

SECURITIES ACT
(Act No. 26 of 2014)

**SECURITIES (PERSONS OPERATING A SECURITIES INFRASTRUCTURE
BUSINESS) REGULATIONS, 2017**
(Published on 31st March, 2017)

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IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 59 of the Securities Act, the following Regulations are hereby made —

Part I – Preliminary

- Citation 1. These Regulations may be cited as the Securities (Persons Operating a Securities Infrastructure Business) Regulations, 2017.
- Interpretation 2. In these Regulations, unless the context otherwise requires —
“key person” means Chief Executive Officer, Director, Chief Financial Officer, company secretary, compliance officer, internal auditor, and any other person fulfilling a similar function but with a different name, and the term “key personnel” shall be construed accordingly; and
“settlement operator” means a person operating a central securities depository, other clearance and settlement system, or a central counterparty.
- Application 3. These Regulations shall apply to a —
(a) person who wishes to operate a securities infrastructure business and who seeks to apply to the Regulatory Authority for a licence under section 3 of the Act; and
(b) securities business infrastructure whose place of business is in Botswana.

Part II – Requirements for application for licence

- Application for licence 4. (1) A person shall not operate a securities infrastructure business unless that person has been issued with a licence in accordance with section 3 of the Act.
(2) A person who wishes to apply for a licence to operate a securities infrastructure business shall make an application to the Regulatory Authority in Form 1 set out in Schedule 1.
(3) An applicant referred to in subregulation (2) may apply to be an operator of more than one category of securities infrastructure business and shall indicate on the application form, the category or categories of the securities infrastructure business the applicant wishes to operate.
(4) Notwithstanding subregulation (3), the Regulatory Authority shall grant a single licence to an applicant and shall provide in the licence, the category or categories of the securities infrastructure business that the applicant is licensed to operate.
(5) An application for a licence shall be accompanied by a non-refundable fee specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations, and where an application is for more than one category of securities infrastructure business, the applicant shall pay an application fee for each category of securities infrastructure business.
(6) An applicant shall, in addition to an application for a licence and a non-refundable fee, submit to the Regulatory Authority the —
(a) additional information specified in Schedule 2; and
(b) questionnaire set out in Schedule 3 for each of the key persons and controllers of a securities infrastructure business, which shall be signed and dated by the person who is its subject.
- Cap. 46:08
(Sub. Leg.)

(7) Where a questionnaire has been submitted to the Regulatory Authority prior to the submission of an application for a licence, the applicant may submit a copy of the questionnaire to the Regulatory Authority, giving details of any changes to the information contained in the questionnaire, including a declaration by such applicant and the person to whom the questionnaire relates that —

- (a) the changes indicated, if any, are accurate; and
- (b) in all other respects, the information in the questionnaire remains true and is not misleading.

(8) If after submitting an application, an applicant becomes aware of a material change in any of the information submitted with the application, or any material event that may affect such application, the applicant shall notify the Regulatory Authority of the changes or the event, irrespective of whether the Regulatory Authority has considered the application or not.

(9) An applicant may, after submitting an application, withdraw the application at any time.

5. (1) The Regulatory Authority shall, where an applicant and the applicant's key person and controller satisfy the requirements specified in subregulation (2), grant the applicant with a licence in accordance with section 4 of the Act.

Licence
criteria

(2) An applicant shall, before the applicant is granted a licence in accordance with section 4 of the Act, satisfy the Regulatory Authority that —

- (a) the securities infrastructure business to be established by the applicant has the ability to contribute to the development of the financial market and the protection of the interests of the investor and the public;
- (b) the corporate governance of the applicant is in compliance with the Non-Bank Financial Institutions Regulatory Authority (Securities Business Corporate Governance) Rules;
- (c) the applicant has the capacity and the intention to comply with any —
 - (i) condition of a licence that applies to such applicant, and
 - (ii) other requirement imposed under the Act, these Regulations, rules or other applicable financial services law;
- (d) the skills and experience available to the applicant are sufficient for the category or categories such applicant proposes to undertake;
- (e) the financial resources of the applicant are sufficient for the category or categories for which such applicant is seeking a licence as specified in Non-Bank Financial Institutions Regulatory Authority (Financial Resource Requirement) Rules;

Provided that where such applicant wishes to undertake more than one category of securities infrastructure business, the financial resources required shall be the total sum specified in the Non-Bank Financial Institutions Regulatory Authority (Financial Resource Requirement) Rules for each of the category, or such other amount as the Regulatory Authority may require;

- (f) the applicant has the appropriate technology resources required under regulation 16;
- (g) the applicant meets the requirements on conduct of a person operating a securities infrastructure business in accordance with regulation 18;
- (h) where the applicant seeks to operate a —
 - (i) securities exchange, such applicant meets the requirements under Part IV, or

