision of securities services by such persons, including prescribing conduct standards and imposing reporting requirements;*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
  - (c) prescribe standards in accordance with which securities services by such persons must be carried on; and
  - (d) prohibit such persons from providing securities services or undertaking any activities which may frustrate the objects of this Act or the Financial Sector Regulation Act.

*[paragraph (d) substituted by section 290 of [Act 9 of 2017](#)]*

*[subsection (8) amended by section 290 of [Act 9 of 2017](#)]*

- (9) In relation to the securities services that may be provided, or the functions and duties that may be exercised by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external central counterparty, external clearing member or external trade repository, as the case may be, joint standards may prescribe additional criteria for the approval, authorisation, licensing or exemption of those persons in the Republic, and for the equivalence recognition of the applicable foreign country.

*[subsection (9) added by section 290 of [Act 9 of 2017](#)]*

## **6A. Equivalence recognition of foreign jurisdictions**

- (1) On application by an interested party, the Authority, with the concurrence of the South African Reserve Bank and the Prudential Authority, may determine that the regulatory framework of a specified foreign country is equivalent (an "equivalent jurisdiction") to the regulatory framework established in terms of financial sector law, if the legislative and regulatory framework established in that foreign country meets the objectives of the financial sector law.
- (2) A recognition in terms of [section 6A\(1\)](#) must be published on the Authority's website and in the Register.
- (3) The Authority must maintain a list of all foreign countries recognised under this section.
- (4) When assessing the equivalence of the regulatory framework of a foreign country, the Authority, the South African Reserve Bank and the Prudential Authority must take into account—
- (a) the nature and intensity of the supervisory authority's oversight processes, including direct comparison with the regime applied by the Authority, the Prudential Authority and the South African Reserve Bank, as the case may be;
  - (b) alignment of the foreign country's regulatory framework with relevant principles developed by international standard setting bodies applicable to market infrastructures;
  - (c) observed outcomes of the foreign regulatory framework applicable to market infrastructures relative to those in South Africa; and
  - (d) the need to prevent regulatory arbitrage.

*[section 6A inserted by section 290 of [Act 9 of 2017](#)]*

## **6B. Withdrawal of recognition**

The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, withdraw recognition where the criteria set out in [section 6A](#) are no longer met.

*[section 6B inserted by section 290 of [Act 9 of 2017](#)]*

## **6C. Principles of co-operation**

- (1) The Authority must enter into a supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction for the purpose of performing its functions in terms of this Act.
- (2) A supervisory co-operation arrangement referred to in subsection (1) must at least specify—
- (a) the mechanism for the exchange of information between the Authority, the South African Reserve Bank, the Prudential Authority, and the relevant supervisory authorities ("the authorities"), including access to all information requested by the Authority regarding a licensed external market infrastructure;
  - (b) the mechanism for prompt notification to the Authority, the South African Reserve Bank and the Prudential Authority where the supervisory authority deems an external market

- infrastructure which it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject, or any other matter which may have an effect on the authorisation of the market infrastructure;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border supervisory on-site inspections;
  - (d) the processes the authorities should use if an authority subsequently determines that it needs to use requested supervisory information for law enforcement or disciplinary purposes, such as obtaining the consent of the requested authority and handling such information in accordance with the terms of existing memoranda of understanding for enforcement co-operation;
  - (e) the procedures for co-operation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or obtaining information from a licensed external market infrastructure and members of the controlling body or senior management; and
  - (f) the degree to which a supervisory authority may onward-share to a third party any non-public supervisory information received from another authority, and the processes for doing so.
- (3) The Authority and supervisory authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must—
- (a) establish and maintain appropriate confidential safeguards to protect all non-public supervisory information obtained from another supervisory authority;
  - (b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors;
  - (c) consult, co-operate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets;
  - (d) co-operate in the day-to-day and routine oversight of internationally active licensed external market infrastructures;
  - (e) provide advance notification and consult, where possible and otherwise as soon as practicable, regarding issues that may materially affect the respective regulatory or supervisory interests of another authority;
  - (f) design mechanisms for supervisory co-operation to provide information both for routine supervisory purposes and during periods of crisis; and
  - (g) undertake ongoing and *ad hoc* staff communications regarding internationally active licensed external market infrastructure as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.

[[section 6C](#) inserted by section 290 of [Act 9 of 2017](#)]

## Chapter III Exchanges

### Licensing of exchange

#### 7. Application for exchange licence

- (1) An exchange must be licensed under [section 9](#).

- (2) A juristic person may apply to the Authority for an exchange licence in respect of one or more types of securities.
- (3) An application for an exchange licence must—
  - (a) be made in the manner and contain the information prescribed by the Authority;  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) show that the applicant complies with the requirements listed in [section 8](#);
  - (c) be accompanied by—
    - (i) a copy of the proposed exchange rules that must comply with [section 17](#);
    - (ii) a copy of the proposed listing requirements that must comply with [section 11](#);
    - (iii) a copy of 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 Authority;
    - (v) the application fee prescribed by the Authority;
  - (d) be supplemented by any additional information that the Authority may reasonably require.
- (4)
  - (a) The Authority must publish a notice of an application for an exchange licence in two national newspapers at the expense of the applicant, and on the Authority's website.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) The notice must state—
    - (i) the name of the applicant;
    - (ii) that the proposed exchange rules and listing requirements are available on the website of the Authority for comments from members of the public; and  
*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*
    - (iii) the period within, and the process by, which objections to the application or rules and listing requirements may be lodged with the Authority;  
*[subparagraph (iii) substituted by section 290 of [Act 9 of 2017](#)]*
  - (c) The Authority must publish the proposed exchange rules and listing requirements referred to in paragraph (b)(ii) on the Authority's website.  
*[paragraph (c) added by section 290 of [Act 9 of 2017](#)]*

## 8. Requirements applicable to applicant for exchange licence and licensed exchange

- (1) Subject to subsection (2), an applicant for an exchange licence and a licensed exchange must—
  - (a) subject to the requirements prescribed by the Minister have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;
  - (b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the exchange, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;

- (c) demonstrate that the fit and proper requirements prescribed in relevant joint standards are met by the applicant, or the licensed exchange, as the case may be, members of its controlling body and senior management;

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) have made arrangements for the efficient and effective surveillance of all transactions effected through the exchange and for the supervision of authorised users so as to identify possible market abuse and ensure compliance with the exchange rules and exchange directives and this Act;
- (e) have made arrangements for the efficient and effective monitoring of compliance by issuers of securities listed on the exchange with the exchange's listing requirements;
- (f) implement arrangements to efficiently and effectively manage the material risks associated with the operation of an exchange;
- (g) have made arrangements for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange;
- (h) have insurance, a guarantee, compensation fund or other warranty in place to enable it to provide compensation, subject to the exchange rules, to clients;
- (i) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and for the management of settlement risk;
- (j) have made arrangements for the efficient and effective supervision of authorised users so as to ensure compliance with the Financial Intelligence Centre Act; and
- (k) implement an effective and reliable infrastructure to facilitate the trading of securities listed on the exchange.

(2) The Authority may—

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

- (3) (a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.
- (b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
- (c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).
- (d) Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct standards or joint standards.

*[subsection (3) added by section 290 of [Act 9 of 2017](#)]*

## 9. Licensing of exchange

- (1) The Authority may, after consideration of any objection received as a result of the notice referred to in [section 7\(4\)](#) and subject to any conditions which the Authority may consider appropriate, grant an exchange a licence to perform the functions referred to in [section 10](#) 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) An exchange licence must specify the terms and conditions of the licence, the categories of securities that may be listed on that exchange, the registered 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 Authority.
- (3) An exchange may at any time apply to the Authority for an amendment of the terms of its licence or the conditions subject to which the licence was granted.
- (4)
  - (a) The Authority must publish a notice of an application for an amendment of the terms of an exchange licence or the conditions subject to which the licence was granted in two national newspapers, at the expense of the applicant, and on the Authority's website.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) The notice must state—
    - (i) the name of the applicant;
    - (ii) the nature of the proposed amendments; and
    - (iii) the period within which objections to the application may be lodged with the Authority.

## Functions of licensed exchange

### 10. Functions of licensed exchange and power of Authority to assume responsibility for functions

- (1) A licensed exchange must conduct its business in a fair and transparent manner with due regard to the rights of authorised users and their clients.
- (2) A licensed exchange—
  - (a) must provide an infrastructure for the trading of securities listed on that exchange;
  - (b) must issue exchange rules in accordance with [section 17](#);
  - (c) must supervise compliance by its authorised users with the exchange rules and exchange directives;
  - (d) must supervise compliance with this Act by its authorised users and issuers of securities listed on that exchange, report any non-compliance to the Authority and assist the Authority in enforcing this Act;
  - (e) must enforce the exchange rules, listing requirements and exchange directives;
  - (f) must, as soon as it becomes aware, inform the Authority of any matter that it reasonably believes may give rise to, or increase systemic risk;

*[paragraph (f) substituted by section 290 of [Act 9 of 2017](#)]*

- (g) may issue exchange directives;
  - (h) may amend or suspend the exchange rules in terms of [section 71](#), and may amend its listing requirements in terms of [section 1](#) l(6)(a);
  - (i)
    - (i) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;
    - (ii) may appoint a clearing house or central counterparty licensed under Chapter V to clear or settle transactions or both clear and settle transactions on behalf of the exchange;

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

  - (iii) must consult with an appointed associated clearing house when making or amending the exchange rules in accordance with which the associated clearing house will clear or settle transactions on behalf of the exchange;
- (j) must, if it has not appointed a clearing house to clear transactions on behalf of the exchange, —
  - (i) establish and maintain an infrastructure for the clearing of transactions effected through the exchange; and
  - (ii) manage the clearing of transactions effected through the exchange, in relation to those transactions which the exchange rules determine will be cleared;
- (k) must supervise compliance by issuers of securities listed on that exchange with that exchange's listing requirements;
- (l) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received a notification regarding insolvency proceedings against authorised users;
- (m) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Act.
- (3)
- (a) The Authority may assume responsibility for one or more of the regulatory or supervisory functions referred to in subsection (2) if the Authority considers it necessary in order to achieve the objects of this Act referred to in [section 2](#).
  - (b) The Authority must, before assuming responsibility for a function 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 Authority why responsibility should not be assumed by the Authority.

## 11. Listing of securities

- (1) An exchange must, to the extent applicable to the exchange in question, make listing requirements which prescribe—
  - (a) the manner in which securities may be listed or removed from the list or in which the trading in listed securities may be suspended;
  - (b) the requirements with which issuers of listed securities and of securities which are intended to be listed, as well as such issuers' agents, must comply;
  - (c) the standards of conduct that issuers of listed securities and their directors, officers and agents must meet;

- (d) the standards of disclosure and corporate governance that issuers of listed securities must meet;
  - (e) such details relating to the listed securities as may be necessary;
  - (f) the steps that must be taken by the exchange, or a person to whom the exchange has delegated its disciplinary functions, for the investigation and discipline of an issuer, or director, officer or employee of an issuer, that contravenes or fails to comply with the listing requirements;
  - (g) for any contravention of or failure to comply with the listing requirements, any one or more of the following penalties that may be imposed by the exchange or by a person to whom the exchange has delegated its disciplinary functions:
    - (i) A reprimand;
    - (ii) a fine not exceeding R7.5 million, to be adjusted by the Authority annually to reflect the Consumer Price Index, as published by Statistics South Africa;
    - (iii) disqualification, in the case of a natural person, from holding the office of director or officer of a listed company for any period of time;
    - (iv) suspension or termination of listing; or
    - (v) any other penalty that is appropriate in the circumstances.
- (2) The listing requirements may prescribe that—
- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, other national newspapers, the website of the exchange or through the news service of the exchange;
  - (b) any person who contravenes or fails to comply with the listing requirements may be ordered to pay the costs incurred in an investigation or hearing;
  - (c) an exchange may take into account at a hearing information obtained by the Authority in the course of a supervisory on-site inspection or investigation conducted in terms of the Financial Sector Regulation Act or obtained by the directorate in an investigation under [section 84](#), read with [section 85](#).
- [paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*
- (3) If a person fails to pay a fine referred to in subsection (1)(g), the exchange may file with the clerk or Authority of any competent court a statement certified by it as correct, stating the amount of the fine imposed and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the exchange for a liquid debt in the amount specified in the statement.
  - (4) The listing requirements must prescribe the purpose for which a fine referred to in subsection (1)(g) must be appropriated.
  - (5) Listing requirements and any other conditions of listing are binding on an issuer and an authorised user and their directors, officers, employees and agents.
  - (6) (a) An exchange may amend its listing requirements in accordance with the consultation process set out in the listing requirements, which process must provide for—
    - (i) the persons who are to be consulted; and
    - (ii) the manner in which consultation will happen, including the time period or periods allowed for consultation.



- (b) An exchange must submit any proposed amendment of its listing requirements, after licensing, together with an explanation of the reasons for the proposed amendment, and any concerns or objections raised during the consultation process, to the Authority for approval.
- (c) The Authority must, as soon as possible after the receipt of a proposed amendment, publish—
  - (i) the amendment on the Authority's website; and
  - (ii) a notice in the *Gazette* that the proposed amendment is available on the Authority's website, calling upon all interested persons who have any objections to the proposed amendment, to lodge their objections with the Authority within a period of 14 days from the date of publication of the notice.

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) If there are no such objections, or if the Authority has considered the objections and, if necessary, has consulted with the exchange and the persons who raised such objections and has decided to approve or amend the proposed amendment, the Authority must publish—
  - (i) the amendment and the date on which it comes into operation on the Authority's website; and
  - (ii) a notice in the *Gazette*, which notice must state—
    - (aa) that the amendment of the listing requirements has been approved;
    - (bb) that the listing requirements as amended are available on the Authority's website and the website of the exchange; and
    - (cc) the date on which the amendment of the listing requirements will come into operation.

*[paragraph (d) substituted by section 290 of [Act 9 of 2017](#)]*

- (7) (a) The Authority may, by notice in the *Gazette* and on the Authority's website, amend the listing requirements of an exchange—
  - (i) if there is an urgent imperative under exceptional circumstances;
  - (ii) if it is necessary to achieve the objects of this Act referred to in [section 2](#); and
  - (iii) after consultation with the exchange concerned.

*[paragraph (a) amended by section 290 of [Act 9 of 2017](#)]*

- (b) Where the Authority has amended the listing requirements of an exchange in terms of paragraph (a), the Authority must—
  - (i) inform the Minister of the amendment, giving reasons for the amendment and explaining the imperative referred to in paragraph (a)(i); and
  - (ii) publish the reasons for the amendment, and the imperative for such amendment in the *Gazette* and on the Authority's website.

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

- (c) Subsection (6) does not apply to an amendment by the Authority under this subsection.
- (8) An exchange—
  - (a) must keep a list of the securities which may be traded on the exchange;
  - (b) must receive and consider, and may grant, defer or refuse, subject to its listing requirements, applications for the inclusion of securities in the list;

- (c) may, when granting an application referred to in paragraph (b) or at any time thereafter, in consultation with the Authority, delay compliance by an issuer of securities with a specific provision of the listing requirements for a limited period and on conditions determined in the approval, if—
    - (i) practicalities impede the strict application of a specific provision; or
    - (ii) the delay is justified in furtherance of the national government's objective to encourage participation in the financial markets:

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

## 12. Removal of listing and suspension of trading

- (1) An exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list, even to the extent that a removal may have the effect that an entire board or substantial portion of the board on the exchange is closed, or suspend the trading in listed securities, if it will further one or more of the objects of this Act referred to in [section 2](#).
- (2) An exchange must, subject to subsection (3), before a removal or suspension referred to in subsection (1)—
  - (a) inform the issuer of its intention to remove or suspend;
  - (b) give the issuer the reasons for the intended removal or suspension; and
  - (c) call upon the issuer to show cause, within a period specified by the exchange, why the removal or suspension should not be effected.
- (3) If the listing requirements, any conditions imposed under [section 11\(8\)\(c\)](#) or (d) or the exchange rules are not complied with or if a circumstance arises which the exchange rules or the listing requirements envisage as a circumstance justifying the immediate suspension of trading, an exchange may, subject to subsection (1), order an immediate suspension referred to in that subsection for a period not exceeding 30 days, which period may be extended for further periods of 30 days.
- (4) If the trading of listed securities has been suspended in terms of this section, an exchange may, despite 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 interests of minority holders of the securities have been considered.
- (b) An issuer must provide reasons for the request contemplated in paragraph (a).
- (6) (a) If an exchange refuses an application for the inclusion of securities in the list under [section 1](#) or under subsection (1) removes securities from the list, the exchange concerned must immediately notify every other exchange in the Republic of the reasons for and date of the refusal or removal.
- (b) If the refusal to list securities was due to any fraud or other crime committed by the issuer, or any material misstatement of its financial position or non-disclosure of any material fact, or if the removal of securities was due to a failure to comply with the listing requirements of the exchange, no other exchange in the Republic may, for a period of six months from the date referred to in paragraph (a), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such securities, unless the refusal or removal is withdrawn by the first exchange or set aside on reconsideration by the Tribunal.  
*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
- (c) If an exchange withdraws a refusal or removal before the expiry of the six months, it must notify the issuer and every other exchange in the Republic.

### 13. Application of amended listing requirements to previously listed securities

- (1) Amended listing requirements may be applied by the exchange to securities listed before the amendment of the listing requirements, by notice in writing to the issuer of such listed securities.
- (2) Listing requirements so applied take effect from a date determined by the exchange, which date must not be earlier, except when special circumstances justify an earlier date, than one month after the date on which the exchange so notifies the issuer, but the exchange may postpone the former date on written request by the issuer.
- (3) If an exchange refuses a request for a postponement in terms of subsection (2) the issuer concerned may make representations in writing to the Authority, and if the request for a postponement is reasonable, the Authority may, after consultation with the exchange, postpone the date on which the listing requirements take effect by not more than three months and must inform the exchange accordingly in writing.

### 14. Disclosure of information by issuers of listed securities

- (1) (a) An exchange may require an issuer of listed securities to disclose to it any information at the issuer's disposal about those securities, or about the affairs of that issuer, if such disclosure is necessary to achieve one or more of the objects of this Act referred to in [section 2](#).
- (b) An exchange may require the issuer to disclose that information to the registered holders of the securities, within a period specified by the exchange.
- (c) If the issuer refuses to disclose the information to the exchange or the registered holders of the securities, the exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the exchange.

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

### 15. Maintenance of insurance, guarantee, compensation fund or other warranty

- (1) An exchange may impose a fee on any person involved in a transaction in listed securities affected through the exchange for the purpose of administering and maintaining the insurance, guarantee or compensation fund or other warranty contemplated in [section 8\(1\)\(h\)](#).
- (2) Any funds received or held by an exchange for purpose of maintaining the insurance, guarantee or compensation fund or other warranty contemplated in [section 8\(1\)\(h\)](#), are for all intents and purposes considered to be "trust property" as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.

