

South Africa

Financial Markets Act, 2012

Accounting records to be maintained by a regulated person, 2013

Board Notice 96 of 2013

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Accounting records to be maintained by a regulated person, 2013

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Under sections [90\(a\)](#) and [\(b\)](#) of the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), I, Dube Phineas Tshidi, Registrar of Securities Services hereby determine in the Schedule the accounting records to be maintained by a regulated person and the prescribed period within which a regulated person must cause its accounting records and annual financial statements to be audited and submitted to the registrar.

D P Tshidi

Registrar of Securities Services

1. Definition

In this Schedule, “**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. Accounting records to be maintained by regulated persons

- (1) The accounting records of a regulated person must show the transactions and financial commitments of a regulated person, and transactions and payments relating to clients in such a manner that they disclose with substantial accuracy the financial position, performance and cash flows of the regulated person, and separately the position of clients of the regulated person, at the close of business on any day.
- (2) Accounts of clients must be designated as such and must be clearly distinguishable from the business accounts of a regulated person.
- (3) A regulated person may keep computerised records provided that such records are subject to acceptable back-up and recovery procedures and can be reproduced in printed form.

3. Accounting records to be maintained by exchanges

- (1) An exchange must maintain—
 - (a) entries from day to day of all sums of money received and expended by the exchange and the matters in respect of which the receipt and expenditure took place;
 - (b) a record of funds held in trust for authorised users;
 - (c) a record of all income and expenditure of the exchange explaining the nature thereof;
 - (d) a record of all assets and liabilities of the exchange, including any provision for financial commitments or contingent liabilities;
 - (e) a record of all purchases and sales of securities listed on the exchange, which reflects the—
 - (i) date and time of each transaction concluded on the exchange;

- (ii) identification of the authorised users that are counterparties to the transaction;
- (iii) name of the issuer of the securities;
- (iv) name or description of the securities; and
- (v) the price per unit and quantity of the securities bought and sold.

4. Accounting records to be maintained by central securities depositories

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

5. Accounting records to be maintained by clearing houses

- (1) A clearing house must maintain—
 - (a) entries from day to day of all sums of money received and expended by the clearing house and the matters in respect of which the receipt and expenditure took place;
 - (b) a record of funds held in trust for regulated persons;
 - (c) a record of all income and expenditure of the clearing house explaining the nature thereof;
 - (d) a record of all assets and liabilities of the clearing house, including any provision for financial commitments or contingent liabilities;
 - (e) a record of all purchases and sales of securities cleared by the clearing house, which reflects the—
 - (i) date of each transaction;
 - (ii) identification of the regulated persons that are counterparties to the transaction;
 - (iii) name or description of the securities; and
 - (iv) price per security and quantity of the securities cleared.

6. Accounting records to be maintained by authorised users, participants and clearing members

- (1) An authorised user, participant and clearing member must maintain, where applicable, accounting records in respect of securities services provided which must as a minimum contain—
 - (a) a daily record of all sums of money received and expended;
 - (b) a record of funds held in trust;
 - (c) a record of all income and expenditure;
 - (d) a record of all assets and liabilities, including any provisions for financial commitments or contingent liabilities;

- (e) a record of all purchases and sales of securities which reflects the—
 - (i) date and time of each transaction;
 - (ii) person from whom securities were bought or to whom they were sold unless it is processed through an automated trading system recognised by the relevant exchange;
 - (iii) name of the person on whose behalf the securities were bought or sold;
 - (iv) quantity and description of the securities which were bought or sold;
 - (v) name of the issuer of the securities;
 - (vi) price per security and the total consideration;
 - (vii) fees and charges;
 - (viii) taxes that are payable in respect of each transaction;
 - (ix) terms of the contract;
 - (x) capacity (principal or agent) in which the transaction was entered into; and
 - (xi) the following additional information in respect of transactions in options-
 - (aa) the reference number of the transaction and option number, where applicable;
 - (bb) whether the option is a put or call option;
 - (cc) the terms and conditions under which the option may be exercised, including the type of option, the strike price or yield, the strike date and time and the settlement date;
 - (dd) the identity of the writer of the option;
 - (ee) the quantity and description of the listed security to which the option relates;
 - (ff) the option premium and settlement date; and
 - (gg) whether the option was exercised or lapsed and the exercise date, if applicable;
- (f) a record of all securities and documents of title which are in the possession, safe custody or under the control of the authorised user, participant or clearing member in which is reflected the—
 - (i) name of the issuer of the securities;
 - (ii) quantity and description of the securities;
 - (iii) identification numbers of the securities and documents of title, where applicable;
 - (iv) name of the registered holder and if the registered holder is a nominee controlled by the regulated person, the name of the person on whose behalf the nominee is holding the securities;
 - (v) person from whom the securities were received and to whom the securities were delivered;
 - (vi) date of receipt and delivery;
 - (vii) location where the securities or documents of title are kept;
 - (viii) details of any pledge to which the securities may be subject;
 - (ix) person on whose behalf securities or documents of title have been received or delivered; and