- (ii) central securities depository or clearance and settlement system, such applicant meets the requirements under Part V;
 - (i) the business plan submitted by the applicant demonstrates that such applicant has the ability to conduct business in compliance with the requirements under these Regulations, without being a risk to the stability of the capital market;
 - (j) the applicant has not, at any time or in any jurisdiction –
 - (i) been subject to any insolvency or liquidation proceedings,
 - (ii) made any arrangement with any creditor,
 - (iii) been the subject of a compulsory winding up of a securities institution,
 - (iv) engaged in any other conduct, and
 - (v) entered into any other agreement,
 that might compromise such applicant's ability to maintain the financial resource requirements applicable to the applicant;
 - (k) the applicant has not, at any time, been found guilty of misconduct or unprofessional conduct or other conduct that may compromise such applicant's integrity as an applicant, by a competent tribunal, board or body legally constituted within or outside Botswana, for the purpose of adjudicating on matters of discipline and conduct;
 - (l) there are no factors that might compromise the –
 - (i) integrity, financial standing or professional skills of the applicant or such applicant's key person or controllers,
 - (ii) sustainability of the financial position of the applicant and its likely impact on the stability of the financial system, or
 - (iii) capacity of the applicant to meet requirements under these Regulations and the obligations to which such applicant may be subject to in Botswana or elsewhere, whether imposed by statute or other lawful means; and
 - (m) there are no factors that might impede the Regulatory Authority's effective oversight of the securities infrastructure business.
- (3) An applicant shall, in respect of each of the applicant's key person, satisfy the Regulatory Authority that the key person has the skills and experience appropriate to such key person's position as set out in Schedule 5.
- (4) In respect of an applicant's key person and a controller, the applicant shall, before the applicant is granted a licence, satisfy the Regulatory Authority that such key person or controller, as the case may be, has –
- (a) not been convicted of a criminal offence involving dishonesty;
 - (b) not been found guilty of misconduct or unprofessional conduct or other conduct that may compromise his or her integrity as a key person or controller, by a competent tribunal, board or body legally constituted within or outside Botswana, for the purpose of adjudicating on matters of discipline and conduct;
 - (c) not, at any time, being a holder of a professional qualification, been suspended or barred from practising the profession, trade or skill within or outside Botswana;
 - (d) not been removed from any office of trust on account of misconduct, by any court within or outside Botswana;
 - (e) not been the subject of termination of employment by an employer, or of resignation from a position, in circumstances where there would likely have been an alternative sanction such as dismissal;

- (f) not, at any time, been subject to bankruptcy proceedings or made other arrangements with creditors or any other person of a nature that might compromise the financial resources of the applicant and their ability to maintain a sound financial position;
 - (g) not been involved, as a director or controller, or in any capacity with significant influence over the management of an entity, of any such entity whether a company, partnership or any other legal form, that has been the subject of any investigations referred to in subregulation (2) (k), unless the Regulatory Authority is satisfied that the circumstances are such that they do not compromise their financial resources; and
 - (h) no other factors that might compromise the integrity, competence or financial resources of the applicant.
- (5) Where an applicant for a licence to operate as a settlement operator has not obtained a Certificate of Recognition as required by regulation 26 –
- (a) the applicant shall submit a copy of its application for a Certificate of Recognition, if any, to the Regulatory Authority; and
 - (b) the licence, if granted, shall contain a condition stipulating that the Regulatory Authority shall cancel the licence if the application for a Certificate of Recognition is not successful.

6. (1) A person who operates a securities infrastructure business shall not appoint a key person for the operation of the securities infrastructure without the approval of the Regulatory Authority.

Additional applications for key persons

(2) A person who operates a securities infrastructure business, who wishes to appoint a key person shall make an application in Form 2 set out in Schedule 1.

(3) An application in accordance with subregulation (2) shall be accompanied by a questionnaire set out in Schedule 3 which shall be completed, signed and dated by the person appointed as the key person.

(4) The Regulatory Authority shall, if it is satisfied that a key person meets the requirements under these Regulations, give approval for a person to be appointed as a key person by an applicant.

(5) Where a person who operates a securities infrastructure business appoints a key person without the approval of the Regulatory Authority, the Regulatory Authority may impose a penalty not exceeding –

- (a) P50 000 against the securities infrastructure business; or
- (b) P10 000 against the person appointed as the controller, and may direct the securities infrastructure business to dismiss the key person.

7. (1) A person who operates a securities business infrastructure shall not appoint a controller for the operation of the securities business infrastructure without the approval of the Regulatory Authority.

Additional applications for controllers

(2) A person who operates a securities infrastructure business, who wishes to appoint a controller shall make an application in Form 2 set out in Schedule 1.

(3) An application made in accordance with subregulation (2) shall be accompanied by a questionnaire set out in Schedule 3 which be signed and dated by the person appointed as the controller.

(4) Where an application referred to in subregulation (2) is for the appointment of a new controller, such application shall be accompanied by a fee specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations.

(5) The Regulatory Authority shall, if it is satisfied that a controller meets the requirements set out in these Regulations, give approval for a person to be appointed as a controller.

(6) Where a person who operates a securities infrastructure business appoints a controller without the approval of the Regulatory Authority, the Regulatory Authority may impose a penalty not exceeding —

(a) P50 000 against the securities infrastructure business; or

(b) P10 000 against the person appointed as the controller and may direct such person to ensure that he or she immediately disposes of his or her interest in the securities infrastructure business.

Application
to be self-
regulatory
organisation

8. (1) A person who operates a securities infrastructure business who wishes to obtain a declaration that the securities infrastructure business shall be a self-regulatory organisation, shall —

(a) make such declaration on the application for a licence in Form 1 set out in Schedule 1;

(b) provide an overview of the responsibilities the securities infrastructure business he or she wishes to undertake;

(c) indicate how its rules, if any, shall be enforced;

(d) indicate whether its rules, if any, are consistent with its responsibilities under these Regulations; and

(e) enter into an agreement with the Regulatory Authority that shall be reviewed annually.

(2) A declaration made in accordance with subregulation (1) (a) shall be accompanied by a non-refundable fee specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations.

(3) If after submitting an application with a declaration referred to in subregulation (1), an applicant becomes aware of a material change in any of the information supplied in relation to the declaration, or any material event that may affect such declaration, the applicant shall inform the Regulatory Authority of the change, irrespective of whether the Regulatory Authority has considered the application or not.

(4) The Regulatory Authority shall, after considering an application, recommend the approval of the application to the Minister and in doing so the Regulatory Authority shall consider whether the applicant has the capacity and intention to —

(a) incorporate in the rules of the securities infrastructure business, the obligations for which such applicant is responsible;

(b) enforce the requirements for which such applicant is responsible;

(c) enter into an arrangement and cooperate with the Regulatory Authority in implementing the regulatory regime for which it is responsible; and

(d) accept the oversight of the Regulatory Authority over the self-regulatory organisation responsibilities.