### 16. Funds of mutual exchange

A mutual exchange may require its authorised users to contribute towards the funds of the exchange for the purpose of carrying on the business of the exchange.

## Exchange rules

### 17. Requirements with which exchange rules must comply

- (1) The exchange rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.  
*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*
- (2) The exchange rules must provide—
  - (a) for equitable criteria for authorisation and exclusion of authorised users and, in particular, that no person may be admitted as an authorised user or allowed to continue such person's business as an authorised user unless the person—
    - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
    - (ii) complies, or, in the case of a corporate body, is managed by persons or employs persons who comply, with the standards of training, experience and other qualifications required by the exchange rules;
  - (b) for the authorisation and criteria for authorisation of the securities services that authorised users may provide, and if—
    - (i) there are different categories of—
      - (aa) authorised users, for the authorisation and criteria for authorisation of the securities services that each category of authorised user may provide;
      - (bb) securities listed on an exchange, for the authorisation and criteria for authorisation of the categories in respect of which an authorised user may provide one or more securities services;
    - (ii) the exchange authorises its authorised users to perform securities services in respect of securities not listed on the exchange, for the authorisation and criteria for authorisation of the categories of such securities in respect of which an authorised user may provide one or more securities services;

- (c)
  - (i) for the capital adequacy, guarantee and risk management requirements with which an authorised user must comply;
  - (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of authorised users or different activities of an authorised user's business;
- (d) for an efficient, honest, transparent and fair manner in which and terms and conditions subject to which transactions in listed securities must be effected by authorised users, whether for own account or on behalf of other persons;
- (e) for the manner in which transactions in listed securities must be cleared and settled;
- (f) if the exchange has not appointed a clearing house for the clearing of transactions effected through the exchange,—
  - (i) for the determination as to which transactions will be cleared by the exchange;
  - (ii) for the circumstances in which the exchange may refuse to clear a transaction in securities which would otherwise be cleared in terms of the rules in subparagraph (i);
  - (iii) for the monitoring of settlement obligations of authorised users and their clients;
- (g) for the regulation of transactions in listed securities entered into as a result of any first communication made to a person without an express or tacit invitation from such person;
- (h) subject to the provisions of [section 38\(3\)](#) and [section 41](#), for the circumstances in which a transaction in listed securities may be declared void by the exchange;
- (i) that no authorised user may conduct business with a person whom the authorised user believes or suspects requires approval as a nominee under [section 76](#) or approval to undertake management of securities in terms of any law, without having taken reasonable measures to ascertain that such person has the necessary approval;
- (j) for the approval by the exchange of a nominee of an authorised user which nominee holds securities in a securities account or central securities account as defined in Chapter IV;
- (k) for the manner in which the exchange monitors compliance by its authorised users with this Act, and the exchange rules and exchange directives;
- (l) for the conditions subject to which an officer or employee of an authorised user may, in relation to the buying and selling of listed securities, advise on or conclude any transaction on behalf of an authorised user in the course of that authorised user's business and for the circumstances in which an officer or employee of an authorised user may be denied access to the exchange;
- (m) for the circumstances in which trading in any listed security may be suspended or halted;
- (n) for the manner in which an authorised user is required to conduct the securities services for which it is authorised generally;
- (o) for the operation by an exchange or authorised user of a trust account contemplated in [section 21](#);
- (p) for the manner in which authorised users must comply with [section 22](#);
- (q) for the—
  - (i) recording of transactions effected through the exchange;
  - (ii) monitoring of compliance by authorised users with the exchange rules and exchange directives; and

- (iii) surveillance of any matter relevant for the purposes of this Act, and the exchange rules and exchange directives;
- (r) for the circumstances and manner in which an authorised user may advertise or canvass for business;
- (s) for a process whereby complaints by authorised users against the exchange in respect of the exercise of functions by the exchange may be made, considered and responded to;
- (t) for the manner in which complaints against an authorised user or officer or employee of an authorised user must be investigated;
- (u) for the steps to be taken by the exchange, or a person to whom the exchange has delegated its investigative and disciplinary functions, to investigate and discipline an authorised user or officer or employee of an authorised user who contravenes or fails to comply with the exchange rules, the interim exchange rules or the exchange directives, and for a report on the disciplinary proceedings to be furnished to the Authority within 30 days after the completion of such proceedings;
- (v) for the manner in which an authorised user, officer or employee of an authorised user who is believed to—
  - (i) be able to furnish any information on the subject of any investigation referred to in paragraphs (u); or
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject,may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (w) in respect of the insurance, guarantee, compensation fund or other warranty referred to in [section 8\(1\)\(h\)](#), for—
  - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty; and
  - (ii) the amount of the fee imposed by the exchange for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty; and
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;
- (x) that authorised users must disclose to their clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (y) that authorised users may charge a fee for different categories of transactions;
- (z) for the purposes for which, and the process by which, an exchange may issue exchange directives;
- (aa) for supervisory measures that enable the exchange to comply with [section 10\(2\)\(c\)](#), (d) and (e);

- (bb) for the authority of, and the manner in, and circumstances under which—
    - (i) an exchange may limit the revocation of any settlement instruction given by an authorised user or its client;
    - (ii) on the commencement of insolvency proceedings, an authorised user or client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the exchange rules, but prior to settlement;
    - (iii) an exchange or an authorised user may terminate transactions on the commencement of insolvency proceedings;
  - (cc) for the arrangements to be made in relation to the administration of securities and funds held for own account or on behalf of a client by an authorised user, including the settlement of unsettled transactions, under insolvency or default proceedings in respect of that authorised user;
  - (dd) for the manner in which an authorised user who is acting as an inter-dealer broker is required to conduct its inter-dealer broking services, including the manner in which the inter-dealer broker broadcasts bids and offers that it receives, if applicable;
  - (ee) for the circumstances in which an authorised user may or may not transact in listed securities using the services of an inter-dealer broker who is not an authorised user;
  - (ff) that authorised users must notify the exchange as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and
  - (gg) for the supervision by an exchange of compliance with the duties imposed on its authorised users by the Financial Intelligence Centre Act.
- (2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the exchange rules.
- [subsection (2A) inserted by section 290 of [Act 9 of 2017](#)]*
- (3) (a) Any rules made in terms of subsection 2(e) or 2(bb) or 2(cc) must have due regard for, and not be in conflict with, any applicable depository rules.
  - (b) Any rules made in terms of subsection (2)(bb) and (cc) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.
  - (4) (a) Subject to [section 5\(1\)\(c\)](#) and (2) and the requirements prescribed in joint standards, the exchange rules may provide for the approval of external authorised users to be authorised users of the exchange.
- [paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
- (b) If the exchange rules provide for this, the rules must provide, in accordance with paragraph (a), for the identification of those securities services that will be authorised and regulated by the exchange in terms of the exchange rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external authorised user is authorised and supervised.
- (5) The exchange rules made under this section apply to an authorised user only to the extent that those rules apply to—
    - (a) all authorised users generally; and
    - (b) the securities service or services for which that authorised user has been authorised by the exchange.
  - (6) An exchange may, with the approval of the Authority, make exchange rules on additional matters that are not inconsistent with this Act.

- (7) An exchange rule made under this section is binding on—
- (i) the exchange;
  - (ii) the authorised users of the exchange;
  - (iii) issuers of securities listed on that exchange;
  - (iv) the officers and employees of the exchange, its authorised users and issuers; and
  - (v) clients of its authorised users.

### **Authorised users**

#### **18. Restriction on borrowing against and repledging of securities belonging to other persons**

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.

#### **19. Marking of or recording details of securities**

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.

#### **20. Restriction on alienation of securities**

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.

#### **21. Segregation of funds**

- (1)
  - (a) Every authorised user must open and maintain a trust account at a bank designated for client funds, or may use such an account opened and maintained by an exchange, into which any instruments of payment or cash received from a client must be deposited on the day of receipt: Provided that any deposit that is made by a client directly into an authorised user's own account, or any deposit that is received after banking hours, must be transferred into such trust account by the start of business on the next day.
  - (b) A trust account referred to in this subsection may contain only funds of clients and not those of an exchange or authorised user.
- (2) Funds received from a client need not be deposited into a trust account if payment—
  - (a) is made to the authorised user by a buyer of listed securities—
    - (i) against delivery of such securities to the buyer; or
    - (ii) against such securities being marked or recorded as the property of the buyer; or
  - (b) is preceded by a payment made by the authorised user to the seller of listed securities against delivery of such securities to the authorised user; or



- (c) is made to pay a debt due to the authorised user: Provided that a debt arising from the purchase of listed securities which have not been marked or recorded as the property of the buyer of the securities, may not be regarded as a debt due for this purpose; or
  - (d) is made in terms of any other law or exchange rule which specifically provides for such payment to be deposited into some other account.
- (3) Funds held in a trust account and any funds which have not been deposited into a trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, are considered to be "trust property" as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those funds, subject to this section.
- (4) Funds deposited into a trust account may only be withdrawn by an authorised user for the purpose of making payment—
  - (a) to the person entitled to the payment; or
  - (b) in terms of any other law or the exchange rules:

Provided that if, after the withdrawal, any deposited cheque, draft or other instrument against which the withdrawal was made is not subsequently honoured, the authorised user must pay the shortfall arising from the default into the trust account immediately.
- (5) All bank charges accruing in respect of a trust account are for the account of the authorised user except that bank charges specifically relating to a deposit or withdrawal of the funds of a client are for that client's own account.
- (6) Any interest accruing to the funds in a trust account is payable to the owner of the funds after any fees owed to the authorised user or exchange has 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 Authority 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.

## 22. Segregation of securities

- (1) Every authorised user must deposit securities held for its own account and for or on behalf of its clients in separate securities accounts or other accounts, maintained by the person who holds or otherwise safeguards such securities on behalf of the authorised user, and must ensure that securities held for or on behalf of its clients are identifiable as belonging to specific persons.
- (2)
  - (a) Every authorised user must balance and reconcile the aggregate number of each security reflected in securities accounts maintained by the authorised user, and held by a participant, another third party, or a licensed central securities depository if so authorised by the Authority, on behalf of the authorised user and its clients, with the number of securities held by the participant, other third party or licensed central securities depository, whichever may be applicable, on a daily basis unless otherwise provided for in the exchange rules.
  - (b) Any reconciling differences must be rectified within the time period prescribed in the exchange rules.
- (3) Any securities held by an authorised user for or on behalf of another person must be identifiable as belonging to a specific person and are considered to be trust property as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those securities.

## General provisions in relation to listed securities

### 23. Use of designation "stockbroker" and related designations

- (1) A stockbroker may use the designation "stockbroker", "stockbroker (South Africa)" or "stockbroker (SA)".
- (2) A person who is not a stockbroker, may not—
  - (a) purport to be a stockbroker; or
  - (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act implying, or tending to induce the belief, that such person is a stockbroker.
- (3) A person to whom the rules of an external exchange apply, and whose business is substantially similar to that of a stockbroker, may use the designation "stockbroker" if the country in which the use of the designation authorised is indicated after the designation.

### 24. Buying and selling listed securities

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

- (a) is an authorised user and acts in compliance with the relevant exchange rules;
- (b) effects such buying or selling through an authorised user in compliance with the relevant exchange rules;
- (c) is not an authorised user, but is a financial institution transacting as principal with another financial institution also transacting as principal, subject to [section 25](#); or
- (d) is a person who, subject to any condition that the Authority may prescribe, buys or sells listed securities in order to—
  - (i) give effect to a reconstruction of a company or group of companies by the issue or reallocation of shares, or a takeover by one company of another or an amalgamation of two or more companies; or
  - (ii) effect a change in the control over management or the business of a company.

### 25. Reporting of transactions in listed securities

- (1) Any transaction in listed securities resulting in a change of beneficial ownership of those securities that is concluded outside of an exchange by—
  - (a) a financial institution referred to in [section 24\(c\)](#); or
  - (b) a person referred to in [section 24\(d\)](#),must be reported by that financial institution or person, as the case may be, to the Authority.
- (2) The Authority may prescribe standards in respect of reports referred to in subsection (1) specifying—
  - (a) the information required in respect of any transaction; and
  - (b) the manner in and time within which reports are to be rendered.

*[subsection (2) amended by section 290 of [Act 9 of 2017](#)]*
- (3) (a) The Authority must disclose information about a transaction reported in terms of subsection (1) to the exchange on which the securities are listed.

- (b) The Authority may disclose information about a transaction reported in terms of subsection (1) to the public, if the Authority is satisfied that such disclosure will enhance the objects of this Act referred to in [section 2](#) or regulatory effectiveness and transparency.
- (4) The exchange referred to in subsection (3) may publish any information disclosed to it in terms of that subsection.

## **Chapter IV**

### **Custody and administration of securities**

#### **26. Definition**

For purposes of this Chapter, unless the context indicates otherwise, "securities" means uncertificated securities, including money market securities.

### **Licensing of central securities depository**

#### **27. Application for central securities depository licence**

- (1) A central securities depository must be licensed under [section 29](#).
- (2) A juristic person may apply to the Authority for a central securities depository licence.
- (3) An application for a central securities depository licence must—
  - (a) be made in the manner and contain the information prescribed by the Authority;
  - (b) show that the applicant complies with the requirements referred to in [section 28](#);
  - (c) be accompanied by—
    - (i) a copy of the proposed depository rules that must comply with [section 35](#);
    - (ii) a copy of 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 Authority; and
    - (iv) the application fee prescribed by the Authority;
  - (d) be supplemented by any additional information that the Authority may reasonably require.
- (4) (a) The Authority must publish a notice of an application for a central securities depository licence in two national newspapers, at the expense of the applicant, and on the Authority's website.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

  - (b) The notice must state—
    - (i) the name of the applicant;
    - (ii) where the proposed depository rules may be inspected by members of the public; and
    - (iii) the period within and the process by which objections to the application may be lodged with the Authority.
  - (c) The Authority must publish the proposed depository rules referred to in paragraph (b)(ii) on the Authority's website.

*[paragraph (c) added by section 290 of [Act 9 of 2017](#)]*

## 28. Requirements applicable to applicant for central securities depository licence and licensed central securities depository

- (1) An applicant for a central securities depository licence and licensed central securities depository must—
- (a) subject to the requirements prescribed by the Minister have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;
  - (b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the central securities depository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of the relevant stakeholders;
  - (c) demonstrate that the fit and proper requirements prescribed in the relevant joint standards are met by the applicant, or the central securities depository, as the case may be, members of its controlling body and senior management;  
*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*
  - (d) have made arrangements for the efficient and effective monitoring of compliance by participants with the depository rules;
  - (e) have the infrastructure necessary for the sustained operation of a central securities depository in terms of this Act;
  - (f) have arrangements in place to manage operational risk associated with the operation of a central securities depository;
  - (g) make provision to the satisfaction of the Authority for settlement of transactions and for the management of settlement risk; and
  - (h) have made arrangements for security and back-up procedures to ensure the integrity of its records.
- (2) The Authority may—
- (a) require an applicant or a licensed central securities depository to furnish such additional information, or require such information to be verified, as the Authority may deem necessary;
  - (b) take into consideration any other information regarding the applicant or a licensed central securities depository, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant or a central securities depository and the latter is given a reasonable opportunity to respond thereto; and
  - (c) prescribe any of the requirements referred to in subsection (1) in greater detail.
- (3)
- (a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.
  - (b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
  - (c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).
  - (d) Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct standards or joint standards.

*[subsection (3) added by section 290 of [Act 9 of 2017](#)]*

## 29. Licensing of central securities depository

- (1) The Authority may, after consideration of any objection received as a result of the notice referred to in [section 27\(4\)](#) and subject to the conditions which the Authority may consider appropriate, grant a central securities depository licence to perform the functions referred to in [section 30](#) 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 registered 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 joint prior written approval of the Authority, the Prudential Authority and the South African Reserve Bank.

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

- (3) A central securities depository may at any time apply to the Authority for an amendment of the terms of its licence and the conditions subject to which its licence was granted.
- (4)
  - (a) The Authority must publish a notice of an application for an amendment of the terms of a central securities depository licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

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

## Functions of licensed central securities depository

### 30. Functions of licensed central securities depository and power of Authority to assume responsibility for functions

- (1) A licensed central securities depository must conduct its business in a fair and transparent manner with due regard to the rights of participants and their clients, and issuers.
- (2) A licensed central securities depository—
  - (a) must constitute, maintain and provide an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities;
  - (b) must constitute, maintain and provide an infrastructure, which infrastructure will include a securities settlement system;
  - (c) must perform custody and administration in respect of a central securities account;
  - (d) must issue depository rules in accordance with [section 35](#);
  - (e) must supervise compliance by participants with the depository rules and depository directives;
  - (f) must supervise compliance with this Act by its participants, report any non-compliance to the Authority and assist the Authority in enforcing this Act;

- (g) must enforce the depository rules and depository directives;
- (h) must, as soon as it becomes aware, inform the Authority of any matter that it reasonably believes may give rise to, or increase, systemic risk;  
*[paragraph (h) substituted by section 290 of [Act 9 of 2017](#)]*
- (i) may issue depository directives;
- (j) may amend or suspend the depository rules in terms of [section 71](#);
- (k) must maintain a central securities account with due regard to the interests of the participant and its clients;
- (l) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities account;
- (m) must notify a participant in writing or as otherwise agreed of an entry made in the central securities account of the relevant person;
- (n) must balance and reconcile the total number and where applicable, the nominal value of each kind of uncertificated securities held on its uncertified securities register with the records of the relevant issuer—
  - (i) in respect of certificated securities of the same kind reflected in the central securities account, not less than once every six months;
  - (ii) in respect of uncertificated securities of the same kind—
    - (aa) if that aggregate has not changed, not less than once every month;
    - (bb) if that aggregate has changed, on the business day after such change;
- (o) must administer and maintain a record of uncertificated securities deposited with it;
- (p) is entitled to access to the records of uncertified securities administered and maintained by its participants to perform the functions for which it is licensed;
- (q) may, if the central securities depository is licensed as a clearing house under Chapter V, clear transactions in securities in accordance with its clearing house licence;
- (r) must disclose to persons for whom central securities accounts are kept, participants and issuers the fees and charges required by it for its services, and which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) must on request disclose to—
  - (i) the Authority information about the securities held in a central securities account;
  - (ii) an issuer information about the securities issued by that issuer and held in central securities accounts;
- (t) must notify the Authority as soon as it becomes aware that a participant will cease or has ceased to be a participant;
- (u) subject to sections [5\(1\)\(c\)](#) and [\(2\)](#) and [35\(4\)](#), may enter into an agreement with an external central securities depository for the provision of securities services in the Republic by that external central securities depository;
- (v) must establish and maintain effective, efficient and sustainable infrastructure to perform the functions for which it is licensed;
- (w) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and

- (x) may do all other things that are necessary for, incidental or conducive to the proper operation of a central securities depository and that are not inconsistent with this Act.
- (3) (a) The Authority may assume responsibility for one or more of the regulatory or supervisory functions referred to in subsection (2) if the Authority considers it necessary in order to achieve the objects of this Act referred to in [section 2](#).
- (b) The Authority must, before assuming responsibility as contemplated in paragraph (a)—
  - (i) inform the central securities depository of the registrar's intention to assume responsibility;
  - (ii) give the central securities depository the reasons for the intended assumption; and
  - (iii) call upon the central securities depository to show cause within a period specified by the Authority why responsibility should not be assumed by the Authority.

