

South Africa

Financial Markets Act, 2012

Conditions for the amalgamation, merger, transfer or disposal of market infrastructures, 2013

Board Notice 103 of 2013

Legislation as at 31 May 2013

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Conditions for the amalgamation, merger, transfer or disposal of market infrastructures, 2013

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Financial Markets Act, 2012

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Board Notice 103 of 2013

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Under section [64\(1\)\(b\)\(iii\)](#) of the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), I, Dube Phineas Tshidi, Registrar of Securities Services hereby determine the Conditions set out in the Schedule, with which a market infrastructure must comply in case of an amalgamation, merger, transfer or disposal.

D P Tshidi

Registrar of Securities Services

1. Definitions

In these conditions "**the Act**" means the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), and any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned to it.

2. Application for approval of amalgamation, merger, transfer or disposal

If an application is made for the approval—

- (a) in terms of section 64(1)(a)(i) of the Act for an 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; or
- (b) in terms of section 64(1)(a)(ii) of the Act for any transfer or disposal of more than 25% of the assets, liabilities or assets and liabilities of a market infrastructure to another person;

the application must be submitted to the registrar by the entities involved in the amalgamation or merger ("amalgamating parties" or "merging parties") or the entities involved in the transfer or disposal ("transferor" and "transferee"/ parties to the disposal) on Form FM 3 accompanied by—

- (a) the information specified in Annexure 1 to Form FM 3; and
- (b) the documentation, statements and undertakings specified in Annexure 2 to Form FM 3 in support of the information supplied in Annexure 1.

3. Address

Applications must be submitted to the Registrar of Securities Services at one of the following addresses:

P O Box 35655 Menlo Park 0102	41 Matroosberg Road Riverwalk Office Park Block B Ashlea Gardens Ext 6 0081
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4. Commencement

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

Form FM 3

[Editorial note: The form has not been reproduced.]

Annexure 1 to Form FM 3

Information required for amalgamation, merger, transfer or disposal of market infrastructures

(Only furnish information if information previously furnished will change as a result of the transfer, disposal, amalgamation or merger, or if the information in question was not furnished previously).

1. Administrative information

- (a) The postal, physical and electronic mail addresses, and head office of the amalgamated entity's/merged entity's/transferee's/party to the disposal at which it will receive all documents for the purpose of this application.
- (b) The telephone and facsimile numbers of the amalgamated entity/merged entity/transferee/party to the disposal and the name of its Chief Executive Officer.
- (c) A list that reflects the full names, addresses and telephone numbers of persons, if any, who alone or with associates will exercise control over the amalgamated entity/merged entity/transferee/party to the disposal in terms of section 67(2) of the Act, as at the date of this application.
- (d) A list which reflects the names, physical and postal addresses, telephone and facsimile numbers of the—
 - (i) bank;
 - (ii) auditor; and
 - (iii) attorney,

of the amalgamated entity/merged entity/transferee/party to the disposal.

2. Details of—

- (a) the expected constitution, structure and ownership of the amalgamated entity/merged entity/transferee/party to the disposal, including its memorandum of incorporation or other founding documentation and any agreement between the amalgamated entity/merged entity/transferee/party to the disposal, its owners or other persons relating to its constitution or governance;
- (b) all business to be conducted by the amalgamated entity/merged entity/transferee/party to the disposal, whether or not a regulated activity;
- (c) any persons providing corporate finance advice or similar services (such as reporting accountants) to the amalgamated entity/merged entity/transferee/party to the disposal;
- (d) any relevant functions in relation to regulated business to be outsourced or delegated, with copies of relevant agreements;
- (e) information technology systems and or arrangements for their supply, management, maintenance, upgrading, and security;
- (f) the business continuity plans and disaster recovery plans in the event of disruption to the business of the amalgamated entity/merged entity/transferee/party to the disposal;

- (g) internal controls, risk management principles and procedures and insurance cover;
- (h) internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest; expected changes in monitoring and enforcing compliance with its rules in case of exchanges, central securities depositories or independent clearing houses;
- (i) arrangements for recording transactions effected by, or cleared through, the facilities of the amalgamated entity/merged entity/transferee/party to the disposal;
- (j) arrangements for detecting and preventing market abuse, including arrangements for complying with money laundering legislation; and
- (k) the competitors and prospective competitors of the amalgamated entity/merged entity/transferee/party to the disposal.

Annexure 2 to Form FM 3

Documentation, statements and undertakings to be provided, if applicable, in support of the information supplied in Annexure 1

1. A *curriculum vitae* in respect of each member of the controlling body of the amalgamated entity/merged entity /transferee/party to the disposal indicating his or her relevant experience and training.
2. A statement signed by each member of the controlling body to the effect that he or she knows of no reason why he or she should not fulfil his or her term of office as a member of the controlling body.
3. A copy of—
 - (a) the latest audited annual financial statements of the amalgamating parties/merging parties/transferor and transferee/parties to the disposal as at their latest financial year-end if in existence for more than a year; and
 - (b) the budgeted income statement, balance sheet and cash flow statement of the amalgamated entity/merged entity/transferee/party to the disposal for a three year period prior to the date of the latest annual financial statements.
4. A statement signed by the chief executive officer of the amalgamated entity/merged entity/transferee/party to the disposal specifying the critical assumptions made in the preparation of the amalgamated entity's/merged entity's/ transferee's/party to the disposal's budgets and, in particular, the sources where the amalgamated entity/merged entity/transferee/party to the disposal will derive any further funding as outlined in terms of its business plan.
5. Where arrangements have been made for the funding of any temporary shortfall in available cash resources, the chief executive officer must provide a statement setting out the extent and terms of the commitment.
6. A copy of the amalgamated entity's/merged entity's/transferee's/party to the disposal's registration certificate certified by the Companies and Intellectual Property Commission, where applicable.
7. Copies of the quarterly management accounts for the current financial year of the amalgamating parties/merging parties/transferor and transferee/parties to the disposal.
8. Details of its business plan for the first three years of its operations as an amalgamated entity/merged entity/transferee/party to the disposal.
9. Adequacy of management and human resources
 - (a) An explanation of the management structure of the amalgamated entity/merged entity/transferee/party to the disposal including the names of the individuals and qualifications, responsible for the major functional areas and the number of personnel employed in each functional area.

- (b) A *curriculum vitae* in respect of each member of the management of the amalgamated entity/merged entity/transferee/party to the disposal who is responsible for a major functional area, which indicates his or her relevant experience and training.
- 10. The applicant must demonstrate that the fit and proper requirements as prescribed by the registrar are met by the applicant, its directors and senior management.