Processing
of applications

9. (1) The Regulatory Authority may, after receipt of an application for a licence to operate a securities infrastructure business, require additional information from the applicant, key person or controller.

(2) Where the Regulatory Authority has required additional information in accordance with subregulation (1), the applicant, key person or controller shall provide such information within 14 days.

(3) The Regulatory Authority may, where additional information is not supplied in accordance with subregulation (1), decline to process the application.

(4) The Regulatory Authority shall, where an applicant does not meet the requirements to operate as a securities infrastructure business or to be recommended to the Minister to be declared a self-regulatory organisation —

- (a) inform the applicant of its decision and the reasons for that decision, in writing and give its opinion and reasons;
- (b) allow the applicant to make representations within a period of 30 days after being informed of the Regulatory Authority's decision in accordance with paragraph (a); and
- (c) consider any representations that may be made and either —
 - (i) confirm its decision to reject the application, or refuse to recommend the applicant to be declared a self-regulatory organisation to the Minister, as the case may be,
 - (ii) approve the application, or
 - (iii) request further information from the applicant.

(5) Where the Regulatory Authority intends to recommend to the Minister to declare that a securities infrastructure business should be declared a self-regulatory organisation, the Regulatory Authority shall, in accordance with the Non-Bank Financial Institutions Regulatory Authority Act, enter into an arrangement with the securities infrastructure business for the performance by such securities infrastructure business, of regulatory or supervisory functions.

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(6) After entering into the arrangement referred to in subregulation (5) has been concluded, the Regulatory Authority shall forward its recommendation that the securities infrastructure business should be declared a self-regulatory organisation to the Minister.

(7) Where the Regulatory Authority intends to approve a licence application with conditions, it shall —

- (a) inform the applicant of its decision and give reasons;
- (b) give the applicant 30 days notice within which such applicant shall make its representations to the Regulatory Authority; and
- (c) consider any representations that may be made and either —
 - (i) confirm its decision to impose conditions,
 - (ii) approve the application without conditions, and subregulation (8) shall apply,
 - (iii) reject the application, and subregulation (4) shall apply, or
 - (iv) request further information from the applicant.

(8) Where the Regulatory Authority intends to approve a licence application without conditions —

- (a) it shall inform the applicant of its intention; and
- (b) the applicant shall, in accordance with regulation 14 (2), pay the first supervisory levy.

(9) The Regulatory Authority shall, after the applicant has paid the first annual supervisory levy in accordance with subregulation (8)(b), approve the application and inform such applicant of the date the approval shall take effect.

(10) Where the Regulatory Authority approves a licence application with conditions —

- (a) it shall give written notice to the applicant of the approval;
- (b) the approval of such application shall take effect from a date specified by the Regulatory Authority; and

	<p>(c) the applicant shall, in accordance with regulation 14 (2), pay the first supervisory levy.</p>
Duration of licence	<p>10. (1) A licence issued under the Act shall, unless previously renewed or revoked, expire at the end of three years from the date of issue.</p> <p>(2) Notwithstanding subregulation (1), a licensee shall pay an annual licence fee specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations at least 30 days before the elapse of every 12 months of the duration of the licence referred to in subregulation (1).</p>
Revocation of licence	<p>11. The Regulatory Authority may revoke a licence, recommend that the Minister revoke a self-regulatory organisation declaration or exercise its powers under any other financial services law to revoke a licence, where —</p> <p>(a) the licensee so requests;</p> <p>(b) it has been ascertained that any information given to the Regulatory Authority by the licensee, its key person or controller, for the purpose of obtaining the licence, was false at the time when the information was given;</p> <p>(c) the licensee has, without reasonable excuse, failed to comply with a term or condition of the licence or requirement under these Regulations;</p> <p>(d) the licensee has been convicted of an offence under the Act or any other financial services law; or</p> <p>(e) the Regulatory Authority has reasonable grounds to believe that either the licensee, its key person or controller, is not a fit and proper person to continue with the business.</p>
Renewal of licence	<p>12. (1) An application for the renewal of a licence shall be made to the Regulatory Authority by the licensee in Form 1 or 2 set out in Schedule 1 and such application shall be accompanied by a fee specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations.</p> <p>(2) An application referred to in subregulation (1) shall be made six months prior to the date of the expiry of the licence.</p> <p>(3) Where an application for renewal is made after a period not exceeding 12 months after the expiry of the licence, the Regulatory Authority may renew such licence subject to the payment of a fee for the late renewal of licence specified in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations.</p> <p>(4) An application for the renewal of a licence that expired 12 months or more prior to the application for renewal shall be —</p> <p>(a) treated as an application for a new licence and the provisions of regulations 5, 6, 7, 8, 9 and 10 shall apply; and</p> <p>(b) accompanied by a penalty for failure to renew of P2 500 for every day during which such failure continues, but such penalty shall not exceed P50 000.</p>
Conditions of licence	<p>13. (1) A licence issued under the Act shall not be transferable.</p> <p>(2) A licensee shall undertake the securities infrastructure business specified in the conditions of a licence.</p>

Part III – Obligations of persons operating securities infrastructure business

14. (1) A person who operates a securities infrastructure business shall pay a supervisory levy to the Regulatory Authority in accordance with the Non-Bank Financial Institutions Regulatory Authority Act. Supervisory

(2) The first supervisory levy shall be payable when the Regulatory Authority has indicated its intention to approve a licence application.

(3) Where the Regulatory Authority indicates its intention to approve a licence application on a date other than the 1st April of every year, the first supervisory levy shall be reduced by 1/12 for every month that passes after 1st April.