## Participant

### 31. Authorisation of participant

A licensed central securities depository may authorise a person as a participant in that central securities depository in terms of the depository rules.

## Duties of participant

### 32. Duties of participant

- (1) A participant must conduct its business in a fair and transparent manner with due regard to the rights of its clients.
- (2) A participant—
  - (a) must, if securities are deposited with the participant, deposit them with a licensed central securities depository;
  - (b) must maintain a securities account for a client in respect of securities deposited;
  - (c) must reflect the number or nominal value of securities of each kind deposited in a securities account;
  - (d) must administer and maintain a record of all securities deposited with it in accordance with the depository rules;
  - (e) must record all securities of the same kind deposited with it in an uncertificated securities register if so required by the depository rules;
  - (f) must disclose to clients and issuers the fees and charges required by it for its services; which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
  - (g) must notify a client in writing or as otherwise agreed to by the client of an entry made in the client's securities account;
  - (h) must on request disclose to—
    - (i) the Authority information about the securities recorded in a securities account;
    - (ii) an issuer information about the securities issued by that issuer and recorded in a securities account in accordance with the depository rules;

- (i) must have a central securities account with a licensed central securities depository, and may —
  - (i) deposit securities with or withdraw securities from that central securities depository; or
  - (ii) transfer, attach, pledge, cede or give effect to any other lawful instruction in respect of a security or an interest in securities through that central securities depository;
- (j) must exercise the rights in respect of securities deposited by it with a licensed central securities depository in its own name on behalf of a client when so instructed by the client;
- (k) must balance and reconcile the aggregate of the securities accounts with the central securities accounts on a daily basis;
- (l) must correct discrepancies which are revealed in the reconciliation of the aggregate of its securities accounts with the central securities depository, and the participant must make good or provide any reconciled shortfall for which there are reasonable grounds for concluding that the participant is responsible;
- (m) must deposit securities held by it for its own account and those held for or on behalf of its clients in separate securities accounts and must ensure that securities held for or on behalf of its clients are segregated and identifiable as belonging to a specific person;
- (n) must, on a daily basis, ensure that its securities accounts and central securities accounts do not show a debit balance;
- (o) may not alienate, invest, pledge, hypothecate, encumber or otherwise make use of securities held for or on behalf of its clients, except with the client's express consent;
- (p) must make adequate arrangements for the safeguarding of clients' ownership rights, including, but not limited to insolvency proceedings;
- (q) must notify the Authority and central securities depository as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and
- (r) may perform securities services to the extent necessary to perform the duties referred to in this subsection.

### Uncertificated securities

#### 33. Uncertificated securities

- (1) An issuer may convert certificated securities to uncertificated securities, at the election of the issuer or the holder of certificated securities, and an issuer may, subject to subsection (2), issue uncertificated securities despite any contrary provision in—
  - (i) any other law;
  - (ii) the common law;
  - (iii) an agreement;
  - (iv) the memorandum of incorporation of an issuer;
  - (v) a prospectus; or
  - (vi) any other conditions applicable to the issuing of securities.

*[subsection (1) amended by section 290 of [Act 9 of 2017](#)]*



- (2) When any new issue of listed securities is made by an issuer or when an issuer issues securities in contemplation of the listing of that issuer's securities by an exchange, the securities must be issued in uncertificated form.
- (3) An issuer and a licensed central securities depository and its participants must make arrangements in accordance with depository rules for uncertificated securities to be evidenced by way of entry.
- (4) 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.

### 34. Duties of issuer of uncertificated securities

An issuer of uncertificated securities must—

- (a) record in its securities register the total number and, where applicable, the 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 36\(1\)](#), 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 total number and, where applicable, the nominal value of each kind of uncertificated securities issued by it and recorded in its securities register—
  - (i) if the register has not changed, not less than once every month;
  - (ii) if the register has changed, on the business day after such change; and
- (e) where applicable, comply with Chapter II, Part E and Part F of the Companies Act.

## Depository rules

### 35. Requirements with which depository rules must comply

- (1) The depository rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) The depository rules—
  - (a) must provide for the manner in which transactions in securities settled through the central securities depository must be settled;
  - (b) must provide for equitable criteria for authorisation and exclusion of participants and, in particular, that no person may be admitted as a participant or allowed to continue such person's business as a participant unless the person—
    - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
    - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the depository rules;
  - (c) must provide for an orderly process by which a participant ceases to be a participant;

- (d) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
- (e) must provide for the steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate, and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the depository rules, the interim depository rules or the depository directives and must require a report on the disciplinary proceedings to be furnished to the Authority within 30 days after the completion of such proceedings;
- (f) 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;
- (g) 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;
- (h) must provide for requirements in respect of corporate actions, including, but not limited to, that—
  - (i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to the central securities depository, participants or clients and, if applicable, by the central securities depository to participants, and by participants to clients;
  - (ii) notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to the central securities depository, participants or clients; and if applicable, that effect is given to the lawful instructions of clients with regard to voting rights and other matters; and
  - (iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities account or securities account as the case may be;
- (i) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities account or central securities account, deliver a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities account or central securities account, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned;
- (j) must provide for requirements in respect of same day debit balances and prohibit debit balances at the end of a day in a securities account or a central securities account;
- (k) 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;
- (l) must provide for—
  - (i) the duty of persons for whom securities accounts or central securities accounts are kept to disclose to a participant or central securities depository, as the case

may be, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited with the participant or central securities depository, as the case may be; and

- (ii) the manner, form and frequency of such disclosure;
- (m) 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;
- (n) must provide for the manner in which participants must give instructions to a central securities depository;
- (o) if the central securities depository is appointed as a clearing house by an exchange, may regulate, in a manner consistent with the exchange rules, the clearing and settlement functions to be performed by participants in the clearing and settlement process;
- (p) must provide for the purposes for which, and the process by which, a central securities depository may issue depository directives;
- (q) must provide for the manner in which a participant must hold and administer securities;
- (r) must provide for the approval by the central securities depository of a nominee of a participant;
- (s) must provide that no participant may open a securities account or a central securities account for a person whom the participant believes or suspects requires approval as a nominee under [section 76](#) without having taken reasonable measures to ascertain that such person has the necessary approval;
- (t) must provide for supervisory measures that enable the central securities depository to comply with [section 30\(2\)\(e\)](#), (f) and (g);
- (u) must provide for the manner in which complaints against a participant or officer or employee of a participant must be addressed;
- (v) must provide for a process whereby complaints by participants against the central securities depository in respect of the exercise of functions by the central securities depository may be made, considered and responded to;
- (w) must provide for the authority of, and the manner in and circumstances under which—
  - (i) a central securities depository may limit the revocation of any settlement instruction given by a participant or its client;
  - (ii) a participant or client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the depository rules, but prior to settlement; or
  - (iii) a central depository or a participant may terminate transactions on the commencement of insolvency proceedings;
- (x) must provide for—
  - (i) arrangements in relation to the administration of securities held for own account or on behalf of a client by a participant, including the settlement of unsettled transactions;
  - (ii) arrangements in relation to the administration of dividends and other payments made by issuers for the benefit of participants or clients; and

- (iii) the manner in which a shortfall in securities in the securities account or central securities account must be apportioned amongst the persons whose securities are held in such account;

under insolvency proceedings in respect of that participant;
  - (y) must provide for netting arrangements if transactions in one or more categories of securities settled through the central securities depository settle on a net basis;
  - (z) must provide for the manner in which a participant is required to conduct the securities services for which it is authorised;
  - (aa) must provide for the manner in which the central securities depository monitors compliance by its participants with this Act, the depository rules and the depository directives.
- (2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the depository rules.
- [subsection 2A inserted by section 290 of [Act 9 of 2017](#)]*
- (3)
    - (a) Any rules made in terms of subsection (2)(w) must have due regard for, and not be in conflict with, any applicable exchange rules.
    - (b) Any rules made in terms of subsection (2)(w), (x) and (y) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.
  - (4)
    - (a) Subject to [section 5\(1\)\(c\)](#) and (2) and requirements prescribed in conduct standards or joint standards, the depository rules may provide for the approval of external participants or external central securities depositories to be participants of the central securities depository.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

    - (b) If the depository rules provide for this, the rules must, provide for—
      - (i) the identification of those securities services that will be authorised and regulated by the central securities depository in terms of the depository rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external participant is authorised and supervised;
      - (ii) where a central securities depository has approved an external central securities depository as a participant, for the identification of the relevant laws or depository rules that apply to each aspect of the participation, including, but not limited to, the laws regulating effectiveness against third parties and insolvency proceedings.

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*
  - (5) A central securities depository may, with the approval of the Authority, make depository rules, that are not inconsistent with this Act, on additional matters.
  - (6) A depository rule made under this section is binding on—
    - (i) the central securities depository;
    - (ii) participants of the central securities depository;
    - (iii) issuers of securities deposited with that central securities depository;
    - (iv) any other person that has a central securities account with the central securities depository;
    - (v) the officers and employees of the central securities depository, its participants, issuers, and of other persons that have a central securities account with the central securities depository; and
    - (vi) clients of participants.

## General provisions relating to custody and administration of securities

### 36. Registration of securities

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

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) (a) No central securities depository or participant may become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of—
- (i) a deposit of securities; or
  - (ii) the registration in its name of—
    - (aa) securities;
    - (bb) limited rights in securities;
    - (cc) other rights in securities;
    - (dd) benefits in respect of securities; or
    - (ee) benefits accruing to securities.
- (b) Paragraph (a) also applies to a wholly owned subsidiary, as defined in section 1 of the Companies Act, of a central securities depository or participant.

### 37. Ownership of securities

- (1) Where securities of any kind are deposited with a participant or with a central securities depository, or accrue to the owner of securities of the same kind held collectively by a participant, authorised user, nominee or external central securities depository in a securities account or by a central securities depository in a central securities account, the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities account or central securities account, as the case may be.
- (2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner.
- (3) The interest of a co-owner in all the securities in a securities account or central securities account, as the case may be, must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner 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 account or the central securities account.
- (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 an owner of securities or of a participant, external central securities depository or other person as the case may be, and specifying the interest of that owner, client, participant, external central securities depository or other person, is sufficient proof of the title or interest of that person in such securities.
- (5) Any securities held by a central securities depository, participant or nominee for or on behalf of another person, must be segregated and identifiable as belonging to a specific person and are

considered to be trust property as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those securities.

### 38. Transfer of uncertificated securities or interest in uncertificated securities

- (1)
  - (a) The transfer of uncertificated securities or of an interest in uncertificated securities on the uncertificated securities register held by a central securities depository or participant must be effected in the manner provided for in Chapter 2, Part E of the Companies Act, where applicable, and the depository rules, by making the debit and credit entries respectively in the central securities account or securities account of the transferor and the transferee kept by the central securities depository or the participant, as the case may be.
  - (b) The transferee of uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) is entitled to all the rights of a transferee of movable property.
  - (c) Nothing in this section prejudices any power of a participant or central securities depository, as the case may be, to effect a transfer to a person to whom the right to any uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) has been transmitted by operation of law.
- (2) A central securities depository, participant, authorised user, nominee or external central securities depository, as the case may be, must act in accordance with this section, the rules of the central securities depository and the Companies Act, where applicable, to give effect to a transfer referred to in subsection (1).
- (3) A transfer effected in accordance with subsection (1) is effective against third parties.

### 39. Pledge or cession of uncertificated securities *in securitatem debiti*

- (1)
  - (a) A pledge or cession *in securitatem debiti*, as constituted by an agreement, in respect of uncertificated securities or an interest in uncertificated securities held by a central securities depository, participant, authorised user or nominee, as the case may be, must be effected by entry in the central securities account or the securities account, as the case may be, of—
    - (i) the pledgor in favour of the pledgee specifying the name of the pledgee, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities pledged and the date of entry; or
    - (ii) the cedent in favour of the cessionary specifying the name of the cessionary, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities ceded and the date of entry, as the case may be.
  - (b) Uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) may not be transferred or otherwise dealt with, and no instruction by the pledgor or cedent may be given effect to, without the written consent of the pledgee or cessionary.
  - (c) The pledgee or cessionary of uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt.
  - (d) A pledge or cession *in securitatem debiti* effected in accordance with paragraph (a) is effective against third parties.
  - (e) Nothing in this section prejudices any power of a participant or central securities depository, as the case may be, to effect a pledge or cession *in securitatem debiti* to a person to whom the right to any uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) has been transmitted by operation of law.
- (2) This section does not apply to an out-and-out cession in respect of securities or an interest in securities and such a cession must be effected in accordance with [section 38](#).

- (3) An interest in respect of uncertificated securities may be granted under this section, where applicable, and in the manner provided for in the depository rules, and is effective against third parties, in relation to a central securities account or a securities account, where such an interest extends to all uncertificated securities standing to the credit of the relevant central securities account or securities account at the time the pledge is effected.

*[subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*

#### **40. Ranking of interests in securities**

- (1) Despite any other law, if more than one interest or limited interest is entered against the same securities, priority must be granted to the interest or limited interest entered first in time in the securities account or central securities account, as the case may be.
- (2)
  - (a) Despite subsection (1), the order of priority in any interest or limited interest may be varied by agreement between the parties.
  - (b) Any variation referred to in paragraph (a) is not effective against third parties.

#### **41. Acquisition by *bona fide* transferee**

- (1) An entry effected in terms of section [38](#) or [39](#) is valid and effective against third parties despite any fraud or illegality that may have resulted in the entry being effected, unless a transferee to the transaction resulting in the entry was a party to or had knowledge of the fraud or illegality.
- (2) This section does not modify the order of priorities determined by [section 40](#).
- (3) Section 53(4), (5) and (6) of the Companies Act applies to an entry referred to in subsection (1) with the changes required by the context.

#### **42. Withdrawal and delivery of securities**

The withdrawal of uncertificated securities held in an uncertificated securities register by a central securities depository or participant, as the case may be, must be effected in the manner provided for in Chapter 2 of the Companies Act and the depository rules, where applicable.

#### **43. Records**

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

#### **44. Warranty and indemnity**

- (1) Every person who deposits securities with a participant or central securities depository, as the case may be, is deemed to warrant that such person is entitled to deposit the securities deposited by that person and that any document or instruction relating to such securities and lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by the participant or central securities depository arising out of such deposit or breach of warranty.
- (2) A central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).
- (3) Every person, whether a client, participant or central securities depository, must provide the indemnities referred to in section 55 of the Companies Act.



#### 45. Attachment

- (1) The attachment of securities or an interest in securities is only complete when—
  - (a) written notice of the attachment has been given by the sheriff to the person that holds the securities in a securities account or a central securities account; and
  - (b) the central securities depository, participant, authorised user or nominee, as the case may be, has made an entry of the attachment on the central securities account or securities account, as the case may be, on behalf of the sheriff.
- (2) A central securities depository, participant or authorised user, as the case may be, must ensure that only the securities or interest in securities of the person against whom the warrant of execution was granted, are attached.

#### 46. Effectiveness in insolvency

Any issuance, deposit, withdrawal, transfer, attachment, pledge, cession *in securitatem debiti* or other instruction in respect of securities or an interest in securities that has become effective against third parties, is effective against the insolvency administrator and creditors in any insolvency proceeding.

### Chapter V Clearing house

#### Licensing of clearing house and central counterparty

[heading substituted by section 290 of [Act 9 of 2017](#)]

#### 47. Application for clearing house licence and central counterparty licence

[heading substituted by section 290 of [Act 9 of 2017](#)]

- (1) A clearing house and a central counterparty must be licensed under [section 49](#).  
[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]
- (1A) Subject to [section 110](#)(6), a central counterparty must be an independent clearing house.  
[subsection (1A) inserted by section 290 of [Act 9 of 2017](#)]
- (2) A juristic person may apply to the Authority for a clearing house licence or a central counterparty licence.  
[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]
- (3) An application for a clearing house licence or central counterparty licence must—
  - (a) be made in the manner and contain the information prescribed by the Authority;
  - (b) show that the applicant complies with the requirements listed in [section 48](#);
  - (c) be accompanied by—
    - (i) a copy of the founding documents of the applicant;
    - (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the Authority;
    - (iii) the application fee prescribed by the Authority;



- (iv) in relation to an application for an associated clearing house licence, particulars of the applicant's proposed appointment by an exchange; and
- (v) in relation to an application for an independent clearing house licence or a central counterparty licence, a copy of the proposed clearing house rules that must comply with [section 53](#); and

*[subparagraph (v) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) be supplemented by any additional information that the Authority may reasonably require.

*[subsection (3) amended by section 290 of [Act 9 of 2017](#)]*

- (4) (a) The Authority must publish a notice of an application for a clearing house licence in two national newspapers at the expense of the applicant and on the Authority's website.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

- (b) The notice must state—

- (i) the name of the applicant; and
- (ii) in relation to an independent clearing house or a central counterparty, that the proposed clearing house rules are available on the Authority's website for comments from members of the public; and

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

- (iii) the period within and the process by which objections to the application may be lodged with the Authority.

- (c) The Authority must publish the proposed clearing house rules referred to in paragraph (b)(ii) on the Authority's website.

