

South Africa

Financial Markets Act, 2012

## Fit and proper requirements for market infrastructures, 2013

Board Notice 97 of 2013

Legislation as at 31 May 2013

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Fit and proper requirements for market infrastructures, 2013  
Contents

1. Definitions ..... 1

2. Honesty and integrity ..... 1

3. Competency ..... 2

4. Operational ability ..... 3

5. Financial soundness of applicants ..... 3

6. Financial soundness of directors and senior managers ..... 3

7. Short title and commencement ..... 3

Annexure A ..... 3

Annexure B ..... 4

Annexure C ..... 4

Annexure D ..... 4

## South Africa

### Financial Markets Act, 2012

# Fit and proper requirements for market infrastructures, 2013

## Board Notice 97 of 2013

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**Commenced on 3 June 2013**

*[This is the version of this document from 31 May 2013.]*

I, Dube Phineas Tshidi, Registrar of Securities Services, hereby determine under sections [8\(1\)\(c\)](#), [28\(1\)\(c\)](#), [48\(1\)\(c\)](#) and [55\(1\)\(c\)](#) of the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), the fit and proper requirements, as set out in the Schedule, for an applicant for an exchange, central securities depository, trade repository or clearing house licence, and a licensed exchange, central securities depository, trade repository or clearing house, and their directors and senior managers.

DP Tshidi

Registrar of Securities Services

### 1. Definitions

In this Schedule, “**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 and, unless the context otherwise indicates—

“**applicant**” means a person who has submitted an application in terms of section [7](#), [27](#), [47](#) or [54](#) for an exchange, central securities depository, clearing house or trade repository licence respectively.

### 2. Honesty and integrity

- (1) A director or senior manager of a market infrastructure must be a person who is honest and has integrity.
- (2) In determining whether a director or senior manager complies with subparagraph (1), the registrar may refer to any information in possession of the registrar or brought to the registrar’s attention.
- (3) Without prejudice to the generality of subparagraph (2) and (4), any of the following factors constitutes *prima facie* evidence that the person does not qualify in terms of subparagraph (1), namely that the person—
  - (a) has at any time prior to the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in the Republic of South Africa or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty;
  - (b) has at any time prior to the date of application been found guilty by any professional or financial services industry body (whether in the Republic of South Africa or elsewhere) of an act of dishonesty, negligence, incompetence or mismanagement;
  - (c) has at any time prior to the date of application been denied membership of any body referred to in sub-paragraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement;

- (d) has at any time prior to the date of application—
    - (i) been found guilty by any regulatory or supervisory body (whether in the Republic of South Africa or elsewhere); or
    - (ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body,  
on account of an act of dishonesty, negligence, incompetence or mismanagement;
  - (e) has at any time prior to the date of application, had any licence granted by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement; or
  - (f) has at any time prior to the date of application been disqualified or prohibited by any court of law (whether in the Republic of South Africa or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.
- (4) An applicant, director or senior manager must in the application be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to the applicant, director and senior manager and which may be relevant for purposes of a decision by the registrar that the applicant, director or senior manager complies or does not comply with subparagraph (1).
- (5) An applicant must submit its application with completed Annexure B and C in respect of each of its directors or senior managers.

### 3. Competency

- (1) An applicant must satisfy the registrar that its directors or senior managers have the competency to undertake the relevant duties and functions, and where appropriate, detailed knowledge of the structure, purpose and risks of the securities associated with the duty or function.
- (2) To demonstrate competence, a director or senior manager involved in carrying out the duties and functions must act in a knowledgeable, professional and efficient manner.
- (3) Without prejudice to the generality of subparagraph (1), in determining a person's competence, the registrar may have regard to including, but not limited to the following matters:—
  - (a) the person's past performance or expertise in the nature of the business being conducted;
  - (b) the person's skills and experience to understand, operate and manage the regulated activities and financial affairs; and
  - (c) the person's technical knowledge and ability to perform prescribed duties for which he or she is engaged, including recognised professional qualifications and membership of relevant professional institutions.
- (4) A market infrastructure must comply with the following conditions, in addition to any other conditions imposed by the registrar in terms of the Act (if any) as indicated on the applicant's licence when granted:—
  - (a) maintain a register of directors and senior managers, which must be regularly updated;
  - (b) promptly inform the registrar when an appointment of a director or senior manager is terminated, and the reason therefor;
  - (c) complete Annexure B where a new director or senior manager is appointed, and promptly submit it to the registrar;
  - (d) annually submit a written statement to the registrar wherein continued compliance with this Notice with respect to each director and senior manager is confirmed.