15. (1) A person who operates a securities infrastructure business shall ensure that the business maintains the minimum financial requirements specified in the Non-Bank Financial Institutions Regulatory Authority (Financial Resources Requirements) Rules, or such other amount as the Regulatory Authority may specify. Minimum financial requirements

(2) Notwithstanding subregulation (1), the Regulatory Authority may increase the minimum financial requirements as it may deem necessary depending on the risk profile of the securities infrastructure business.

(3) Notwithstanding the minimum financial requirements that the Regulatory Authority may impose under this regulation, a person operating a securities infrastructure business shall ensure that such business has the additional financial resources as are necessary having regard to the nature, size and complexity of its business for the purposes of guarding against the risk of failure to fulfil the business' liabilities as they fall due.

16. (1) A person who operates a securities infrastructure business shall ensure that the business has the necessary technological resources to conduct such a business. Technological resources

(2) For purposes of subregulation (1) the resources shall be —

- (a) used for the maintenance of records and the operation of the securities infrastructure business;
- (b) reliable;
- (c) regularly evaluated to ensure that they are operating as intended;
- (d) maintained to an appropriate standard, with appropriate safeguards against failure;
- (e) maintained by the skilled personnel; and
- (f) secure, in order to protect the confidentiality of the data contained in the resources.

17. (1) A person operating a securities infrastructure business shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the business, and shall prepare in each financial year, a statement of such accounts. Accounts and audit

(2) The accounts of the securities infrastructure business in respect of each financial year shall, within three months of the end thereof, be audited by an independent auditor appointed by the person who operates a securities infrastructure business.

(3) A person operating the securities infrastructure business shall not appoint an independent auditor under this regulation without the approval of the Regulatory Authority.

(4) Where a person operating a securities infrastructure business stops a auditor from executing his or her duties as such, the business and the auditor shall inform the Regulatory Authority and the Regulatory Authority may request for an explanation, if any, from such business and the auditor.

(5) In default of the appointment of an independent auditor under subregulation (2), the Regulatory Authority shall appoint an independent auditor.

(6) An independent auditor appointed under subregulation (2) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not the —

- (a) auditor has received all information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) accounts and related records of the securities infrastructure business have been properly kept;
- (c) securities infrastructure business has complied with all the financial provisions of these Regulations with which it is its duty to comply; and
- (d) statement of accounts prepared by the securities infrastructure business was prepared on the basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of such business.

(7) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the securities infrastructure business and the Regulatory Authority.

(8) A person operating a securities infrastructure business shall, as soon as possible but not later than 90 days after receipt of the annual report, publish in a local newspaper, such report which shall include such business' audited financial statements and the audit report for a every financial year to which the statements relate.

Conduct of
person operating
securities
infrastructure
business

18. (1) A person who operates a securities infrastructure business shall —

- (a) act with integrity;
- (b) exercise due care, skill and diligence in maintaining the integrity of the market;
- (c) observe high standards of conduct;
- (d) treat all similarly situated market participants consistently and fairly and
- (e) perform a duty of care to any person who uses the facilities of the securities infrastructure business either directly or through other securities institutions

(2) A person who operates a securities infrastructure business shall not conduct any business, other than that permitted by the licence, without the permission of the Regulatory Authority.

(3) A person operating a securities infrastructure business shall include in its assessment of a risk associated with the operation of the business, any factors that may —

- (a) inhibit the fair, transparent, orderly and efficient functioning of the markets;
- (b) adversely affect the interests of market users; or
- (c) arise from conflicts of interest, and shall implement measures and procedures designed to mitigate the risk.

(4) Without derogating from the generality of subregulation (3), the measures and procedures that the person may use to mitigate the risk associated with the operation of a securities infrastructure business shall include —

- (a) a surveillance programme with respect to a participant's or issuer's compliance with the rules of the business, including any rules imposed by such business where the business is declared a self-regulatory organisation, and shall include —
 - (i) a risk assessment of each participant subject to such rules, which shall be submitted to the Regulatory Authority,
 - (ii) a requirement from a member or participant to make a financial report, operations report and any other report to the person operating the securities infrastructure business, which reports shall, where possible, be in accordance with the requirements of the Regulatory Authority,
 - (iii) an on-site inspection programme based on a risk assessment, accompanied by the appropriate report and action plan, which shall be disclosed to the Regulatory Authority as the Regulatory Authority may require,
 - (iv) a facility to initiate an investigation where there is suspicion of a breach of the rules by the participant or issuer,
 - (v) the procedure to be followed for imposing sanctions, where appropriate, subject to section 32 of the Act, and
 - (vi) an annual review of compliance with its rules; and
- (b) a formal agreement with any other person who operates a securities infrastructure business, in order to provide for the appropriate co-operation.

(5) Where a person operating a securities infrastructure business creates a structure that, in the opinion of the Regulatory Authority, creates a risk to such business, the Regulatory Authority may require the person to take measures to mitigate that risk.

(6) A person operating a securities infrastructure business shall ensure that, where its facilities provide for the safeguarding and administration of assets which belong to the market participants —

- (a) satisfactory arrangements are made for that purpose;
- (b) clear terms of an agreement exist between the market participants and the securities infrastructure business; and
- (c) the assets of the participants are clearly separated from those of the securities infrastructure business.

(7) A person who operates a securities infrastructure business shall ensure that the —

- (a) rules of the business are accessible to the public; and
- (b) fees set by the business are published in a local newspaper.