*[paragraph (c) added by section 290 of [Act 9 of 2017](#)]*

#### **48. Requirements applicable to applicants for clearing house licence, central counterparty licence, licenced clearing house and licensed central counterparty**

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) An applicant for a clearing house licence and a licensed clearing house, and an applicant for a central counterparty licence and a licensed central counterparty must—
  - (a) subject to the requirements prescribed by the Minister, have sufficient assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;
  - (b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing house or central counterparty, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;
  - (c) demonstrate that the fit and proper requirements prescribed in the relevant joint standards are met by the applicant, the licensed clearing house or the licensed central counterparty, as the case may be, members of its controlling body and senior management;
  - (d) comply with the requirements prescribed in the joint standards for the clearing or settlement of transactions in securities, or both;
  - (e) implement an effective and reliable infrastructure to facilitate the clearing of securities cleared by the clearing house or central counterparty;

- (f) implement effective arrangements to manage the material risks associated with the operation of a clearing house or central counterparty;
- (g) have made arrangements for security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the clearing house or central counterparty; and
- (h) in relation to an applicant for an independent clearing house licence, a central counterparty licence, a licensed independent clearing house or a licensed central counterparty, have made arrangements for the efficient and effective supervision of clearing members so as to ensure compliance with the clearing house rules and clearing house directives and this Act.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (1A) Subject to subsection (1) and the regulations prescribed by the Minister, a central counterparty must—
- (a) implement a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;
  - (b) collect and manage collateral held for the due performance of the obligations of clearing members or clients of clearing members;
  - (c) establish and maintain a default fund to mitigate the risk should there be a default by a clearing member and to ensure, where possible, that the obligations of that clearing member continue to be fulfilled;
  - (d) maintain initial capital as prescribed, including an appropriate buffer;
  - (e) have a clearly defined default waterfall where the obligations of the defaulting clearing member, other clearing members and the central counterparty are legally and clearly managed;
  - (f) provide an appropriate segregation and portability regime to protect the positions of clients of a defaulting clearing member; and
  - (g) provide the necessary infrastructure, resources and governance to facilitate its post trade management functions and, in the event of default of one or more of the clearing members—
    - (i) ensure that sufficient risk policies, procedures and processes are in place; and
    - (ii) have sound internal controls for robust transaction processing and management.

*[subsection (1A) inserted by section 290 of [Act 9 of 2017](#)]*

- (2) The Authority may—
- (a) require an applicant, a licensed clearing house or licensed central counterparty to furnish such additional information, or require such information to be verified, as the Authority may deem necessary;  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) take into consideration any other information regarding the applicant, a licensed clearing house or licensed central counterparty, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant or a licensed clearing house and the latter is given a reasonable opportunity to respond thereto; and  
*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
  - (c) prescribe any of the requirements referred to in subsection (1) in greater detail.
- (3) (a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

- (b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
- (c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).
- (d) Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct standards or joint standards.

*[subsection (3) added by section 290 of [Act 9 of 2017](#)]*

#### **49. Licensing of clearing house and central counterparty**

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) The Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank and after consideration of any objection received as a result of the notice referred to in [section 47\(4\)](#) and subject to the conditions which the Authority may consider appropriate, grant a clearing house licence to perform the functions referred to in [section 50](#), 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.

*[subsection (1) amended by section 290 of [Act 9 of 2017](#)]*

- (1A) Subject to the regulations or joint standards, the Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, and after consideration of any objection received as a result of the notice referred to in [section 47\(4\)](#) and subject to the conditions which the Authority may consider appropriate, grant a central counterparty licence to perform the functions referred to in [section 50](#), 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 the licence.

*[subsection (1A) inserted by section 290 of [Act 9 of 2017](#)]*

- (2) The clearing house licence and the central counterparty licence—
  - (a) must specify the functions that may be performed by the clearing house and central counterparty, and the securities in respect of which those functions may be performed, any other terms and conditions of the licence, the registered office of the clearing house and central counterparty, and the places where the clearing house and central counterparty may be operated, and stipulate that the clearing house and central counterparty, may not be operated at any other place without the joint prior written approval of the Authority, the Prudential Authority and the South African Reserve Bank; and
  - (b) may specify that insurance, a guarantee, compensation fund, or other warranty must be in place to enable the clearing house and central counterparty to provide compensation, subject to the clearing house rules, to clients of clearing members.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

*[subsection (2) amended by section 290 of [Act 9 of 2017](#)]*

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

*[subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*

- (4) (a) The Authority must publish a notice of an application for an amendment of the terms of a clearing house licence and central counterparty licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

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

#### **49A. Licensing of external central counterparty**

- (1) An external central counterparty must be licensed under this section to perform functions or provide services, unless it is exempt from the requirement to be licensed in terms of [section 6\(3\)](#) (m).
- (2) An external central counterparty from an equivalent jurisdiction may apply to the Authority for a licence.
- (3) An application for a licence in terms of this section must—
  - (a) be made in the manner and contain information determined by the Authority;
  - (b) be accompanied by a copy of the proposed rules;
  - (c) *[Editorial note: the insertion of paragraph (c) comes into force at a later date.]*
  - (d) be supplemented by any additional information that the Authority may reasonably require.
- (4) (a) The Authority must publish a notice of an application for a licence in two national newspapers at the expense of the applicant and on the Authority's website.
- (b) The notice must state—
  - (i) the name of the applicant; and
  - (ii) the availability of the operating rules of the external central counterparty on the Authority's website, for members of the public.
- (5) An applicant for a licence or a licensed external central counterparty must be either—
  - (a) a company as defined in section 1(1) of the Companies Act; or
  - (b) an external company as defined in section 1(1) of the Companies Act that is registered as required by section 23 of that Act.
- (6) The Authority may—
  - (a) require an applicant or a licensed external central counterparty to furnish such information, or require such information to be verified, as the Authority may deem necessary in connection with the application; and
  - (b) take into consideration any other information regarding the applicant or the external central counterparty, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant or the external central counterparty, as the case may be, and the latter is given a reasonable opportunity to respond thereto.
- (7) Regulations or joint standards may prescribe additional criteria for the licensing or exemption of an external central counterparty.

- (8) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, grant a licence or an exemption, if—
- (a) the applicant or the external central counterparty undertakes to co-operate and share information with the Authority, the Prudential Authority and the South African Reserve Bank to assist with the performance of functions and the exercise of powers in terms of financial sector law; and
  - (b) the objects of this Act referred to in [section 2](#) will be furthered by the granting of the licence.
- (9) A licence or exemption may only be granted after the following factors have been taken into consideration:
- (a) Relevant international standards;
  - (b) the type and size of external central counterparty;
  - (c) the impact of the activities of the external central counterparty on the South African financial system;
  - (d) the degree of systemic risk posed by the activities of the external central counterparty; and
  - (e) any other factors that the Minister, the Authority, the South African Reserve Bank or the Prudential Authority, as the case may be, deem relevant.
- (10) A licensed external central counterparty must comply with the relevant requirements of this Act and any other terms and conditions of the licence.
- (11) The licence granted in terms of subsection (8) must specify those functions or duties, or services that may be provided by the external central counterparty and the securities in respect of which those functions or duties, or services may be performed.
- (12) A licensed external central counterparty may at any time apply to the Authority for an amendment of the terms of its licence or the conditions subject to which the licence was granted.
- (13) (a) The Authority must publish a notice of an application for an amendment of the terms of a licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.
- (b) The notice must state—
- (i) the name of the applicant;
  - (ii) the nature of the proposed amendments; and
  - (iii) the period within which objections to the application may be lodged with the Authority.
- (14) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, amend the terms of a licence or the conditions subject to which the licence was granted.
- (15) (a) In respect of regulations that may be prescribed in terms of subsection (7), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
- (b) Paragraph (a) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (7).
- (c) Joint standards may be prescribed to address any matters that are not prescribed in regulations, or to provide detail that is additional to, but not inconsistent with, regulations prescribed by the Minister in terms of subsection (7).

*[section 49A inserted by section 290 of [Act 9 of 2017](#)]*

## Functions of licensed clearing house and licensed central counterparty

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

### 50. Functions of licensed clearing house and licensed central counterparty, and power of Authority to assume responsibility for functions

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) A licensed clearing house and a licensed central counterparty must conduct its business in a fair and transparent manner with due regard to the rights of clearing members and their clients.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) A licensed clearing house and a licensed central counterparty—

- (a) must provide an infrastructure for the clearing of securities through the clearing house;
- (b) must, as soon as it becomes aware thereof, inform the Authority of any matter that it reasonably believes may give rise to, or increase, systemic risk;

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

- (c) must manage the clearing of transactions in securities which it accepts for clearing and, if licensed to do so, the settlement of transactions in those securities;
- (d) must, on request, disclose to the Authority information on the exposures that a clearing member underwrites with the clearing house;
- (e) must have appropriate arrangements in place to—
  - (i) ensure that it has efficient and timely access to funds and assets held as collateral for the due performance of the obligations of clearing members; and
  - (ii) protect the funds and collateral of clearing members in the event of a default of a clearing member;
- (f) may do all other things that are necessary for, incidental or conducive to the proper operation of a clearing house not inconsistent with this Act.

*[subsection (2) amended by section 290 of [Act 9 of 2017](#)]*

- (3) A licensed independent clearing house and a licensed central counterparty, in addition to the functions referred to in subsection (2)—
- (a) must issue clearing house rules;
  - (b) must enforce the clearing house rules;
  - (c) must supervise compliance by its clearing members with the clearing house rules and clearing house directives;
  - (d) must supervise compliance with this Act by its clearing members, report any non-compliance to the Authority and assist the Authority in enforcing this Act;
  - (e) may issue clearing house directives;
  - (f) may amend or suspend the clearing house rules in terms of [section 71](#);
  - (g) may make different rules for clearing and settlement of different securities and different clearing members;
  - (h) must consult relevant regulated persons when making or amending clearing house rules pertaining to clearing and settlement;

- (i) must disclose to clearing members the fees and charges required by it for its services; which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (j) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received notification regarding insolvency proceedings against clearing members; and
- (k) must notify the Authority as soon as it becomes aware that a clearing member will cease to be a clearing member.

*[subsection (3) amended by section 290 of [Act 9 of 2017](#)]*

(3A) A central counterparty, in addition to the functions referred to in subsections (1), (2) and (3), must —

- (a) interpose itself between counterparties to transactions in securities through the process of novation, legally binding agreement or open offer system;
- (b) manage and process the transactions from the date the central counterparty interposes itself between counterparties to transactions, becoming the buyer to every seller and seller to every buyer, to the date of fulfilment of the legal obligations in respect of such transactions; and
- (c) facilitate its post-trade management functions.

*[subsection (3A) inserted by section 290 of [Act 9 of 2017](#)]*

- (4) (a) The Authority may assume responsibility for one or more of the regulatory and supervisory functions referred to in subsections (2) and (3) if the Authority considers it necessary in order to achieve the objects of this Act referred to in [section 2](#).
- (b) The Authority must, before assuming responsibility as contemplated in paragraph (a)—
  - (i) inform the clearing house or central counterparty of the Authority's intention to assume responsibility;
  - (ii) give the clearing house or central counterparty the reasons for the intended assumption; and
  - (iii) call upon the clearing house or central counterparty to show cause within a period specified by the Authority why responsibility should not be assumed by the Authority.

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

## 51. Maintenance of insurance, guarantee, compensation fund or other warranty

- (1) An independent clearing house or a central counterparty required under [section 49\(2\)\(b\)](#) to have insurance, a guarantee, a compensation fund, or other warranty in place, may impose a fee on any person involved in a transaction in listed or unlisted securities cleared or settled or both through the clearing house for the purpose of maintaining that insurance, guarantee, compensation fund or other warranty.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) Any funds received or held by an independent clearing house or a central counterparty for the purpose of maintaining the insurance, guarantee, compensation fund or other warranty contemplated in [section 49\(2\)\(b\)](#), are for all intents and purposes considered to be "trust property" as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*



## 52. Funds of mutual independent clearing house or central counterparty

A mutual independent clearing house or a central counterparty may require its clearing members to contribute towards the funds of the clearing house for the purpose of carrying on the business of the clearing house.

*[section 52 substituted by section 290 of [Act 9 of 2017](#)]*

## Clearing house rules

## 53. Requirements with which clearing house rules must comply

- (1) The clearing house rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) The clearing house rules must provide—
- (a) for the manner in which and the terms and conditions subject to which transactions in listed and unlisted securities must be cleared or settled or cleared and settled through the clearing house;
  - (b) for equitable criteria for authorisation and exclusion of clearing members and, in particular, that no person may be admitted as a clearing member or allowed to continue such person's business as a clearing member unless the person—
    - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
    - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the clearing house rules;
  - (c) must provide for an orderly process by which a clearing member ceases to be a clearing member;
  - (d) for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that a clearing member may provide and the type of securities for which a clearing member may provide clearing services or settlement services or both, and if there are different categories of—
    - (i) clearing members, for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that each category of clearing member may provide;
    - (ii) securities, for the authorisation and criteria for authorisation of the categories in respect of which a clearing member may provide one or more clearing services or settlement services or both clearing services and settlement services;
  - (e)
    - (i) for the capital adequacy, guarantee and risk management requirements with which a clearing member must comply;
    - (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of clearing members or different activities of a clearing member's business;
  - (f) if there are different categories of clearing members, for the restriction of the activities of such categories subject to different conditions;
  - (g) for the monitoring of settlement obligations of clearing members and their clients;



- (h) for the circumstances in which the clearing house may refuse to settle or clear a transaction in securities;
- (i) for the manner in which the clearing house monitors compliance by its clearing members with this Act, the clearing house rules and the clearing house directives;
- (j) for the manner in which a clearing member is required to conduct its business generally;
- (k) for the—
  - (i) recording of transactions cleared or settled by the clearing house; and
  - (ii) monitoring of compliance by clearing members with this Act, and the clearing house rules and clearing house directives;
- (l) for the manner in which complaints against a clearing member or officer or employee of a clearing member must be investigated;
- (m) for the equitable and expeditious resolution of disputes between clearing members and between clearing members and their clients in respect of the clearing or settlement of transactions in listed and unlisted securities,
- (n) for a process whereby complaints by clearing members against the clearing house in respect of the exercise of functions by the clearing house may be made, considered and responded to;
- (o) for the steps to be taken by the clearing house, or a person to whom the clearing house has delegated its investigative and disciplinary functions, to investigate and discipline a clearing member or officer or employee of a clearing member who contravenes or fails to comply with the clearing house rules, the interim clearing house rules or the clearing house directives and for a report on the disciplinary proceedings to be furnished to the Authority within 30 days after the completion of such proceedings;
- (p) for the manner in which a clearing member, officer or employee of a clearing member who is believed to—
  - (i) be able to furnish any information on the subject of any investigation referred to in this subsection; or
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject,may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (q) where appropriate, in respect of the insurance, guarantee, compensation fund or other warranty referred to in [section 51](#), for—
  - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
  - (ii) the amount of the fee imposed by the clearing house for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;

- (r) that clearing members must disclose to clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) for the purposes for which, and the process by which, a clearing house may issue clearing house directives;
- (t) for supervisory measures that enable the clearing house to comply with [section 50\(3\)\(b\), \(c\) and \(d\)](#);
- (u) for the administration of securities and funds held for own account or on behalf of a client by a clearing member, including the settlement of unsettled transactions, under insolvency proceedings in respect of that clearing member; and  
*[paragraph (u) substituted by section 290 of [Act 9 of 2017](#)]*
- (v) for the authority of, and the manner in, and circumstances under which—
  - (i) a clearing house may limit the revocation of any settlement instruction given by a clearing member or client;
  - (ii) a clearing member or its client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the clearing house rules, but prior to settlement;
  - (iii) a clearing house or a clearing member may terminate transactions on the commencement of insolvency proceedings;
- (w) for the recording by a clearing member of transactions or positions cleared by that clearing member through the clearing house;
- (x) circumstances and manner in which a clearing member may advertise or canvass for business;
- (y) refusal by a clearing house to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
- (z) for the segregation and portability of funds and securities held as collateral;  
*[paragraph (z) substituted by section 290 of [Act 9 of 2017](#)]*
- (aa) that clearing members must notify the clearing house as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and  
*[paragraph (aa) substituted by section 290 of [Act 9 of 2017](#)]*
- (bb) in the case of a central counterparty, for the default procedures to be followed, including close-out procedures, in the event of a default of a clearing member;  
*[paragraph (bb) added by section 290 of [Act 9 of 2017](#)]*
- (2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the clearing house rules.  
*[subsection (2A) inserted by section 290 of [Act 9 of 2017](#)]*
- (3) Despite subsection (2), the rules of a clearing house only need to provide for matters relating to settlement if the clearing house is licensed to settle transactions in securities.
- (4) (a) Subject to [section 5\(1\)\(c\)](#) and (2) and the requirements prescribed in joint standards, clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

- (b) If the clearing house rules provide for the approval of external clearing members to be clearing members of the clearing house, the rules must, in accordance with paragraph (a), provide for the identification of those clearing services or settlement services, or both, that will be authorised and regulated by the clearing house in terms of the clearing house rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external clearing member is authorised and supervised.
- (5) A clearing house may, with the approval of the Authority, make clearing house rules on matters additional to those listed in subsection (2).
- (6)
  - (a) Any rules made in terms of subsection (2)(a), (2)(u) or 2(v) must have due regard for, and not be in conflict with, any applicable depository rules.
  - (b) Any rules made in terms of subsection (2)(v) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.
- (7) A clearing house rule made under this section is binding on—
  - (i) the clearing house,
  - (ii) the clearing members of the clearing house,
  - (iii) the officers and employees of the clearing house and its clearing members, and
  - (iv) clients of the clearing members.

## Chapter VI

### Trade repositories

#### 54. Application for trade repository licence

- (1) A trade repository must be licensed under [section 56](#).  
*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*
- (2) A juristic person may apply to the Authority for a trade repository licence for one or more types of unlisted securities.
- (3) An application for a trade repository licence must—
  - (a) be made in the manner and contain the information prescribed by the Authority;
  - (b) show that the applicant complies with the requirements listed in [section 55](#);
  - (c) be accompanied by—
    - (i) a copy of the founding documents of the applicant;
    - (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the Authority; and
    - (iii) the application fee prescribed by the Authority;
  - (d) be supplemented by any additional information that the Authority may reasonably require.
- (4)
  - (a) The Authority must publish a notice of an application for a trade repository licence in two national newspapers, at the expense of the applicant, and on the Authority's website.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) The notice must state—
    - (i) the name of the applicant; and

- (ii) the period within and the process by which objections to the application may be lodged with the Authority.

## 55. Requirements applicable to applicant for trade repository licence and licensed trade repository

- (1) Subject to subsection (2), an applicant for a trade repository licence and a licensed trade repository must—
  - (a) subject to the requirements prescribed by the Minister, have assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its duties as set out in this Act;
  - (b) have governance arrangements, that are clear and transparent, promote the safety and efficiency of the trade repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;
  - (c) demonstrate that the fit and proper requirements prescribed in the joint standards are met by the applicant, members of its controlling body and senior management;  
*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*
  - (d) have made arrangements for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository;
  - (e) have made arrangements for security and back-up procedures to ensure the integrity of its records of transactions;
  - (f) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;
  - (g) have objective, non-discriminatory and publicly disclosed requirements for access and participation;
  - (h) identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks; and
  - (i) establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations.
- (2) The Authority may take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

- (3)
  - (a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.
  - (b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
  - (c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).
  - (d) Requirements prescribed in terms of subsection (1)(c) before the commencement of this subsection may be amended or repealed by conduct standards or joint standards.