#### 4. Operational ability

An applicant must have and be able to maintain the operational ability to fulfil the responsibilities imposed by the Act on market infrastructures, including at least the following:—

- (a) a fixed business address in the Republic of South Africa;
- (b) adequate access to communication facilities including at least a full-time telephone or cell phone service, and administrative facilities, including electronic, typing and document duplication facilities;
- (c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence; and
- (d) an account with a registered bank in South Africa.

#### 5. Financial soundness of applicants

- (1) An applicant must not be under liquidation or provisional liquidation, or subject to business rescue proceedings as contemplated in the Companies Act, 2008, or have made arrangements with creditors, filed for bankruptcy or filed for winding-up.
- (2) The assets of an applicant (excluding goodwill and other intangible assets) must exceed the applicant's liabilities (excluding loans validly subordinated in favour of all other creditors).
- (3) An applicant must maintain current assets which are at least sufficient to meet current liabilities.
- (4) An applicant must not be subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period.
- (5) An applicant must provide the registrar with a satisfactory credit reference.

#### 6. Financial soundness of directors and senior managers

- (1) A director or senior manager of a market infrastructure must not be an unrehabilitated insolvent or subject to debt review as contemplated by the National Credit Act, 2005 ([Act No. 34 of 2005](#)).
- (2) A director or senior manager of a market infrastructure must not be subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period.
- (3) A director or senior manager of a market infrastructure must provide the registrar with a satisfactory credit reference.

#### 7. Short title and commencement

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

### Annexure A

#### General information on completion of questionnaires as contained in Annexures B and C

##### A – Instructions for completion and submission

1. The questionnaires in Annexure B and C must be properly completed and Annexure D must be signed by all applicants who have completed either Annexure B or C. Questions must be answered either in full or indicated not applicable ("n/a"). The signatory(ies) of the questionnaires must be duly authorised to furnish the information.

2. The questionnaires in Annexure B and C must be completed in respect of directors and senior managers as indicated therein.
3. The format of the questionnaire or the wording of questions may not be changed. However, this document may be reproduced.
4. Answers may be in handwriting or in typewriting.
  - 4.1. If the questionnaire is completed electronically (a) the solid lines in those areas provided for answers must be deleted before the answers are typed or alternatively the otype mode whilst the answers are typed must be used; and (b) rows may be inserted where insufficient space is provided for answers.
  - 4.2. If the questionnaire is completed in writing and the space provided is not sufficient, the detail may be provided on a separate page, duly cross-referenced to the relevant question. Please indicate the number of any supplementary sheets attached to Annexures B and C.
  - 4.3. If the questionnaire submitted contains any changes to typed or written information, such changes must be duly signed.
5. Applications must be submitted to the Registrar of Securities Services at one of the following addresses

P O Box 35655	41 Matroosberg Road
Menlo Park	Riverwalk Office Park
0102	Block B
Facsimile: (012) 346-6533	Ashlea Gardens Ext 6
	0081

## Annexure B

### Questionnaire to be completed in respect of directors and senior managers of an applicant

*[Editorial note: The forms have not been reproduced.]*

## Annexure C

### Questionnaire to be completed in respect of an applicant

*[Editorial note: The forms have not been reproduced.]*

## Annexure D

### Declaration

I, the undersigned, (*insert full first name(s) and surname*) hereby certify that, to the best of my knowledge, the information given in answers to the above questions are true, complete and accurate and not misleading in any respect.

I undertake that, as long as I continue to be a director or senior manager of the market infrastructure, I will notify the registrar of any material changes to, or changes affecting the completeness or accuracy of the answers to the

questions above as soon as possible, but in no event later than 21 days from the day that the change comes to my attention.

I hereby authorise the Financial Services Board, and its duly authorised verification agent, to request or confirm any personal information as well as any other information that I have provided in support of my application to any personal data holders (including but not limited to the South African Police Service, the Government of the Republic of South Africa, industry bodies and associations, employers and any educational, training, credit bureau and fraud prevention organisations) for the purpose of verifying my personal credentials and records.

Credential verification types include, but are not limited to, educational qualifications, professional membership, employment history, employment references including industry employment registers, consumer credit, criminal records, driver's licence, and fraud prevention checks.

I authorise the personal data holders (including but not limited to the aforesaid institutions) to furnish information regarding my credentials, whether claimed or not, to the Financial Services Board and its duly appointed verification agent. I unconditionally indemnify the Financial Services Board, its verification agent and the personal data holders against any liability that may result from furnishing information in this regard.

Position held:

SIGNATURE

DATE

### ***Documents to be submitted***

- a certified copy of the RSA identity document, or Passport;
- completed and signed Personal Credential Verification Forms;
- the curriculum vitae;
- the credit reference for the applicant;
- the credit reference of the director or senior manager;
- the signed declaration; and
- the other documents, if any, mentioned in questions in support of the information contained in this document. *(Please indicate the pages of each enclosure and the number of the question to which the enclosure relates).*