(8) Where a person operating a securities infrastructure business permits access to its facilities by a participant of another country, that person shall —

- (a) require the participant to be licensed or approved by the Regulatory Authority by concluding a memorandum of understanding with the regulatory authority of such participant, who is responsible for the regulation of the activity the participant proposes to conduct with the business;

- (b) commission, or where it is available, consult an updated analysis of any material differences between the legislation on market abuse to which the participant is subject in its country and that which applies in Botswana, and where necessary, refuse to accept a participant from a country that do not have adequate legislation that prohibits market abuse;
 - (c) require the participant to arrange for a bank based in Botswana, subject to supervision by the Bank of Botswana, to guarantee any financial obligations of the participant;
 - (d) restrict membership or participation in the business to an entity in another country that is licensed by the regulatory authority of that country to conduct the business it proposes to conduct with the securities infrastructure business; and
 - (e) conclude an agreement with the regulatory authority of the participant that –
 - (i) gives such person operating the securities infrastructure business the right to make on-site inspections of such participant, and
 - (ii) includes the responsibility to inspect, investigate and impose sanctions in order to monitor and enforce the applicable rules.
- 19. (1)** A person who operates a securities infrastructure business shall ensure that the business has clear and fair rules that –
- (a) are consistent with such a business;
 - (b) encompass any regulatory responsibility that the business has as a self-regulatory organisation;
 - (c) operate as a contract between any member or participant and such business;
 - (d) permit the business, where it is a self-regulatory organisation, to issue directives within the framework of these Regulations where such directives are necessary to meet the obligations of such business;
 - (e) are legally enforceable; and
 - (f) are published and made available to the public.
- (2) Where the rules are binding on, or intended to guide a member or participant, a person operating a securities infrastructure business shall adopt a procedure for consulting any market user when adopting rules for trading, clearing, settlement or any other matter.
- (3) A person who operates a securities infrastructure business shall, with the approval of the Regulatory Authority in writing –
- (a) make rules for the business; and
 - (b) amend or vary any rule of the business.
- (4) The Regulatory Authority may –
- (a) determine the scope of the rules; and
 - (b) direct the person operating the securities infrastructure business to make such changes to its rules as the Regulatory Authority may specify.
- (5) The rules made in accordance with subregulation (3) (a) shall include rules for a member or participant that shall –
- (a) allow access to the business by any licensed intermediary that has the skills, financial resources and operational capacity to conduct business with the securities infrastructure business without prejudicing the stability of the technology used by such business;

- (b) allow any new member or participant to be granted access on a fair and equitable basis, and to refuse access by the new member or participant who fails to meet the set criteria;
 - (c) treat the member or participant and any potential member or participant fairly and consistently;
 - (d) provide for the management of any conflict of interest;
 - (e) provide for fees to be paid by the member or participant;
 - (f) provide for inspections and investigations of the member or participant and the imposition of sanctions for any breach of the rules;
 - (g) provide for powers for the person operating the securities infrastructure business to exercise its role as a self-regulatory organisation, where the business is registered as such, to monitor the conduct of the member or participant through mandatory reporting, on-site inspection and any other means;
 - (h) require a member or participant to adhere to the rules and directives of the securities infrastructure business and any decision that may be made in accordance with the rules; and
 - (i) include the objectives and procedures for the suspension and removal of a member or participant that no longer meets the criteria, from the membership or participation in the business, and such objectives and procedures shall include the —
 - (i) manner of communication of reasons for the suspension or removal of the member or participant, and
 - (ii) procedures for the review of the business' decision as provided under section 32 of the Act, where the member or participant is aggrieved by such decision.
- (6) A person who operates a securities infrastructure business shall —
- (a) treat an applicant, for membership and participation in a securities infrastructure business under the Botswana Stock Exchange Member Rules approved by the Authority, fairly and consistently;
 - (b) provide an opportunity for representations if the applicant for membership or participation in the securities infrastructure business does not meet the criteria for such membership or participation set out in the Botswana Stock Exchange Member Rules approved by the Authority;
 - (c) allow the applicant, for membership or participation in the securities infrastructure business under the Botswana Stock Exchange Member Rules approved by the Regulatory Authority, to have the decision of the business reviewed by the Regulatory Authority if such applicant is not satisfied with such decision; and
 - (d) implement an appropriate mechanism for resolving disputes between a member or participant and any person who may wish to use the services of the business.
- (7) Where a person who operates a securities infrastructure business wishes to vary or amend the rules in terms of subregulation (3) (b), such person shall consult any person affected by such variation or amendment.
- (8) A person who operates a securities infrastructure business may make provision for any of its rules to be waived where necessary and such waiver shall be —
- (a) determined by that person;
 - (b) approved by the Regulatory Authority; and

- (c) published in a local newspaper, along with any criteria that has to be met by any person affected.
- (9) The Regulatory Authority shall, after consultation with the person who operates the securities infrastructure business, override a decision of that person where it considers it right to do so:

Provided that the Regulatory Authority –

- (a) publishes its decision in a local newspaper; and
- (b) gives its reasons for so doing.

Complaints

20. (1) A person who operates a securities infrastructure business shall ensure that the business has a procedure to be used by any member or participant where such member or participant has a complaint.

- (2) The procedure referred to under subregulation (1) shall include the –
 - (a) allocation of the responsibility to handle a complaint to a person who does not have an interest in the complaint;
 - (b) period within which a complaint shall be dealt with;
 - (c) period within which a complainant shall be informed of the progress made on the complaint, and such period shall not be more than three months; and
 - (d) manner of review of any decision regarding a complaint in accordance with section 32 of the Act.
- (3) Where a complaint is with regards to a member or participant of the securities infrastructure business, the person who operates the business shall inform the member or participant concerned and shall –
 - (a) determine whether it concerns a matter of conduct within the responsibility of that person or of the Regulatory Authority;
 - (b) where the complaint is within the Regulatory Authority's responsibility, refer the complaint to the Regulatory Authority and inform the complainant; and
 - (c) where it is within the responsibility of that person, maintain oversight of the complaint until it is resolved.
- (4) In the case where the complaint is with regards to the securities infrastructure business, the person operating the business shall –
 - (a) deal with such complaint in a fair and timely manner; and
 - (b) inform the complainant of the outcome.
- (5) Depending on the nature of the complaint, the person operating a securities infrastructure business shall –
 - (a) provide the appropriate restitution, where the complaint is justified;
 - (b) address any weaknesses in the internal system of the business that may have led to the complaint; and
 - (c) record any decision that is made regarding the complaint.
- (6) Where the person who operates a securities infrastructure business has failed to resolve a complaint within a given period, that person shall inform the Regulatory Authority.
- (7) A person who operates a securities infrastructure business shall keep and maintain a proper record of complaints and that person shall enter in the record, the –
 - (a) the particulars of the person from whom the complaint was received;
 - (b) the nature of the complaint;