*[subsection (3) added by section 290 of [Act 9 of 2017](#)]*

## 56. Licensing of trade repository

- (1) Subject to subsection (2), the Authority may, after consideration of any objection received as a result of the notice referred to in [section 54\(4\)](#), and subject to the conditions which the Authority may consider appropriate, grant a trade repository a licence to perform the duties referred to in [section 57](#).

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) A licence referred to in subsection (1) may only be issued to a trade repository if—
- (a) the applicant complies with the relevant requirements of this Act; and
  - (b) the objects of this Act referred to in [section 2](#) will be furthered by the granting of a trade repository licence.
- (3) The trade repository licence must—
- (a) specify the services that may be provided by the trade repository and the unlisted securities in respect of which those services may be provided;
  - (b) specify any other terms and conditions of the licence;
  - (c) specify the registered office of the trade repository; and
  - (d) specify the places where the trade repository will be operated.
- (4) A trade repository must obtain the prior written approval of the Authority to operate or conduct any of its activities outside the Republic, and if such approval is granted, adhere to any additional requirements the Authority may prescribe.
- (5) A trade repository may at any time apply to the Authority for an amendment of the terms of its licence and the conditions subject to which its licence was granted.
- (6) (a) The Authority must publish a notice of an application for an amendment of the terms of a trade repository licence and the conditions subject to which the licence was granted in two national newspapers, at the expense of the applicant, and on the Authority's website.

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

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

### 56A. Licensing of external trade repository

- (1) An external trade repository must be licensed under this section to perform duties or provide services, unless it is exempt from the requirement to be licensed in terms of [section 6\(3\)\(m\)](#).
- (2) An external trade repository from an equivalent jurisdiction may apply to the Authority for a licence.
- (3) An application for a licence in terms of this section must—
- (a) be made in the manner and contain the information determined by the Authority;
  - (b) *[Editorial note: the insertion of paragraph (b) comes into force at a later date.]*
  - (c) be supplemented by any additional information that the Authority may reasonably require.

- (4) (a) The Authority must publish a notice of an application for a licence in two national newspapers, at the expense of the applicant, and on the Authority's website.
- (b) The notice referred to in paragraph (a) must state—
  - (i) the name of the applicant; and
  - (ii) the period within, and the process by, which objections to the application may be lodged with the Authority.
- (5) Regulations or joint standards may prescribe additional criteria for the licensing of an external trade repository.
- (6) The Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, grant a licence, if—
  - (a) the applicant undertakes to co-operate and share information with the Authority, the Prudential Authority and the South African Reserve Bank to assist with the performance of functions and the exercise of powers in terms of financial sector law; and
  - (b) the objects of this Act referred to in [section 2](#) will be furthered by the granting of the licence.
- (7) A licence or exemption may only be granted after the following factors have been taken into consideration:
  - (a) Relevant international standards;
  - (b) the type and size of the external trade repository;
  - (c) the impact of the activities of the external trade repository on the South African financial system;
  - (d) the degree of systemic risk posed by the activities of the external trade repository; and
  - (e) any other factors that the Minister, the Authority, the South African Reserve Bank or the Prudential Authority, as the case may be, deem relevant.
- (8) A licensed external trade repository must comply with the relevant requirements of this Act and any other terms and conditions of the licence.
- (9) The licence granted in terms of subsection (6) must specify the services that may be provided by the external trade repository and the securities in respect of which those services may be provided.
- (10) A licensed external trade repository may at any time apply to the Authority for an amendment of the terms of its licence or the conditions subject to which the licence was granted.
- (11) (a) The Authority must publish a notice of an application for an amendment of the terms of a licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.
- (b) The notice must state—
  - (i) the name of the applicant;
  - (ii) the nature of the proposed amendments; and
  - (iii) the period within which objections to the application may be lodged with the Authority.
- (12) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, amend the terms of a licence or the conditions subject to which the licence was granted.
- (13) (a) In respect of regulations that may be prescribed in terms of subsection (5), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

- (b) Paragraph (a) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (5).
- (c) Joint standards or conduct standards may be prescribed to address any matters that are not prescribed in regulations, or to provide detail that is additional to, but not inconsistent with, regulations prescribed by the Minister in terms of subsection (5).

*[section 56A inserted by section 290 of [Act 9 of 2017](#)]*

## 57. Duties of licensed trade repository

- (1) A licensed trade repository must conduct its business in a fair and transparent manner.
  - (2) A licensed trade repository must—
    - (a) employ timely, efficient and accurate record keeping procedures;
    - (b) make information prescribed by the Authority in joint standards made with the concurrence of the South African Reserve Bank available to the Authority, the Prudential Authority, the South African Reserve Bank, other relevant supervisory authorities and other persons, subject to the requirements prescribed by the Authority in joint standards made with the concurrence of the South African Reserve Bank under [section 58](#) as to the manner, form, and frequency of disclosure;
- [paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
- (c) monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies;
  - (d) publicly disclose the prices and fees associated with services provided, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
  - (e) ensure the confidentiality, integrity and protection of the information received;
  - (f) provide the Authority with any information requested to monitor and mitigate systemic risk; and
  - (g) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it.
- (3) Joint standards may prescribe duties additional to those referred to in subsection (2).

*[subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*

## 58. Reporting obligations

- (1) Subject to regulations prescribed by the Minister, the Authority may prescribe reporting obligations in respect of transactions or positions in unlisted securities which must be reported to a trade repository, including—
    - (a) the types of unlisted securities to which reporting requirements apply;
    - (b) the entities to whom such reporting requirements apply;
    - (c) the manner and frequency of reporting; and
    - (d) any other matter to ensure adequate reporting.
- [subsection (1), previously unnumbered, numbered by section 290 of [Act 9 of 2017](#)]*
- (2) (a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

- (b) In respect of regulations prescribed in terms of subsection (1), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.
- (c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1).
- (d) Requirements other than those that were prescribed in regulations referred to in paragraph (b) that were prescribed in terms of subsection (1) before the commencement of this subsection, may be amended or repealed by conduct standards or joint standards.

*[subsection (2) added by section 290 of [Act 9 of 2017](#)]*

## Chapter VII

### General provisions applicable to market infrastructures

#### 59. Annual assessment

The Authority, in consultation with the Prudential Authority, must annually assess whether a licensed market infrastructure—

- (a) complies with this Act, the Financial Sector Regulation Act and the rules of the market infrastructure;
- (b) where applicable, complies with directives, and with requests, conditions or requirements of the Authority in terms of a financial sector law; or
- (c) where applicable, gives effect to decisions of the Tribunal.

*[section 59 substituted by section 290 of [Act 9 of 2017](#)]*

#### 60. Cancellation or suspension of licence

- (1) The Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, cancel or suspend a licence if—

- (a) the market infrastructure has failed to—
  - (i) comply with this Act or its rules;
  - (ii) comply with a directive, request, condition or requirement of the Authority in terms of a financial sector law; or

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

- (iii) give effect to a decision of the Tribunal;

*[subparagraph (iii) substituted by section 290 of [Act 9 of 2017](#)]*

- (b) after an investigation, the Authority is satisfied on reasonable grounds that the manner in which it is operated is—
  - (i) not in the best interests of clearing members of independent clearing houses or of central counterparties, authorised users or participants, or users or members of the market infrastructure, as the case may be, and their clients; or

*[subparagraph (i) substituted by section 290 of [Act 9 of 2017](#)]*

- (ii) defeating the objects of this Act referred to in [section 2](#);

*[paragraph (b) amended by section 290 of [Act 9 of 2017](#)]*



- (c) the market infrastructure has ceased to operate or has failed to commence operating within a reasonable period after being licensed; or
- (d) the Authority is satisfied on reasonable grounds that the licence was obtained through misrepresentation.

*[subsection (1) amended by section 290 of [Act 9 of 2017](#)]*

- (2) The Authority must, before cancelling or suspending a licence—
  - (a) inform the market infrastructure of the registrar's intention to cancel or suspend;
  - (b) give the market infrastructure the reasons for the intended cancellation or suspension; and
  - (c) call upon the market infrastructure to show cause within a period specified by the Authority why its licence should not be cancelled or suspended.
- (3) The Authority must, subject to subsection (4), cancel the licence of a market infrastructure upon submission to the Authority of a request by the market infrastructure for cancellation.
- (4) If the Authority cancels or suspends a licence, the Authority must take such steps and may impose such conditions as are necessary to achieve the objects of this Act referred to in [section 2](#), which steps may include—
  - (a) the transfer of the business of the market infrastructure to another similar market infrastructure; or
  - (b) the winding-up of the market infrastructure in terms of [section 100](#).

## 61. Carrying on of additional business

- (1) A market infrastructure may not conduct any additional business if to do so would create or increase systemic risk.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) A market infrastructure must consult the Authority prior to conducting any business, function or service not provided for under [section 10](#), [30](#) or [50](#), that may—
  - (a) adversely impact on the market infrastructure's ability to meet or perform its regulated obligations or functions; or
  - (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be.
- (3) The Authority may, if it considers that a business, function or service referred to in subsection (2) may—
  - (a) impact on the regulated obligations or functions of a market infrastructure; or
  - (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be,after consultation with the Prudential Authority and the South African Reserve Bank, make a determination specifying requirements in relation to the market infrastructure carrying on of such business, function or service.

*[subsection (3) amended by section 290 of [Act 9 of 2017](#)]*

- (3A) The Authority may not make a determination in terms of subsection (3) in respect of a particular market infrastructure unless—
  - (a) a draft of the determination has been given to the market infrastructure;

- (b) the market infrastructure has had a reasonable period of at least 14 days to make submissions to the Authority about the matter; and
- (c) the Authority had regard to all submissions made to it in deciding whether or not to make the determination.

*[subsection (3A) inserted by section 290 of [Act 9 of 2017](#)]*

- (3B) If the Authority considers on reasonable grounds that it is necessary to make the determination urgently, it may do so without having complied, or complied fully, with subsection (3A).

*[subsection (3B) inserted by section 290 of [Act 9 of 2017](#)]*

- (4) The Authority must, within 14 days after making a determination in terms of subsection (3), give the market infrastructure a statement of its reasons for making a determination in terms of subsection (3), and a statement of the material facts on which the determination was made.

*[subsection (4) substituted by section 290 of [Act 9 of 2017](#)]*

## 62. Conflicts of interest

A market infrastructure must, where applicable, take necessary steps to avoid, eliminate, disclose and otherwise manage possible conflicts of interest between its regulatory functions and its commercial services, which steps must include—

- (a) the implementation of appropriate arrangements, which arrangements must comply with the requirements prescribed by the Authority, be documented and be publicly available; and
- (b) an annual assessment, in accordance with conduct standards or joint standards, of the arrangements referred to in paragraph (a), the results of which must be published.

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

## 63. Demutualisation of exchange, central securities depository, independent clearing house or central counterparty

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) An exchange, central securities depository, independent clearing house or central counterparty which is not a public company or a private company as defined in section 1 of the Companies Act, may convert to a public company or private company with the approval of the Authority and subject to requirements imposed by the Authority.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) If a conversion referred to in subsection (1) takes place—
  - (a) the exchange, central securities depository, independent clearing house or central counterparty referred to in subsection (1) is deemed to be a company incorporated in terms of the Companies Act from a date determined by the Authority in consultation with the exchange, central securities depository, independent clearing house or central counterparty in question;
- (b) the Companies and Intellectual Property Commission, established by section 185 of the Companies Act, must accept the filed notice of incorporation of the exchange, central securities depository, independent clearing house or central counterparty in terms of section 13 of that Act and register the entity in question as a company in terms of section 14 of that Act on the date referred to in paragraph (a);

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

- (c) the continued corporate existence of the exchange, central securities depository, independent clearing house or central counterparty from the date on which it was first licensed in terms of this Act is unaffected and any actions of the exchange, central securities depository, independent clearing house or central counterparty before its conversion remain effectual;

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) the terms and conditions of service of employees of the exchange, central securities depository, independent clearing house or central counterparty are not affected;

*[paragraph (d) substituted by section 290 of [Act 9 of 2017](#)]*

- (e) all the assets and liabilities of the exchange, central securities depository, independent clearing house or central counterparty, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the exchange, central securities depository, independent clearing house or central counterparty to cover any liabilities of the clearing members of independent clearing houses or central counterparties, authorised users or participants, as the case may be, to clients, remain vested in and binding upon the company or such other entity acceptable to the Authority as the company may designate;

*[paragraph (e) substituted by section 290 of [Act 9 of 2017](#)]*

- (f) the company has the same rights and is subject to the same obligations as were possessed by or binding upon the exchange, central securities depository, independent clearing house or central counterparty immediately before its conversion;

*[paragraph (f) substituted by section 290 of [Act 9 of 2017](#)]*

- (g) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the exchange, central securities depository, independent clearing house or central counterparty and in force immediately before the conversion remain in force and effectual, and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the company, as the case may be;

*[paragraph (g) substituted by section 290 of [Act 9 of 2017](#)]*

- (h) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the exchange, central securities depository, independent clearing house or central counterparty which was in force immediately before the conversion, remains in force, and is construed as a bond, pledge, guarantee or instrument given to or in favour of the company, as the case may be;

*[paragraph (h) substituted by section 290 of [Act 9 of 2017](#)]*

- (i) any claim, right, debt, obligation or duty accruing to any person against the exchange, central securities depository, independent clearing house or central counterparty or owing by any person to such exchange, central securities depository, independent clearing house or central counterparty is enforceable against or owing to the company, subject to any law governing prescription;

*[paragraph (i) substituted by section 290 of [Act 9 of 2017](#)]*

- (j) any legal proceedings that were pending or could have been instituted against the exchange, central securities depository, independent clearing house or central counterparty before the conversion may be continued or instituted against the company, subject to any law governing prescription; and

*[paragraph (j) substituted by section 290 of [Act 9 of 2017](#)]*

- (k) the licence of the exchange, central securities depository, independent clearing house or central counterparty, remains vested in the company if the company complies with

all the requirements of this Act in respect of an exchange, central securities depository, independent clearing house or central counterparty.

*[paragraph (k) substituted by section 290 of [Act 9 of 2017](#)]*

#### **64. Amalgamation, merger, transfer or disposal**

- (1) (a) The Authority must approve—
  - (i) any amalgamation or merger referred to in Chapter 5 of the Companies Act that involves a market infrastructure as one of the principal parties to the amalgamation or merger; and
  - (ii) any transfer or disposal of more than 25 per cent of the assets, liabilities or assets and liabilities of a market infrastructure to another person.
- (b) A market infrastructure must—
  - (i) prior to the making of any compulsory disclosures under any rules or national legislation in respect of any transaction referred to in paragraph (a), inform the Authority of the proposed transaction;
  - (ii) clearly state in any compulsory disclosures under any rules or national legislation, or any announcement or press release in respect of a transaction referred to in paragraph (a), that the transaction is subject to the approval of the Authority; and
  - (iii) on conclusion of the transaction, seek the approval of the Authority in accordance with this subsection and the conditions prescribed by the Authority.
- (2) The 25 per cent referred to in subsection (1)(a)(ii) must be calculated by aggregating the amount of the transferred assets, liabilities or assets and liabilities together with any previous transfer of assets, liabilities or assets and liabilities within the same financial year of the market infrastructure concerned.
- (3) (a) Subsection (1) does not apply if only assets are transferred and the amount of the transferred assets, together with any previous transfer of assets within the same financial year, aggregates to an amount that is more than 10 per cent but less than 25 per cent of the total on-balance-sheet assets of the transferring market infrastructure.
- (b) A market infrastructure must notify the Authority of a transfer referred to in paragraph (a).
- (4) The Authority may give approval referred to in subsection (1), if the Authority is satisfied that the transaction in question will not be detrimental to the objects of this Act.
- (5) Upon the coming into effect of a transaction effecting an amalgamation, merger or the transfer of such part of the assets, liabilities or assets and liabilities as approved in terms of subsection (1)—
  - (a) all the assets and liabilities of the amalgamating entities (or in the case of a transfer of assets and liabilities, of the entity by which the transfer is effected), including any insurance, guarantee, compensation fund or other warranty owned or maintained by any of them to cover any liabilities of clearing members of independent clearing houses or central counterparties, authorised users or participants, as the case may be, to clients, vest in and become binding upon the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities or such other entity acceptable to the Authority as the parties to the amalgamation may designate;

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

  - (b) the amalgamated entity, or in the case of a transfer of assets and liabilities, the entity 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, applicable to or binding upon the amalgamating entities or, as the case may be, the entity by which the transfer has been effected;

- (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamated entities or, as the case may be, the entity by which the transfer has been effected, and in force immediately before the amalgamation or transfer, remain in force and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the amalgamated entity or, as the case may be, the entity 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 entities or, as the case may be, the entity transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, remains in force and is construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities; and
  - (e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating entities or owing by any person to any of such entities, is enforceable against or owing to the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities.
- (6) Upon the coming into effect of a transaction effecting an amalgamation or merger, the licences of the individual market infrastructure that were parties to the amalgamation or merger are deemed to be cancelled, and the Authority must license the market infrastructure created by the amalgamation or merger.

## 65. Duty of members of controlling body

- (1) The provisions of the Companies Act relating to the duties of a director apply, with the necessary changes, to each member of the controlling body of a market infrastructure, whether it is a company or not.
- (2) The members of the controlling body of a market infrastructure owe a fiduciary duty and a duty of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

## 66. Appointment of members of controlling body

- (1) No person may be appointed as a member of the controlling body of a market infrastructure if that person—
  - (a) may not be appointed or act as a director in terms of section 69 of the Companies Act;
  - (b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a market infrastructure, which contravention involved dishonesty; or
  - (c) does not meet the fit and proper requirements prescribed in the relevant joint standards.

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.
- (3) A market infrastructure must, within 14 days of the appointment of a new member to its controlling body, inform the Authority of the appointment and furnish the Authority with such information on the matter as the Authority may reasonably require.