- (x) purpose for which the securities or documents of title are held.
 - (g) a record of securities held by the authorised user, participant or clearing member on behalf of its clients which must contain as a minimum—
 - (i) the name of the client;
 - (ii) the quantity and a description of securities held; and
 - (iii) a description of transaction movements within the securities accounts during the period since the previous report;
 - (h) a record of the reconciliation of the securities accounts maintained by a participant and the central securities account maintained by the central securities depository.
- (2) An authorised user, participant or clearing member, must reconcile balances with exchanges, clearing houses, central securities depositories, participants and banks, if applicable, as frequently as required in terms of applicable rules or directives for the volume of transactions on accounts. Any differences, other than differences in timing between the records of the authorised user, participant or clearing member and the exchanges, clearing houses, central securities depositories, participants or banks, as the case may be, must be investigated forthwith and corrected as soon as required in terms of the applicable rules or directives.
- (3) An authorised user, participant or clearing member must reconcile securities under their control with the accounting records relating to securities held by the authorised user, participant or clearing member on a daily basis. Correcting entries must be made immediately.
- (4) The records referred to in paragraph 6(1)(g) must be made available to its clients as frequently as required in terms of applicable rules or directives.

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

- (1) An authorised user, participant or clearing member of an independent clearing house that ceases business must maintain a record of funds or assets held in trust, which funds or assets must be transferred to a client or another person authorised to deal in, hold custody or provide for the clearing and settlement services in respect of securities, until such transfer has been fully effected.
- (2) An authorised user, participant or clearing member of an independent clearing house that ceases business must—
- (a) notify the respective exchange, central securities depository or independent clearing house of the intended or actual date of cessation of business;
 - (b) notify the clients for whom they hold assets or funds, in writing, of the intended or actual date of cessation of business, provide the clients, for whom they hold assets or funds, with statements reflecting the assets and funds held on their behalf and indicate to which authorised user, participant, clearing member of an independent clearing house or other person authorised to deal in, hold custody or provide for the clearing and settlement services in respect of securities, their assets and funds will be delivered in the absence of an instruction from the client to the contrary; and
 - (c) deliver the client assets and funds in accordance with the information available or obtained in terms of paragraph (b) above.

8. Prescribed period in which audited financial statements must be submitted by regulated persons

- (1) A regulated person, other than a market infrastructure, a person regulated under the Banks Act, and the South African Reserve Bank, must cause the accounting records and annual financial statements referred to in section 90(a) of the Act to be audited by an auditor appointed under section 89 within

three months after the financial year end of the regulated person or within such later date as the registrar may allow on application by the regulated person.

- (2) A person regulated under the Banks Act and the South African Reserve Bank must cause the accounting records and annual financial statements referred to in section 90(a) of the Act to be audited by an auditor appointed under section 89 within six months after its financial year end or within such later date as the registrar may allow on application by the regulated person.
- (3) A market infrastructure must cause the accounting records and annual financial statements referred to in section 90(a) of the Act to be audited by an auditor appointed under section 89 within four months after the financial year end of the market infrastructure or within such later date as the registrar may allow on application by the market infrastructure.

9. Request for extension

A regulated person may apply to the registrar for an extension to submit its audited accounting records and annual financial statements at a later date as the one prescribed in paragraph 8. Such application must be in writing and be submitted to the registrar prior to the expiry of the prescribed period applicable to such a regulated person.

10. Commencement

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