- (c) the particulars of the person dealing with the complaint;
- (d) the particulars of the person being complained or who is responsible for the action that led to the complaint;
- (e) information on whether the complaint was resolved or not;
- (f) the manner in which the complaint was resolved; and
- (g) the time it took to resolve the complaint.

(8) Notwithstanding subregulation (7), a person who operates a securities infrastructure business shall maintain a register containing a summary of all complaints received.

21. (1) A person who operates a securities infrastructure business shall —

- (a) co-operate with the Regulatory Authority and give the Regulatory Authority such assistance as the Regulatory Authority may require for the performance of its functions; and
- (b) submit to the Regulatory Authority, reports and notifications as specified in Schedule 4.

Relations with
Regulatory
Authority

(2) The Regulatory Authority may, after consultation with the person who operates a securities infrastructure business, direct such person to do, or refrain from doing, anything that the Regulatory Authority has reason to believe that if done, or omitted to be done, is necessary in the interest of any investor or the capital market.

(3) A person who operates a securities infrastructure business who fails to comply with the directions of the Regulatory Authority issued in accordance with subregulation (2) commits an offence.

(4) The Regulatory Authority may require the person who operates securities infrastructure business or any other person specified by the Regulatory Authority to appoint a qualified person to undertake a study into a matter related to the performance of the business and its regulatory obligations.

(5) A person under subregulation (4) shall, after the completion of his or her study, compile a report and submit a copy of the report to the Regulatory Authority.

22. (1) A person who operates a securities infrastructure business, whether the business is part of any financial group or not, shall identify any conflict of interest that —

Conflict of
interest

- (a) is likely to occur in the course of such business; or
- (b) may arise as a result of its membership of the financial group, and adopt appropriate measures designed to minimise such conflict.

(2) A person who operates a securities infrastructure business shall adopt procedures to ensure that such person, a key person, a controller or an employee shall not —

- (a) take advantage of the status of the business in order to make any material gain for the benefit of that person, the key person, the controller or the employee; and
- (b) receive any gift or benefit that may alter the decisions of such person, key person, controller or employee, or alter the operation of the business, in a way that would not have occurred if the gift had not been offered.

(3) A person who operates a securities infrastructure business that issues transferable securities which are traded using facilities operated by the operator of the securities infrastructure business shall abide by the Regulatory Authority's determination of the appropriate procedures for avoiding conflicts of interest.

Confidentiality

(4) A person who contravenes the provisions of this regulation commits an offence and is liable to a fine not exceeding P30 000 or to a term of imprisonment not exceeding two years, or to both.

23. (1) A person who operates a securities infrastructure business, its key person, controller or employee shall observe and preserve the confidentiality of any information regarding the market users and such confidentiality shall subsist even after the winding up of the business.

(2) A person who operates a securities infrastructure business, its key person, controller or employee to whom confidential information is revealed shall not disclose that information to any other person unless —

- (a) such disclosure is made with the consent of a market user of the business;
- (b) such information is already in the public domain;
- (c) such disclosure is made in proceedings under the Act;
- (d) required to do so in terms of any written law or for purposes of an judicial proceedings; or
- (e) such disclosure is made to the Regulatory Authority, or to the regulator, authority of another country.

(3) A person who operates a securities infrastructure business shall, subject to the approval of the Regulatory Authority and in the interests of the relevant market in Botswana or elsewhere, or in the interests of an investor in Botswana or elsewhere, establish rules and procedures to be followed when disclosing information to —

- (a) any other securities infrastructure business in Botswana;
- (b) a securities infrastructure business in another country; and
- (c) a regulatory authority in another country.

(4) A person who contravenes the provisions of this regulation commits an offence and is liable to a fine not exceeding P30 000 or to a term of imprisonment not exceeding two years, or to both.

Part IV – General provisions relating to persons operating securities exchange

**Establishment
of proper
markets by
securities
exchange**

24. (1) A person who operates a securities exchange shall establish and operate a proper market that —

- (a) is conducive to the economic good;
- (b) is fair and transparent;
- (c) is efficient in securing price discovery, allocating capital and transferring risks; and
- (d) does not cause or promote instability in the markets.

(2) Without derogating from the generality of regulation 19, a person who operates a securities exchange shall mitigate any risk associated with the operation of the exchange by ensuring that —

(a) such exchange has surveillance technology that permits the person who operates the exchange to —

- (i) monitor the market in real time,
- (ii) monitor compliance with any trading rule, and
- (iii) detect trading patterns that might indicate market misconduct, financial crime or money laundering;

(b) there is effective use of technology to monitor and analyse trading activities;

(c) such person has ability to suspend or halt trading where appropriate or when required to do so by the Regulatory Authority; and

(d) there are other mechanisms for dealing with disorderly trading conditions.
(3) A person who operates a security exchange shall publish such information to the market as may be necessary to ensure transparency and fair treatment of any investor.

(4) The information referred to in subregulation (3) shall be provided on an equitable basis to every market participant and shall include —

- (a) the securities exchange rules;
- (b) the securities exchange order routing and any other procedure;
- (c) any transaction completed in the trading of the securities exchange; and
- (d) any other trading information.