- (4) The provisions of subsection (3) may not be construed so as to render the appointment of a member of the controlling body of a market infrastructure subject to the approval of the Authority.
- (5) If it appears to the Authority that a member is disqualified in terms of subsection (1), the Authority may, subject to subsection (6), instruct the market infrastructure to remove that member from its controlling body.
- (6) The Authority must, before giving an instruction in terms of subsection (5)—
  - (a) in writing inform the market infrastructure and the particular member of the registrar's intention to give such an instruction;
  - (b) give the market infrastructure and the particular member written reasons for the intended instruction; and
  - (c) call upon the market infrastructure and the particular member to show cause within a period of 14 days why the instruction should not be given.
- (7) If the Authority instructs the market infrastructure to remove a member from its controlling body, the market infrastructure must so remove the member within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the market infrastructure.
- (8) *[subsection (8) deleted by section 290 of [Act 9 of 2017](#)]*
- (9) *[subsection (9) deleted by section 290 of [Act 9 of 2017](#)]*

## **67. Limitation on control of and shareholding or other interest in market infrastructures**

- (1) For the purposes of this section, "associate", in relation to—
  - (a) a natural person, means—
    - (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
    - (ii) a child of that person, including a stepchild, an adopted child and a child born out of wedlock;
    - (iii) a parent or stepparent of that person;
    - (iv) a person in respect of which that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first-mentioned person;
    - (v) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii) to (iv);
    - (vi) a person who is in a commercial partnership with that person;
    - (vii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the market infrastructure in question;
  - (b) a juristic person—
    - (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof as defined in section 1 of the Companies Act;
    - (ii) which is a close corporation registered under the Close Corporations Act, 1984 ([Act No. 69 of 1984](#)), means any member thereof as defined in section 1 of that Act;

- (iii) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company—
    - (aa) had it been a company; or
    - (bb) where that other juristic person is not a company either, had both it and that other juristic person been a company;
  - (iv) means any person in accordance with whose directions or instructions its board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts;
- (c) in relation to any person—
  - (i) means any juristic person whose board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts in accordance with its directions or instructions;
  - (ii) means a trust controlled or administered by it.
- (2) For the purposes of this section, a person controls a market infrastructure—
  - (a) that is a company, if that person, alone or with associates—
    - (i) holds shares in the market infrastructure of which the total nominal value represents more than 15 per cent of the nominal value of all the issued shares thereof;
    - (ii) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise, or
    - (iii) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board;
  - (b) that is a close corporation, if that person, alone or with associates, owns more than 15 per cent of the members' interest, or controls directly, or has the right to control, more than 15 per cent of members' votes in the close corporation; or
  - (c) that is a trust, if that person, alone or with associates, has the ability to control more than 15 per cent of the votes of the trustees or to appoint more than 15 per cent of the trustees, or to appoint or change more than 15 per cent of the beneficiaries of the trust.
- (3) A person may not, without the prior approval of the Authority, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the market infrastructure.
- (4) A person may not, without the prior approval of the Authority, acquire shares or any other interest in a market infrastructure in excess of that approved under subsection (3).  
*[subsection (4) substituted by section 290 of [Act 9 of 2017](#)]*
- (5)
  - (a) A person may not, without the prior approval of the Minister, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in the per cent referred to in subsection (2) exceeding 49 per cent.
  - (b) Any request for approval referred to in paragraph (a) must be submitted through the Authority to the Minister.



- (6) An approval referred to in subsection (3), (4) or (5)—
- (a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the Authority;
  - (b) may not be given if it will defeat the objects of this Act referred to in [section 2](#); and
  - (c) may be refused if the person concerned, alone or with his or her associates, has not owned shares in the market infrastructure—
    - (i) of the aggregate nominal value; and
    - (ii) for a minimum period, not exceeding 12 months, that the Authority or the Minister, as the case may be, may determine.

*[subsection (6) amended by section 290 of [Act 9 of 2017](#)]*

- (7) If the Authority or the Minister, as the case may be, is satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure, the Authority or the Minister, as the case may be, may apply to the court in whose area of jurisdiction the main office of the market infrastructure is situated, for an order—
- (a) compelling that person to reduce, within a period determined by the court, the shareholding or other interests in the market infrastructure to a shareholding with a total nominal value not exceeding—
    - (i) in a case where subsection (3) applies, 15 per cent; or
    - (ii) 49 per cent,
 of the total nominal value of all the issued shares of the market infrastructure; and
 

*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his or her shareholding or other interest in the market infrastructure, to 15 or 49 per cent of the voting or other rights attached to the shares or other interests, as the case may be.
- (8) An application referred to in subsection (3), (4) or (5) must be made in the manner and form prescribed by the Authority.

*[subsection (8) substituted by section 290 of [Act 9 of 2017](#)]*

## 68. Delegation of functions

- (1) A market infrastructure may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the market infrastructure, or a division or department of the market infrastructure, subject to the conditions that the market infrastructure may determine.
- (2) Before delegating or assigning functions as contemplated in subsection (1) to an external party, the market infrastructure must obtain the approval of the Authority.
- (3) The Authority may delegate or assign any function entrusted to the Authority by or under this Act, subject to the conditions that the Authority may determine.
- (4) A market infrastructure or the Authority, as the case may be, is not divested or relieved of a function delegated or assigned under subsections (1) and (2), and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.



## 69. Report to Authority

Within four months after the financial year-end of a market infrastructure, that market infrastructure must submit to the Authority an annual report containing the details determined in joint standards and audited annual financial statements that fairly present the financial affairs and status of the market infrastructure.

*[section 69 substituted by section 290 of [Act 9 of 2017](#)]*

## 70. Attendance of meetings by, and furnishing of documents to, Authority

- (1) The Authority or a person nominated by the Authority may attend any meeting of the controlling body of a market infrastructure or a committee of the controlling body, and may take part, but may not vote, in all the proceedings at such meeting.
- (2) A market infrastructure must furnish the Authority with all notices, minutes and documents which are furnished to members of the controlling body of the market infrastructure or a committee of the controlling body, as if the Authority were a member of that body or committee.

## 71. Manner in which rules of certain market infrastructure may be made, amended or suspended, and penalties for contraventions of such rules

- (1) The Authority must as soon as possible after issuing a licence to a market infrastructure that is required to issue rules, cause the rules made by that entity to be published in the *Gazette* at the expense of the entity concerned.
- (1A) Rules that are made by a market infrastructure may not contradict any regulation, conduct standard, prudential standard, or joint standard issued in term of this Act or the Financial Sector Regulation Act.

*[subsection (1A) inserted by section 290 of [Act 9 of 2017](#)]*

- (2) (a) A market infrastructure may, subject to this section, amend or suspend its rules in accordance with the consultation process set out in the rules, which process must provide for —
  - (i) the persons who are to be consulted; and
  - (ii) the manner in which consultation will happen, including the time period or periods allowed for consultation.
- (b) The Authority may, after consultation with the Prudential Authority and the South African Reserve Bank, subject to this section, amend the rules or issue an interim rule.

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

- (3) (a) A proposed amendment, other than a suspension, of the rules must be submitted to the Authority for approval and must be accompanied by an explanation of the reasons for the proposed amendment and any concerns or objections raised during the consultation process.
- (b) The Authority must as soon as possible after the receipt of a proposed amendment publish—
  - (i) the amendment on the Authority's website; and
  - (ii) a notice in the *Gazette* that the proposed amendment is available on the Authority's website,

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

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

- (c) If there are no such objections, or if the Authority has considered the objections and, if necessary, has consulted with the market infrastructure and the persons who raised such objections and has decided to approve or amend the proposed amendment, the Authority must publish—
  - (i) the amendment and the date on which it comes into operation on the Authority's website; and
  - (ii) a notice in the *Gazette*, which notice must state—
    - (aa) that the amendment to the rules has been approved;
    - (bb) that the rules as amended are available on the Authority's website and the website of the market infrastructure; and

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*
- (4) (a) The Authority, after consultation with the Prudential Authority and the South African Reserve Bank, by notice in the *Gazette* and on the Authority's website, may amend the rules of that market infrastructure—
  - (i) if there is an urgent imperative under exceptional circumstances;
  - (ii) if it is necessary to achieve the objects of this Act referred to in [section 2](#); and
  - (iii) after consultation with the market infrastructure concerned.

*[paragraph (a) amended by section 290 of [Act 9 of 2017](#)]*

(b) Where the Authority has amended the rules of a market infrastructure under paragraph (a), the Authority must—

  - (i) inform the Minister of the amendment, giving reasons for the amendment and explaining the imperative referred to in paragraph (a)(i); and
  - (ii) give reasons for the amendment, and explain the imperative referred to in paragraph (a)(i), in the *Gazette* and on the Authority's website.

*[subparagraph (ii) substituted by section 290 of [Act 9 of 2017](#)]*

*[paragraph (b) amended by section 290 of [Act 9 of 2017](#)]*
- (5) (a) Subject to prior approval of the Authority, a market infrastructure may suspend any of the rules of that organisation for a period not exceeding 30 days at a time after reasonable notice of the proposed suspension has been advertised on the Authority's website.
- [paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

(b) The Authority may after consultation with the Prudential Authority and the South African Reserve Bank, for the period of such suspension, issue an interim rule by notice in the *Gazette* to regulate the matter in question.

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
- (c) Any contravention of or failure to comply with an interim rule, has the same legal effect as a contravention of or failure to comply with a rule.
- (6) (a) The rules may prescribe that a market infrastructure, or a person to whom the market infrastructure has delegated its disciplinary functions, may where appropriate impose any one or more of the following penalties for any contravention thereof or failure to comply therewith:
  - (i) A reprimand;
  - (ii) a censure;

- (iii) a fine not exceeding R7.5 million, to be adjusted by the Authority annually to reflect the Consumer Price Index, as published by Statistics South Africa;
  - (iv) suspension or cancellation of the right to be a clearing member of an independent clearing house or central counterparty, an authorised user or a participant;  
*[subparagraph (iv) substituted by section 290 of [Act 9 of 2017](#)]*
  - (v) disqualification, in the case of a natural person, from holding the office of a director or officer of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant, as the case may be, for any period of time;  
*[subparagraph (v) substituted by section 290 of [Act 9 of 2017](#)]*
  - (vi) a restriction on the manner in which a clearing member of an independent clearing house or central counterparty, an authorised user or a participant may conduct business or may utilise an officer, employee or agent;  
*[subparagraph (vi) substituted by section 290 of [Act 9 of 2017](#)]*
  - (vii) suspension or cancellation of the authorisation of an officer or employee of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant to perform a function in terms of the rules;  
*[subparagraph (vii) substituted by section 290 of [Act 9 of 2017](#)]*
  - (viii) any other penalty that is appropriate in the circumstances.
- (b) The rules may prescribe that—
- (i) full particulars regarding the imposition of a penalty must be published on the website of the market infrastructure or through the news service of the market infrastructure or through a market notice, 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 market infrastructure may take into account at a disciplinary hearing any information obtained by the Authority in the course of an inspection conducted in terms of the Financial Sector Regulation Act;  
*[subparagraph (iii) substituted by section 290 of [Act 9 of 2017](#)]*
  - (iv) a market infrastructure, or a person to whom a market infrastructure has delegated its disciplinary functions, may, upon good cause shown, and subject to the conditions it may impose, vary or modify any penalty which it may previously have imposed upon any person, but that in varying or modifying such penalty, the penalty may not be increased.
- (7) If a person fails to pay a line referred to in subsection (6)(a), the market infrastructure may file with the clerk or Authority of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the market infrastructure for a liquid debt in the amount specified in the statement.
- (8) This section does not prejudice the common law rights of a person aggrieved by a contravention of or failure to comply with a rule to claim any amount except to the extent that any portion of such amount has been recovered under subsection (6).
- (9) The rules must prescribe the purpose for which a fine referred to in subsection (6) must be appropriated.

## 72. Limitation of liability

- (1) No market infrastructure, chief executive officer, director, official, other officer, employee or representative of a market infrastructure or any member of a controlling body or committee of a controlling body of a market infrastructure, is liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by—
  - (a) the market infrastructure, chief executive officer, other officer, employee, representative or member in the *bona fide* performance of an obligation or function under or in terms of this Act, the listing requirements of an exchange or exchange, depository or clearing house rules or directives; or
  - (b) a clearing member, an authorised user or participant.
- (2) An authorised user that fails to comply with the rules issued in terms of [section 17\(2\)\(i\)](#) or a participant that fails to comply with the rules issued in terms of [section 35\(2\)\(s\)](#) does not incur liability to a third party for financial loss or damages because of that failure, unless the failure was grossly negligent or wilful.

## 73. Disclosure of information

- (1) No market infrastructure or chief executive officer, other officer, employee, representative or member of a market infrastructure may, subject to subsection (2), disclose to any person any confidential information obtained in the performance of functions under this Act, unless—
  - (a) the person to whom the confidential information relates has given consent;
  - (b) disclosure is required or permitted in terms of a law or a court order;
  - (c) disclosure is necessary to carry out his, her or its functions or in the course of performing duties under any law; or
  - (d) disclosure is required for the purposes of legal proceedings.
- (2) Despite subsection (1), a market infrastructure may disclose information relating to or arising from its functions to any market infrastructure or supervisory authority, whether domestic or foreign, if such disclosure will further one or more of the objects of this Act referred to in [section 2](#).

## Chapter VIII Conduct standards

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

## 74. Conduct standards for regulated persons

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) Conduct standards may prescribe requirements in relation to—
  - (a) authorised users, participants or clearing members of independent clearing houses or central counterparties; or
  - (b) any other regulated person, where the required standard of conduct is not prescribed in another law or conduct standard, and a conduct standard is necessary or expedient for the achievement of the objects of this Act.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

- (2) A conduct standard is binding on authorised users, participants or clearing members of independent clearing houses or central counterparties or any other regulated person in respect of

whom the conduct standard was prescribed, as the case may be, and on their officers and employees and clients.

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

## 75. Principles for conduct standards

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

- (1) A conduct standard for authorised users, participants or clearing members of independent clearing houses or central counterparties must be based on the principle that—
  - (a) an authorised user, participant or clearing member of an independent clearing house or central counterparty must—
    - (i) act honestly and fairly, with due skill, care and diligence and in the interests of a client;
    - (ii) uphold the integrity of the financial markets;
    - (iii) have and effectively employ the resources, procedures and technological systems for the conduct of its business;

*[paragraph (a) amended by section 290 of [Act 9 of 2017](#)]*

- (b) an authorised user, in addition to paragraph (a), must—
    - (i) seek information from a client regarding his or her financial position, investment experience and objectives where appropriate to the category of securities services provided and to the business of the client; and
    - (ii) act fairly in a situation of conflicting interests.

*[subsection (1) amended by section 290 of [Act 9 of 2017](#)]*

- (2) A conduct standard for regulated persons, other than the regulated persons mentioned in subsection (1), must be based on the principle that the regulated person must—
  - (i) act honestly and fairly, with due skill, care and diligence and, where applicable, in the interests of a client or member; and
  - (ii) uphold the integrity of the financial markets.

*[subsection (2) amended by section 290 of [Act 9 of 2017](#)]*

- (3) A conduct standard may provide for—
  - (a) the disclosure to a client of relevant material information, including the disclosure of actual or potential own interests;
  - (b) proper record-keeping;
  - (c) avoidance of fraudulent and misleading advertising, canvassing and marketing;
  - (d) proper safekeeping of transaction documents of clients;
  - (e) proper separation and protection of funds and securities of clients; and
  - (f) any other matter which is necessary or expedient to be regulated in a conduct standard for the achievement of the objects of this Act.

*[paragraph (f) substituted by section 290 of [Act 9 of 2017](#)]*

*[subsection (3) amended by section 290 of [Act 9 of 2017](#)]*

## Chapter IX

### Provisions relating to nominees

#### 76. Approval of nominee

- (1) (a) A nominee of an authorised user must be approved as a nominee by the exchange in terms of exchange rules and comply with the requirements set out in the rules.
- (b) A nominee of a participant must be approved as a nominee by the central securities depository in terms of depository rules and comply with the requirements set out in the rules.
- (2) The criteria for the approval of a nominee of an authorised user or a participant and the ongoing requirements applicable to it must be equivalent to criteria determined in conduct standards for nominees.

*[subsection (2) substituted by section 290 of [Act 9 of 2017](#)]*

- (3) (a) A nominee that is not approved as a nominee in terms of subsection (1) must—
  - (i) be approved by the Authority; and
  - (ii) comply with conduct standards determined by the Authority.
- (b) The Authority must maintain a list of all nominees approved under this section.

*[subsection (3) substituted by section 290 of [Act 9 of 2017](#)]*

## Chapter X

### Market abuse

#### 77. Definitions

In this Chapter, unless the context indicates otherwise—

**"claims officer"** *[definition of "claims officer" deleted by section 290 of [Act 9 of 2017](#)]*

**"deal"** includes conveying or giving an instruction to deal;

**"executive director"** means a person appointed as such in terms of [section 85\(12\)](#);

**"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 or of any derivative instrument related to such a security;

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

**"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 or an issuer of derivative instruments related to such securities to which the inside information relates; or

*[subparagraph (i) substituted by section 290 of [Act 9 of 2017](#)]*

- (ii) having access to such information by virtue of employment, office or profession; or

- (b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);

"**market abuse rules**" means the rules made under [section 84\(2\)\(f\)](#);

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

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

"**person**" includes a partnership and any trust; and

"**regulated market**" means any market, 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

### 78. Insider trading

- (1) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly or through an agent for his or her own account, in the securities listed on a regulated market or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—
  - (i) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider; or
  - (ii) was acting in pursuit of a transaction in respect of which—
    - (aa) all the parties to the transaction had possession of the same inside information;
    - (bb) trading was limited to the parties referred to in subparagraph (aa); and
    - (cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security, or a related security, resulting from the inside information.
- (2) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly or through an agent for any other person, in the securities listed on a regulated market or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*

- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—
  - (i) is an authorised user and was acting on specific instructions from a client, and did not know that the client was an insider at the time;
  - (ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider; or
  - (iii) was acting in pursuit of a transaction in respect of which—
    - (aa) all the parties to the transaction had possession of the same inside information;
    - (bb) trading was limited to the parties referred to in subparagraph (aa); and
    - (cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security, or a related security, resulting from the inside information.
- (3) (a) Any person who deals for an insider, directly or indirectly or through an agent, in the securities listed on a regulated market or in derivative instruments related to such securities, to which the inside information possessed by the insider relates or which are likely to be affected by it, who knew that such person is an insider, commits an offence.  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
  - (b) A person is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if the person on whose behalf the dealing was done had any of the defences available to him or her as set out in subsection (2)(b)(ii) and (iii).
- (4) (a) An insider who knows that he or she has inside information and who discloses the inside information to another person, commits an offence.
  - (b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market or trading with a derivative instrument related to such a security and that he or she at the same time disclosed that the information was inside information.  
*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
- (5) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.  
*[subsection (5) substituted by section 290 of [Act 9 of 2017](#)]*

## 79. Publication

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; or
- (b) when the information is contained in records 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.