(5) A person who operates a securities exchange shall, where such person —

- (a) takes responsibility for clearing and settlement, be bound by the any law or rule that applies to a settlement operator, including the reporting requirements specified in Schedule 4; or
- (b) does not take responsibility for clearing and settlement, enter into an agreement with a settlement operator that is permitted under these Regulations.

25. (1) A person who operates a securities exchange that offers trading facilities for transferable securities shall have listing rules that —

Rules of
securities
exchange

- (a) give such person the power to determine whether or not to accept traded securities for listing, having regard to any relevant factor, including the —
 - (i) issuer of the securities,
 - (ii) form and design of the securities instrument, and
 - (iii) nature of the public offering;
- (b) describe procedures for the admission of transferable securities to the exchange;
- (c) set minimum disclosure and other relevant requirements for public offers of transferable securities that will be listed, which may vary according to the nature of the security;
- (d) where necessary, set minimum reporting and other requirements for issuers, which may vary according to the nature of the security;
- (e) make provision for such person to —
 - (i) monitor conduct of the issuers through mandatory reporting, and other ways,
 - (ii) appoint investigators to conduct investigations into alleged breaches of the exchange rules,
 - (iii) impose a sanction, if justified, subject to a review of that person's decision in accordance with section 32 of the Act, and
 - (iv) suspend transferable securities from trading, with the necessary protection of any investor that may be affected by the suspension;
- (f) make provision for such person to require the removal of a security from the list, with the necessary protection of any investor that may be affected by the removal by consulting the investor and maintaining an orderly market; and
- (g) make provision for the review by the Regulatory Authority, if an issuer or potential issuer is aggrieved by a decision of such person to refuse to list a transferable security or to suspend or insist on withdrawal of that security.

(2) A person who operates a securities exchange that trades listed derivatives shall have rules that —

- (a) state the forms of listed derivatives that may be traded on the exchange;
 - (b) state the obligations of the holders of such securities; and
 - (c) provide for the launching and withdrawal of listed derivatives from the exchange.
- (3) A person who operates a securities exchange that trades listed derivatives shall enter into an exchange contract with the holder of the listed derivatives that is consistent with international standards and shall ensure that the —
- (a) contract meets the risk management needs of potential users;
 - (b) contract promotes price discovery of the underlying securities;
 - (c) terms and conditions of the contract shall reflect the operation of any relevant underlying cash market that does not hinder delivery;
 - (d) views of potential users of the contract are involved in the drafting of such contract; and
 - (e) information concerning the terms and conditions of the contract, delivery and pricing is readily available to the Regulatory Authority, any other relevant regulatory body and the market users.
- (4) A person who operates a securities exchange shall have trading rules that provide for the —
- (a) conditions under which securities shall be traded;
 - (b) availability of bids and offers, the price of the bids and offers and the volume of securities being bid and offered to all market users;
 - (c) matching and execution of bids and offers according to fair priority rules;
 - (d) availability of any post trade information, such as the prices and volumes of any completed transaction, to the market in a timely manner;
 - (e) procedure to be used for dealing with any disruption to the market, suspension of trading or any other matter that may inhibit the orderly functioning of such market; and
 - (f) procedures to prohibit any —
 - (i) abusive trading, including insider trading and market manipulation,
 - (ii) false trading activity,
 - (iii) cross trade executed for improper purposes,
 - (iv) trade intended to assist or conceal any potentially identifiable trading abuse, and
 - (v) trade in which one of the parties to the trade does not intend to close or settle.
- (5) A person who operates a securities exchange shall have disciplinary rules for any member or participant who does not fulfil its obligations under these Regulations.

Part V – General provisions relating to settlement operators

Conduct of
settlement
operator
Cap. 46:06

26. (1) A settlement operator shall obtain a Certificate of Recognition from the Bank of Botswana to operate a clearance and settlement system in accordance with the National Clearance and Settlement Systems Act.

(2) A settlement operator shall ensure that there are procedures for securing the timely discharge of the rights and liabilities of the parties to any transaction conducted on or through its facilities.

(3) The procedures referred to in subregulation (2) shall include —

- (a) an arrangement for matching trades in a timely manner, verifying the trades and ensuring that a party to the trades agrees with the trade details and their obligations;
 - (b) in the case of transferable securities, a legally binding arrangement for transferring title to securities;
 - (c) an arrangement for making payments for securities purchased that are secure and, by the end of a settlement period, final; and
 - (d) an arrangement that —
 - (i) ensures that a participant meets its obligations when trading, and
 - (ii) provides that no settlement of any securities purchased or sold by a participant shall be achieved unless every obligation of that participant is met.
- (4) Where the clearance and settlement system encompasses a central securities depository, the settlement operator shall ensure that —
- (a) there is a legally binding arrangement for the transfer of title to the securities;
 - (b) any payment for transferable securities is made simultaneously with the transfer of title of the transferable security;
 - (c) the central securities depository has sufficient detail of a beneficial owner of dematerialised securities and the intermediaries through which they operate;
 - (d) the central securities depository has an arrangement that ensures that a shareholder has a right to dividends, to vote and any other applicable right;
 - (e) the central securities depository provides a facility for a shareholder to choose in order to change if the shareholder wishes to do so, the intermediary through which they operate; and
 - (f) the central securities depository has a facility that is used to alert a shareholder to trades conducted in the securities they own.
- (5) Where a clearance and settlement system is designed for a market in listed derivatives, the settlement operator shall ensure that —
- (a) for cash settled securities, payment and collection are done simultaneously;
 - (b) for securities that are settled through physical delivery, payment and delivery are done simultaneously; and
 - (c) the settlement and delivery procedures reflect any relevant underlying cash market and promote price convergence.
- (6) The settlement operator shall have a payment system which shall be —
- (a) approved by the Bank of Botswana;
 - (b) used by any bank licensed by the Bank of Botswana; or
 - (c) licensed under the National Clearance and Settlement Systems Act.
- (7) A settlement operator shall disclose to a participant, its procedures and the basis for calculating the obligations of the participant.
- (8) A settlement operator shall ensure that there is an effective mechanism for the monitoring of any open market position in order to identify any potential risk when securing a settlement.
- (9) A settlement operator shall have risk management procedures that shall ensure a safe and secure settlement and these shall include —
- (a) measures for identifying any exposure which may heighten the monitoring of any open market position or credit exposure;