## 80. Prohibited trading practices

- (1) No person—
  - (a) may, either for such person's own account or on behalf of another person, knowingly directly or indirectly use or participate in any practice which has created or is likely to have the effect of creating—
    - (i) a false or deceptive appearance of the demand for, supply of, or trading activity in connection with; or
    - (ii) an artificial price for, that security;
  - (b) who ought reasonably to have known that he or she is participating in a practice referred to in subparagraph (a), may participate in such practice.
- (2) A person who contravenes subsection (1)(a), commits an offence.
- (3) Without limiting the generality of subsection (1), the following are contraventions of subsection (1):
  - (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, with the intention of creating—
    - (i) a false or deceptive appearance of the trading activity in; or
    - (ii) an artificial market price for that security;
  - (b) approving or entering on a regulated market an order to buy or sell a security listed on that market with the knowledge that an opposite order or orders at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating—
    - (i) a false or deceptive appearance of the trading activity in; 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 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 any security which order will be included in any auction during an auction call period and cancelling such order immediately prior to the auction matching, for the purpose of creating—
    - (i) a false or deceptive appearance of the demand for or supply of such security; or
    - (ii) an artificial price for such security;
  - (f) effecting or assisting in effecting a market corner;

- (g) maintaining, at a level that is artificial, the price of a security listed on a regulated market.
- (4) For the purpose of subsection (1), the employment of price-stabilising mechanisms that are regulated in terms of the rules or listing requirements of an exchange does not constitute a practice which creates an artificial price for securities which are subject to such price-stabilising mechanisms.
- (5) For the purposes of subsection 3(a), a purchase or sale of listed securities does not involve a change in beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with that person in relation to those securities, has an interest in the securities after the purchase or sale.

## 81. False, misleading or deceptive statements, promises and forecasts

- (1) No person may, directly or indirectly, make or publish in respect of securities traded on a regulated market, or in respect of the past or future performance of a company whose securities are listed on a regulated market—
  - (a) any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the person knows, or ought reasonably to know, is false, misleading or deceptive; or
  - (b) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the person knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.
- (2) A person who has made a statement as contemplated in subsection (1) and who was unaware that the statement was false, misleading or deceptive, and who becomes aware of the fact that such statement was false, misleading or deceptive, must, without delay, publish a full and frank correction with regard to such statement.
- (3) A person who contravenes subsection (1), or who fails to comply with subsection (2), commits an offence.

## Insider trading sanction

## 82. Liability resulting from insider trading

- (1) Subject to subsection (3), any person who contravenes [section 78\(1\)](#), (2) or (3) of this Act is liable to pay an administrative sanction not exceeding—
  - (a) the equivalent of the profit that the person, such other person or such insider, as the case may be, made or would have made if he or she had sold the securities at any stage; or the loss avoided, through such dealing;
  - (b) an amount of up to R1 million, to be adjusted by the Authority annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
  - (c) interest; and
  - (d) cost of suit, including investigation costs, on such scale as determined by the Authority.
- (2) Subject to subsection (3), any person who contravenes [section 78\(4\)](#) or (5) of this Act is liable to pay an administrative sanction not exceeding—
  - (a) the equivalent of the profit that such other person made or would have made if he or she had sold the securities at any stage, or the loss avoided, through such dealing, if the recipient of the information, or such other person, as the case may be, dealt directly or indirectly in the

- securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
- (b) an amount of up to R1 million, to be adjusted by the Authority annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
  - (c) interest;
  - (d) cost of suit, including investigation costs, on such scale as determined by the Authority; and
  - (e) the commission or consideration received for such disclosure, encouragement or discouragement.
- (3) If the other person referred to in [section 78\(2\)](#), (3), (4) and (5) is liable as an insider in terms of [section 78\(1\)](#), the insider referred to in [section 78\(2\)](#), (3), (4) and (5) is jointly and severally liable together with that other person to pay the amounts set out in subsections (1)(a), (c), (d) and (2)(a), (c) and (d), as the case may be.
- (4) Any amount recovered by the Authority as a result of the proceedings contemplated in this section must be deposited by the Authority directly into a specially designated trust account and—
- (a) the Authority 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 (5);
  - (b) the balance, if any, must be distributed by the Authority to the claimants referred to in subsection (5) in accordance with subsection (6); and
  - (c) any amount not paid out in terms of paragraph (b) accrues to the Authority.
- [subsection (4) substituted by section 290 of [Act 9 of 2017](#)]*
- (5) The balance referred to in subsection (4)(b) must be distributed to all claimants who—
- (a) submit claims to the Authority within 90 days from the date of publication of a notice in one national newspaper or on the Authority's website inviting persons who are affected by the dealings referred to in [section 78\(1\)](#) to (5) to submit their claims; and
- [paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
- (b) prove to the reasonable satisfaction of the Authority that—
    - (i) they were affected by the dealings referred to in [section 78\(1\)](#) to (5); and
    - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in [section 78\(1\)](#), (2) and (3), or the other person referred to in [section 78\(4\)](#) and (5) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or
    - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day as the insider or other person referred to in subparagraph (ii);
    - (iv) it would be equitable for their claim to be included in a distribution in terms of subsection (4)(b).
- [paragraph (b) amended by section 290 of [Act 9 of 2017](#)]*
- (6) Subject to subsection (7), 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 Authority, 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 (2)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (3) 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.
- (7) An amount awarded in proceedings contemplated in [section 87](#) must be deducted from any amount claimed in terms of this section.
- (8) The common law principles of vicarious liability apply to the liability established by this section.

*[section 82 amended by section 290 of [Act 9 of 2017](#)]*

## Procedural matters

### 83. Attachments and interdicts

On application by the Authority, a court may in relation to any matter referred to in Chapter X grant an interdict or order the attachment of assets or evidence to prevent their concealment, removal, dissipation or destruction.

*[section 83 substituted by section 290 of [Act 9 of 2017](#)]*

## Administration of Chapter

### 84. Additional powers of Authority

The Authority may—

- (a) after consultation with the relevant regulated markets in the Republic,—
  - (i) make conduct standards, or
  - (ii) give regulator's directives for the implementation of such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter; and
- (b) make conduct standards for the disclosure of inside information.

*[section 84 substituted by section 290 of [Act 9 of 2017](#)]*

### 85. Composition and functions of directorate

- (1) (a) The Directorate established by section 12 of the Insider Trading Act, 1998 ([Act No. 135 of 1998](#)), and that continued to exist under the Securities Services Act, 2004 ([Act No. 36 of 2004](#)), continues to exist under the name Directorate of Market Abuse, despite the repeal of those Acts.
- (b) A reference to the Insider Trading Directorate in any law must, unless clearly inappropriate, be construed as a reference to the Directorate of Market Abuse.
- (c) The Authority may determine the functions, powers and duties of the directorate, which may include to consider and make recommendations relating to investigations into offences referred to in [sections 78, 80 and 81](#) of this Act and section 135(2) of the Financial Sector Regulation Act.
- (2) (a) The directorate consists of members and alternate members appointed by the Authority.

- (b) The members of the directorate holding office at the date that Part 6 of Chapter 17 of the Financial Sector Regulation Act comes into force remain as members for the terms and subject to the conditions applicable to them on their respective appointments.
  - (c) A member and an alternate member hold office for a period, not exceeding three years, as the Authority may determine at the time of the member's appointment, and is eligible for reappointment upon the expiry of the member's term of office.
  - (d) If on the expiry of the term of office of a member, a reappointment is not made or a new member is not appointed, the former member must remain in office for a further period of not more than six months.
  - (e) The Authority may remove a member of the directorate from office on good cause shown and after having given the member sufficient opportunity to show why the member should not be removed.
- (3) The members of the directorate may comprise of—
- (a) not more than two members of staff of the Authority;
  - (b) one person and an alternate from each of the licensed exchanges in the Republic;
  - (c) one commercial lawyer of appropriate experience and an alternate;
  - (d) one accountant of appropriate experience and an alternate;
  - (e) one person of appropriate experience and an alternate from the insurance industry;
  - (f) one person of appropriate experience and an alternate from the banking industry;
  - (g) one person of appropriate experience and an alternate from the fund management industry;
  - (h) one person of appropriate experience and an alternate that represents institutional investors;
  - (i) one person of appropriate experience and an alternate nominated by the South African Reserve Bank;
  - (j) one person of appropriate experience and an alternate nominated by the Prudential Authority; and
  - (k) two other persons of appropriate experience and alternates, to ensure that the directorate is comprised of an appropriate mix of skills and experience.
- (4) The persons referred to in subsection (3) who are nominated—
- (a) must be available to serve as members of the directorate;
  - (b) must have appropriate knowledge of financial markets; and
  - (c) may not be practising authorised users.
- (5) The Authority must designate a chairperson, who may not be the Commissioner of the Authority, 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 the chairperson's functions.
- (6) 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.
- (7) A meeting of the directorate is convened by the chairperson.
- (8) If four members of the directorate in writing request the chairperson of the directorate to convene a meeting of the directorate, a meeting must be held within seven business days of the date of receipt of the request.

- (9) A meeting of the directorate is chaired by the chairperson or, in the chairperson's absence, by the deputy chairperson or another member designated by the chairperson or the remaining members.
- (10) The directorate determines its procedures, subject to any directions of the Authority.
- (11) The decision of a majority of the members of the directorate constitutes the decision of the directorate.
- (12) The Authority must ensure that written minutes of each meeting of the directorate are kept in a manner determined by the Authority.
- (13) A member of the directorate must disclose, at a meeting of the directorate, or in writing to each of the other members of the directorate, any interest in a matter that is being or is intended to be considered by the directorate, being an interest that—
  - (a) the member has; or
  - (a) a person has who is a related party to the member.
- (14) A disclosure in terms of subsection (13) must be given as soon as practicable after the member concerned becomes aware of the interest.
- (15) A member referred to in subsection (13) may not participate in the consideration of or decision on that matter by the directorate unless—
  - (a) the member has disclosed the interest in accordance with subsection (13); and
  - (b) the other members of the directorate have decided that the interest does not affect the proper execution of the member's functions in relation to the matter.

*[section 85 substituted by section 290 of [Act 9 of 2017](#)]*

**86. \*\*\***

*[section 86 repealed by section 290 of [Act 9 of 2017](#)]*

## **General provisions**

### **87. Protection of existing rights**

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 82](#).

### **88. Confidentiality and sharing of information**

The Authority may share information concerning any matter dealt with in terms of this Chapter with the Takeover Regulation Panel established by section 196 of the Companies Act, the South African Reserve Bank, the Prudential Authority, the Independent Regulatory Board for Auditors constituted in terms of the Auditing Profession Act, a market infrastructure, the Financial Intelligence Centre established by the Financial Intelligence Centre Act, the National Treasury, the Minister and the persons, inside the Republic or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses.

*[section 88 substituted by section 290 of [Act 9 of 2017](#)]*

## Chapter XI Auditing

### 89. Auditor

- (1) Despite the provisions of any law, a regulated person must appoint and at all times have an auditor who engages in public practice and who has no direct or indirect financial interest in the business in respect of which the auditor is so appointed.
- (2) No firm of auditors, or a member of such firm, in which a regulated person or director, officer or employee of a regulated person has any financial interest, may be appointed as an auditor of a regulated person.
- (3) The Authority must approve the appointment of the auditor of every market infrastructure and may withdraw the approval if it is necessary.

### 90 Accounting records and audit

A regulated person must—

- (a) maintain on a continual basis the accounting records determined in joint standards and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be determined in joint standards;  
*[paragraph (a) substituted by section 290 of [Act 9 of 2017](#)]*
- (b) cause such accounting records and annual financial statements to be audited by an auditor appointed under [section 89](#), within a period determined in joint standards or such later date as the Authority may allow on application by a regulated person; and  
*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*
- (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.

### 91. Functions of auditor

- (1) The auditor must audit the annual financial statements of the regulated person in accordance with the International Standards on Auditing to obtain sufficient evidence that the financial statements are in accordance with the underlying records, and are prepared in accordance with the International Financial Reporting Standards and the requirements of the Companies Act and this Act 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 exchange, central securities depository, independent clearing house or central counterparty in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house or central counterparty, and on request to the Authority—
  - (a) to the effect that the auditor has completed the audit of the annual financial statements in accordance with the International Standards on Auditing and in the manner required by this Act and that in the auditor's considered opinion they fairly present the financial position, cash-flows and results of the operations of the regulated person; and
  - (b) on the matters prescribed in conduct standards.

*[paragraph (b) substituted by section 290 of [Act 9 of 2017](#)]*

*[subsection (2) amended by section 290 of [Act 9 of 2017](#)]*

- (3) If the auditor is unable to make such a report or to make it without qualification, the auditor must include in the auditor's report a statement explaining the facts or circumstances that prevented the auditor from making a report or from making it without qualification.
- (4) When the auditor of a regulated person furnishes copies of a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, the auditor must, despite any contrary law, also furnish a copy thereof to the Authority, if the auditor is the auditor of a market infrastructure, or to the exchange, central securities depository, or independent clearing house in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house.
- (5) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must—
  - (a) submit to the Authority, if the auditor is the auditor of a market infrastructure, or to the exchange, central securities depository, or independent clearing house in question if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house, a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination;
  - (b) if the auditor would, but for that termination, have had reason to submit to the regulated person a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, submit such a report to the Authority or the exchange, central securities depository or independent clearing house, as the case may be.
- (6) An auditor must inform the Authority or the exchange, central securities depository or independent clearing house, 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.

## **92. Furnishing of information in good faith by auditor**

The auditor must provide any report or information as required in terms of this Act despite the provisions of any contrary law or a provision of a code of professional conduct to which the auditor is subject.

## **93. Power of Authority to request audit**

- (1) The Authority 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 Authority within the time specified in the notice.
- (2) A person who, pursuant to subsection (1), gives information, an explanation or access to records knowing that the information, explanation or records are false or misleading, commits an offence.

# **Chapter XII**

## **General provisions**

### **Powers of Authority and court**

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

## **94. General powers of Authority**

- (1) If the Authority receives a complaint, charge or allegation that a person ("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 Authority has



reason to believe that such a contravention or failure is taking place, the Authority may investigate the matter in terms of the Financial Sector Regulation Act.

- (2) The power of the Authority to give a regulator's directive in terms of the Financial Sector Regulation Act extends to giving such a directive in respect of an advertisement, brochure or other document relating to securities that is for any reason objectionable.

*[section 94 substituted by section 290 of [Act 9 of 2017](#)]*

95. \*\*\*

*[section 95 substituted by section 259 of [Act 45 of 2013](#) and repealed by section 290 of [Act 9 of 2017](#)]*

## 96. Powers of Authority after supervisory on-site inspection or investigation

*[heading substituted by section 290 of [Act 9 of 2017](#)]*

After a supervisory on-site inspection or an investigation has been conducted, the Authority may, in order to achieve the objects of this Act referred to in [section 2](#)—

- (a) if the respondent is a company—
- (i) apply to the court under section 81 of the Companies Act for the winding-up of the respondent as if the Authority were a creditor of the respondent;
  - (ii) apply to the court under section 131 of the Companies Act to begin business rescue proceedings in respect of the respondent as if the Authority were a creditor of the respondent;
- (b) subject to section 5 of the Financial Institutions (Protection of Funds) Act, apply to the court for the appointment of a curator for the business of the respondent;
- (c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the supervisory on-site inspection or investigation;

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (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 Authority believes that the director, managing executive, officer or employee is not fit and proper to perform such activities; or

*[paragraph (d) amended by section 260(a) of [Act 45 of 2013](#)]*

- (e) hand the matter over to the National Director of Public Prosecutions, provided that the contravention or failure constitutes an offence in terms of this Act.

*[paragraph (e) substituted by section 260(b) of [Act 45 of 2013](#)]*

- (f) *[paragraph (f) deleted by section 260(c) of [Act 45 of 2013](#)]*

*[section 96 amended by section 290 of [Act 9 of 2017](#)]*

97. \*\*\*

*[section 97 repealed by section 290 of [Act 9 of 2017](#)]*

**98. Power of court to declare person disqualified**

- (1) If a court—
  - (a) convicts an authorised user, participant or clearing member of an independent clearing house, or an officer or employee of those entities, of an offence under this Act or of an offence of which any dishonest act or omission is an element; or
  - (b) finds, in proceedings to which a person referred to in paragraph (a) is a party or in which his or her conduct is called into question, that he or she has been guilty of reckless or dishonest conduct, the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the person concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on business or being employed in a capacity of trust.
- (2) The court may, on good cause shown, vary or revoke a declaration made under subsection (1).
- (3) The Authority 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 Authority, and the exchange, central securities depository, or independent clearing house concerned, thereof.
- (4) No declaration made under subsection (1) affects any power of an exchange, central securities depository, or independent clearing house to take disciplinary action in terms of its rules against the person concerned.
- (5) This section does not affect Part 5 of Chapter 10 of the Financial Sector Regulation Act.

*[subsection (5) added by section 290 of [Act 9 of 2017](#)]*

**99. \*\*\***

*[section 99 repealed by section 290 of [Act 9 of 2017](#)]*

**Winding-up, business rescue and curatorship****100. Winding-up or sequestration by court**

- (1) Despite any other law, an order for the winding-up or sequestration of the estate of a regulated person may be granted by the court on the application of—
  - (a) the regulated person;
  - (b) one or more of the regulated person's creditors;
  - (c) if the regulated person is an exchange, a central securities depository or an independent clearing house, one or more authorised users, participants or clearing members, as the case may be;
  - (d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);
  - (e) the business rescue practitioner of the regulated person;
  - (f) the provisional curator or curator of a regulated person; or
  - (g) the Authority.
- (2) A regulated person which is a company or other corporate body may be wound up, subject to [section 102](#), according to the Companies Act, and the estate of a regulated person who is a natural person or partnership may be sequestrated according to the Insolvency Act.

- (3) Despite the Companies Act—
- (a) any resolution or court application made under the Companies Act in respect of a regulated person must be filed with or served on the Authority, as the case may be, and must be approved by the Authority prior to the filing or serving thereof;
  - (b) in relation to a court application in respect of a regulated person, the Authority may file affidavits and other documents relating to, and may appear and be heard at the hearing of, the application;
  - (c) a company may file a resolution under section 80 of the Companies Act in respect of a regulated person only after the Authority has approved the resolution; and
  - (d) the certificate referred to in section 82(1) of the Companies Act in respect of a regulated person must also be filed with the Authority.
- (4) A court may not grant a liquidation order in respect of a regulated person without the approval of the Authority.
- (5) If the Authority does not approve the resolutions of the regulated person made under section 80 of the Companies Act, the Authority may apply—
- (a) for the liquidation and winding-up of the regulated person under section 81 of that Act; or
  - (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.
- (6) A regulated person may not be placed in liquidation or sequestration while under curatorship, unless the curator applies for such liquidation or sequestration.

### 101. Business rescue

- (1) The court may grant a business rescue order in respect of a regulated person which is a company or other corporate body on the application of the persons referred to in [section 100\(1\)](#), except a curator referred to in [section 102\(1\)](#).
- (2) (a) [Section 100\(3\), \(4\), \(5\) and \(6\)](#) apply, with the changes required by the context, to a court application for or a resolution on business rescue.
- (b) For the purpose of paragraph (a), any reference to section 80 of the Companies Act in [section 100\(3\), \(4\), \(5\) and \(6\)](#) must be construed as a reference to section 129 of that Act and any reference to liquidation or sequestration in those sections must be construed as a reference to business rescue.
- (3) The Companies Act applies, subject to [section 103](#), to business rescue proceedings relating to a regulated person that is a company.

### 102. Appointment of curator

- (1) Despite any other law, the court may appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any regulated person.
- (2) The Financial Institutions (Protection of Funds) Act applies to the management and control of a regulated person by a curator appointed under this section.
- (3) If a curator is appointed under this section, no business rescue or liquidation proceedings under the Companies Act or sequestration proceedings under the Insolvency Act may be commenced in respect of that regulated person until the appointment of the curator is terminated, or with the leave of the court.

**103. Appointment of business rescue practitioner or liquidator and approval of business rescue plan**

- (1) Despite the provisions of the Companies Act, the Authority must approve the appointment of a business rescue practitioner or liquidator of a regulated person and must approve the business rescue plan referred to in section 150 of the Companies Act.
- (2) Despite the provisions of the Companies Act, if the Authority does not approve the business rescue plan referred to in section 150(1) of the Companies Act, the Authority may apply—
  - (a) for the liquidation and winding-up of the regulated person under section 81 of that Act; or
  - (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

**Miscellanea****104. General interpretation of Act**

This Act must be interpreted and applied in a manner that gives effect to the objects of the Act set out in [section 2](#).

**105. Right of appeal**

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

on an officer or employee of an authorised user, issuer, participant or clearing member of an independent clearing house or central counterparty

may approach the Tribunal for a reconsideration of the decision.

[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]

(2) [subsection (2) deleted by section 290 of [Act 9 of 2017](#)]

## 106. Evidence

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 an exchange, central securities depository, independent clearing house 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.

## 107. Regulations

- (1) The Minister may make regulations not inconsistent with this Act with regard to—
- (a) any matter that is required or permitted to be prescribed in terms of this Act; and
  - (b) any other matter necessary for the better implementation and administration of the Act or a function or power provided for in this Act:

Provided that in making regulations the Minister must maintain the operational independence of the Authority.

- (2) (a) Before the Minister makes any regulation under this section or [section 5](#), the Minister must—
- (i) ensure consultation with recognised industry bodies;
  - (ii) consider any recommendations from the Authority prior to the publication of draft regulations;
  - (iii) publish a notice of the release of draft regulations in the *Gazette*, indicating that the draft regulations are available on the National Treasury official website, and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice;
  - (iv) in respect of draft regulations to be published in terms of [section 5\(1\)](#), publish on the National Treasury official website, along with the draft regulations, a policy document that informs the draft regulations, and a report on the expediency, effect and implication of the regulations;
  - (v) in respect of draft regulations to be published in terms of [section 5\(1\)\(b\)](#), publish a notice identifying persons who may be declared to be regulated persons and inviting comment from those persons in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
  - (vi) submit the draft regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before promulgation.
- (b) After consideration of any comments received in response to the publication and tabling of the draft regulations in terms of paragraph (a)—
- (i) the Minister may alter the draft regulations, and need not publish the alterations before promulgating the regulations; and

- (ii) after promulgating the regulations, a copy of the promulgated regulations must be tabled in Parliament.
- (c) The Minister must, within a reasonable period after prescribing regulations in terms of this section or [section 5](#), publish on the official website of the National Treasury a document summarising the comments that were received in response to the published draft regulations, and providing a brief response to those comments that were not accommodated in the final regulations promulgated by the Minister.

## 108. Fees

- (1) The Authority may determine fees in respect of matters contemplated in this Act and, in relation to those fees, 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.

*[subsection (1) substituted by section 290 of [Act 9 of 2017](#)]*

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

## 109. Offences and penalties

A person who—

- (a) commits an offence referred to in [section 78](#), [80](#) or [81](#), is liable on conviction to a fine not exceeding R50 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;
- (b) commits an offence referred to in [section 93\(2\)](#), is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;
- (c) contravenes or fails to comply with the provisions of [sections 4](#), [7\(1\)](#), [24](#), [25\(1\)](#), [27\(1\)](#), [47\(1\)](#), [49A\(1\)](#), [54\(1\)](#), [56A\(1\)](#) or a prohibition by the Authority referred in terms of [section 6\(7\)](#), commits an offence and is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

*[paragraph (c) substituted by section 290 of [Act 9 of 2017](#)]*

- (d) contravenes or fails to comply with the provisions of [section 73\(1\)](#) commits an offence and is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years or to both the fine and such imprisonment.

## 110. Savings and transitional arrangements

- (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 the Securities Services Act, 2004 ([Act No. 36 of 2004](#)), repealed by this Act, shall have effect from the date of commencement of this Act as if granted under a corresponding provision of this Act: Provided that a licence, registration or authorisation granted for a specified period remains in force, subject to this Act, for so much of that period as falls after the date of commencement of this Act only.
- (2) The rules of an exchange or central securities depository made under the Securities Services Act, 2004, repealed by this Act and in force immediately before the date of commencement of this Act, continue to be in force in so far as they are not inconsistent with this Act: Provided that the exchange or central securities depository must, within six months from the date of commencement of this Act, amend or replace its rules so as to comply with the requirements of this Act.
- (3) Subsection (2) applies with the changes required by the context to the listing requirements of an exchange.

- (4) Sections [84](#) and [85](#) apply to any investigation of alleged non-compliance with or offences under the Securities Services Act, 2004, instituted after its repeal by this Act.
- (5) *[subsection (5) deleted by section 290 of [Act 9 of 2017](#)]*
- (6) Despite any other provision of this Act, a clearing house performing the functions of a central counterparty must comply with any requirements imposed by regulations or standards, and must—
  - (a) until 31 December 2021, be licensed as either an associated clearing house or an independent clearing house, and be approved by the Authority, the South African Reserve Bank and the Prudential Authority, in the manner and form prescribed by the Authority, to perform the functions of a central counterparty;
  - (b) as of 1 January 2022, be licensed as both an independent clearing house and a central counterparty.

*[subsection (6) added by section 290 of [Act 9 of 2017](#)]*

### **111. Repeal or amendment of laws**

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

### **112. Short title and commencement**

This Act is called the Financial Markets Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## Schedule

### Laws repealed or amended (Section 111)

No. and year of Act	Short title	Extent of repeal or amendment
<a href="#">Act No. 36 of 2004</a>	Securities Services Act	The repeal of the whole Act
<a href="#">Act No. 37 of 2002</a>	Financial Advisory and Intermediary Services Act, 2002	<p>1. The substitution in section 45(1) for paragraph (a)(i) of the following paragraph:</p> <p style="padding-left: 40px;">"(1) The provisions of this Act do not apply to the rendering of financial services by—</p> <p style="padding-left: 80px;">(a) (i) any "authorised user", "<u>clearing member</u>", "licensed clearing house", "<u>licensed central securities depository</u>" "<u>licensed exchange</u>" or "participant" as defined in section 1 of the <b>[Securities Services Act, 2002,</b></p>



		<p>or exchange licensed under section 10 of that Act] <u>Financial Markets Act, 2012</u> that is <u>authorised</u> by that Act to <u>render</u> <u>those</u> <u>financial</u> <u>services;</u>".</p>
<a href="#">Act No. 45 of 2002</a>	Collective Investment Schemes Control Act, 2002	<p>The substitution for section 5 of the following:</p> <p><b>"Requirement for the administration of collective investment schemes and application of Act</b></p> <p>(1) No person may perform any act or enter into any agreement or transaction for the purpose of administering a collective investment scheme, unless such person—</p> <p>(a) is registered as a manager by the</p>

registrar  
or  
is  
an  
authorised  
agent;  
or

(b) is  
exempted  
from  
the  
provisions  
of  
this  
Act  
by  
the  
registrar  
by  
notice  
in  
the  
*Gazette*.

(2) The provisions of this Act do not apply to the rendering of securities services by any "authorised user", "clearing member", "licensed central securities depository", "licensed clearing house", "licensed exchange" or "participant" as defined in section 1 of the Financial Markets Act, 2012 to the extent that the rendering of those services are specifically supervised

		<u>under that Act;".</u>
<a href="#">Act No. 89 of 1998</a>	Competition Act, 1998	<p>1. The substitution for section 18(2) of the following:</p> <p>"(2) Despite anything to the contrary in this Act, the Competition Commission may not make a decision in terms of section 13(5) (b) or 14(1) (b), and the Competition Tribunal may not make an order in terms of section 16(2), if the—</p> <p>(a) merger constitutes —</p> <p>(i) an acquisition of shares for which permission is required</p>

in  
terms  
of  
section  
37  
of  
the  
Banks  
Act,  
1990  
([Act  
No.  
94  
of  
1990](#));  
[or]

- (ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 ([Act No. 94 of 1990](#)) [, or **section 29 of the Cooperative Bank Act, 2007**]; [and]

- (iii) an acquisition of shares for which approval

- |  |  |      |  |
|--|--|------|--|
|  |  |      | is<br><u>required</u><br>in<br>terms<br>of<br>section<br>67<br>of<br>the<br>Financial<br>Markets<br>Act,<br>2012;<br>or  |
|  |  | (iv) | a<br>transaction<br>for<br>which<br>approval<br>is<br>required<br>in<br>terms<br>of<br>section<br>64<br>of<br>the<br>Financial<br>Markets<br>Act,<br>2012;<br>and  |
|  |  | (b)  | Minister<br>of<br>Finance<br>has.<br>in<br>the<br>prescribed<br>manner,<br>issued<br>a<br>notice<br>to<br>the<br>Commissioner<br>specifying<br>the<br>names<br>of<br>the<br>parties<br>to<br>the<br>merger |

and  
certifying  
that

—

- (i) the merger is a merger contemplated in paragraph (a) **[(i) or (ii)]**; and
- (ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 ([Act No. 94 of 1990](#)) or **[section 29 of the Cooperative Banks Act, 2007]** the Financial Markets Act, 2012, as

			<u>the case may be, only."</u>
<u>Act No. 28 of 2001</u>	Financial Institutions (Protection of Funds) Act, 2001	<ol style="list-style-type: none"> <li>1. The deletion of section 8.</li> <li>2. The substitution for section 6A(2) of the following: <ul style="list-style-type: none"> <li>"(2) The directorate may, after an investigation carried out by the directorate under <b>[Chapter VIII of the Securities Services Act, 2004]</b> <u>Chapter X of the Financial Markets Act, 2012,</u> refer an alleged contravention to the enforcement committee."</li> </ul> </li> <li>3. The substitution for section 6D(2)(a) of the following: <ul style="list-style-type: none"> <li>"(a) Impose a penalty by ordering the respondent</li> </ul> </li> </ol>	

to  
pay a  
sum of  
money  
to the  
board;  
and".

4. The substitution for section 6D(2)(b)(ii) of the following subparagraph:

"(ii) if the respondent contravened section [73, 75 or 76 of the **Securities Services Act, 2004**] 78 of the Financial Markets Act, 2012, order the respondent to pay to the board **[a compensatory]** an amount calculated in accordance with section [77(1), (2), (3) or (4)] section 82 of that Act.".



5. The substitution for section 6H of the following section:

**"Utilisation of administrative sanction**

- (1) Any payment received by the board pursuant to an administrative sanction imposed under section 6D(2) (a) must, subject to **[subsection]** subsections (2) and (3), be utilised for purposes of consumer education or the protection of the public.
- (2) A compensatory amount received pursuant to an order under section 6D(2) (b)(ii) must be dealt with in accordance with section

		<p>[77(7), (8) and (9) of the Securities Services Act, 2004] 82(4) to (7) of the Financial Markets Act, 2012. "</p>
<p><a href="#">Act No. 71 of 2008</a></p>	<p>Companies Act, 2008</p>	<p>1. Section 1 of the Companies Act is hereby amended by—</p> <p>(i) the substitution for the definition of "central securities depository" of the following definition:</p> <p><b>"‘central securities depository’</b> has the meaning set out in section 1 of the <b>[Securities Services Act, 2004 (Act No. 36 of 2004)]</b> <u>Financial Markets Act, 2012;</u>";</p> <p>(ii) the substitution for the definition of "exchange" of the following definition:</p> <p><b>"‘exchange’</b> when used as a noun, has the meaning set out in section</p>

1 of the  
[**Securities  
Services  
Act, 2004  
(Act No. 36  
of 2004)**]  
Financial  
Markets  
Act, 2012;;

- (iii) the substitution for the definition of "listed securities" of the following definition:

**"'listed securities'**  
has the meaning set out in section 1 of the [b>Securities Services Act, 2004 (Act No. 36 of 2004)]  
Financial Markets Act, 2012;  
";

- (iv) the substitution for the definition of "nominee" of the following definition:

**"'nominee'**  
[has the meaning set out in section 1 of the **Securities Services Act, 2004 (Act No. 36 of 2004)**]  
means a person that acts as the registered holder of securities or an

interest in securities on behalf of other persons;”;

- (v) the substitution for the definition of "participant" of the following definition:

**"‘participant’**  
has the meaning set out in section 1 of the **[Securities Services Act, 2004 (Act No. 36 of 2004)]**  
Financial Markets Act, 2012;”;

- (vi) the substitution for the definition of "uncertificated securities" of the following definition:

**"‘uncertificated securities’**  
means any securities defined as such in section **[29 of the Securities Services Act, 2004 (Act No. 36 of 2004)]**  
1 of the Financial Markets Act, 2012;”;

2. The substitution in section 5(4)(b)(i) of the Act for item (ff) of the following:

"(ff) **[Securities Services Act, 2004 (Act 36 of 2004)]**  
Financial Markets Act, 2012;"

3. The substitution in section 69(8)(b)(iv) of the Act for item (cc) of the following:

"(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the **[Securities Services Act, 2004 (Act 36 of 2004)]**

Financial  
Markets  
Act,  
2012,  
or  
Chapter  
2 of  
the  
Preven-  
tion  
and  
Combating  
of  
Corrupt  
Activities  
Act,  
2004  
(Act  
12 of  
2004);".

4. The substitution for section 116(4)(a)(iii) of the following:

"(iii) has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act or obtained the approval of the Registrar of Securities Services in terms of section 64 of the

Financial  
Markets  
Act,  
2012,  
if so  
required  
by that  
Act;  
and"

5. The substitution for section 116(9) of the following:

"(9) If, with respect to a transaction involving a company that is regulated in terms of the Banks Act or the Financial Markets Act, 2012, there is a conflict between a provision of subsection (7) and a provision of section 54 of **[that]** the Banks Act or section 64 of the Financial Markets Act,

		<p><u>2012 Act, as the case may be, the provisions of [that Act]those Acts prevail."</u></p>
<p><u>Act No. 24 of 1936</u></p>	<p>Insolvency Act, 1936</p>	<p>1. The substitution for section 35A of the following:</p> <p><b>"35A. Transactions on exchange.—</b></p> <p>(1) In this section —</p> <p><b><u>["exchange"]</u></b>  <b><u>"market infrastructure"</u></b>  means—</p> <p>(a) an exchange as defined in section 1 and licensed under section [10] 2 of the <b>[Securities Services Act, 2004 and for the purposes of this section includes]</b></p>



Financial  
Markets  
Act,  
2012;  
and

(b) a  
central  
securities  
depository  
as  
defined  
in  
section  
1  
and  
licensed  
under  
section  
29  
of  
that  
Act  
**[and  
which  
is  
also  
licensed  
as  
a  
clearing  
house  
under  
section  
66  
of  
that  
Act,];**  
or

(c) a  
clearing  
house  
as  
defined  
in  
section  
1  
of  
that  
Act  
and  
licensed  
under  
section  
49  
of

that  
Act;

**"[exchange] rules"**  
means  
the  
exchange  
rules,  
**[and]**  
depository  
rules  
or  
clearing  
house  
rules,  
as  
defined  
in  
section  
1  
of  
the  
**[Securities Services Act, 2004]**  
Financial Markets Act, 2012;

**"market participant"**  
means  
an  
authorised  
user,  
a  
participant,  
a  
clearing member  
or  
a  
client  
**[or**  
**a settling party]**  
as  
defined  
in  
section  
1  
of  
the  
**[Securities**

**Services Act, 2004]**  
Financial Markets Act, 2012,  
or  
any  
other  
party  
to  
a  
transaction;  
**"transaction"**  
means  
any  
transaction  
to  
which  
the  
rules  
[**of an exchange]**  
apply.

- (2) If upon the sequestration of the estate of a market participant the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the [exchange in question]

market  
infrastructure  
in  
respect  
of any  
obligation  
owed  
to it,  
or any  
other  
market  
participant  
in  
respect  
of  
obligations  
owed  
to such  
market  
participant,  
shall in  
accordance  
with  
the  
**[rules**  
**of that**  
**exchange]**  
rules  
applicable  
to any  
such  
transaction  
be  
entitled  
to  
terminate  
**[all**  
**such]**  
transactions  
or  
revoke  
settlement  
instructions  
and  
the  
trustee  
of the  
insolvent  
estate  
of the  
market  
participant  
shall  
be  
bound  
by such  
termination

or  
revocation.

(3) No claim as a result of the termination or revocation of any transaction as contemplated in subsection (2) shall exceed the amount due upon termination or revocation in terms of the **[rules of an exchange]** rules in question.

(4) Any **[rules of an exchange]** rules and the practices thereunder which provide for the netting of a market participant's position or for set-

off in  
respect  
of  
transactions  
concluded  
by the  
market  
participant  
or for  
the  
opening  
or  
closing  
of a  
market  
participant's  
position  
or for  
the  
revocation  
of  
settlement  
instructions  
shall  
upon  
sequestration  
of the  
estate  
of the  
market  
participant  
be  
binding  
on the  
trustee  
in  
respect  
of any  
transaction  
or  
contract  
concluded  
by the  
market  
par-  
ticipant  
prior  
to such  
sequestration,  
but  
which  
is, in  
terms  
of such  
rules  
and  
practices,

to be settled on a date occurring after the sequestration, **[but which is, in terms of such rules and practices, to be settled on a date occurring after sequestration,]** or settlement of which was overdue on the date of sequestration.

- (5) Section 341(2) of the Companies Act, 1973 ([Act No. 61 of 1973](#)), and sections 26, 29 and 30 of this Act shall not apply to

		property disposed of in accordance with the rules <b>[of an ex-change]</b> ."
<a href="#">Act 78 of 1998</a>	National Payment System Act, 1998	<p>The substitution for section 8(1) of the following:</p> <p>"(1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Banks Act, the Cooperative Banks Act, the Postal Services Act, 1998 (<a href="#">Act 124 of 1998</a>), <b>[or]</b> <u>the Mutual Banks Act or the Financial Markets Act, 2012.</u>"</p>