- (b) mechanisms to make available, to the settlement operator, information on beneficial ownership of an open market position held by a market participant; and
 - (c) measures for dealing with market users who fail to make information available on any open market position.
- (10) A settlement operator shall ensure that funds received from a participant are invested in the appropriate liquid instruments so that they are immediately available to the participant with minimal adverse price effect.
- (11) In the case of a settlement operator who operates a central counterparty, such operator shall have procedures for the novation of a contract to which it becomes a party, and for the assumption and discharging of the obligations of the contract.
- (12) A settlement operator who operates a central counterparty shall have an arrangement to enable such operator to ensure that a participant that has a contract with the counterparty has risk management procedures and financial resources sufficient to enable them to meet their obligations.
- (13) A settlement operator who operates a central counterparty shall –
- (a) monitor any of its exposure to its counterparties;
 - (b) develop mechanisms for extreme but plausible market conditions and calculate its exposure in the event of default by the largest two clearing participants; and
 - (c) have regard to the calculation referred to in paragraph (b) when assessing the appropriate level of financial resources it should hold.
27. (1) A settlement operator shall have rules for participation in the market, that –
- (a) distinguish between a clearing participant that –
 - (i) clears a transaction for that participant only, and
 - (ii) clears a transaction for any other participant; and
 - (b) impose financial resource and operational capacity requirements on any clearing participant.
- (2) A settlement operator shall have rules for the operation of the clearance and settlement system in order to ensure that –
- (a) a clearing participant that clears a transaction for a third party has procedures for segregating the funds, assets and positions of one client from another, and from its own funds, assets or positions;
 - (b) the settlement operator or any other operator has the capacity to impose appropriate risk management procedures on any participant;
 - (c) the settlement operator has the capacity to impose some or all of the following requirements, with the approval of the Regulatory Authority –
 - (i) the payment of margin calls,
 - (ii) the posting of collateral,
 - (iii) limits on the positions taken by participants for themselves or on behalf of clients, and
 - (iv) contributions to a settlement guarantee fund;
 - (d) the settlement operator or any other operator has the capacity to take appropriate action to reduce the risk of default by requiring a participant to, in a timely manner –
 - (i) reduce any exposure,
 - (ii) increase payment of margin calls,
 - (iii) deposit additional collateral,

- (iv) co-operate in the transfer of assets or positions of any client to another participant, or
- (v) take any other necessary action; and
- (e) the settlement operator has the capacity to deal with any failure of the settlement and clearance system.
- (3) The rules governing the action to be taken in accordance with subregulation (2) (d) shall clarify the –
 - (a) circumstances in which the action shall be taken;
 - (b) person who shall take the action; and
 - (c) nature of the action that shall be taken.
- (4) Where a settlement operator permits access to its market by a participant of another country, that operator shall address the risks that such permission may create, including requiring the participant to arrange for a bank in Botswana, subject to the supervision by the Bank of Botswana, to guarantee any financial obligations of such participant.

Part VI – Offences and penalties

28. A person who, without reasonable cause, fails to comply with the provisions of these Regulations commits an offence and on conviction is liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding 5 years or to both, and in the case of a continuing offence, to a fine of P350 for every day during which such offence continues, but such fine shall not exceed P200 000.

Offences
and
penalties

SCHEDULES

Schedule 1

Form 1

(regs. 4 (2) and 12(1))

APPLICATION FOR A PERSON TO BECOME AN OPERATOR OF A SECURITIES INFRASTRUCTURE BUSINESS/APPLICATION FOR RENEWAL TO OPERATE A SECURITIES INFRASTRUCTURE BUSINESS

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied.

- (1) **Name of applicant** (Please give the name of the applicant)
 - a. **Name and capacity of the person submitting this form** (Please note that this form must be submitted by the chief executive or another executive director)
 - b. **Current registered office address** (Please give the full physical address. A postal address is not acceptable)
 - c. **Other addresses used by the applicant** (Please give the head office address, if different from the registered office, and any other addresses used by the applicant)
 - d. **What is the Securities Infrastructure Business the applicant wishes to operate?** (please state whether it is an exchange, central securities depository, other clearance and settlement body – and, if so, whether it encompasses a central counterparty, or any combination of these)
 - e. **Does the applicant seek a declaration that the securities infrastructure business should be a Self-Regulatory Organisation?** (if yes, please give an overview of the regulatory responsibilities to be taken on by the Self-Regulatory Organisation)

(2) Previous regulatory history (Please give details of any regulatory authority that has exercised financial services supervisory authority over the applicant in the past 7 years)

(3) Name and address of the key persons or controllers

(4) Name of the positions the key persons are to take up

(5) Declaration (Please answer "Yes" or "No" to each of the following questions. If the answer is "Yes", please give full details on a separate sheet of paper.)

a. Is the applicant, for any reason, precluded in any way from carrying on (fully or partially) the business which the applicant proposes to conduct?

YES/NO

b. Has the applicant ever been convicted of any offence in any jurisdiction?

YES/NO

c. Has the applicant ever been the subject of any disciplinary, legal, other investigations or other comparable proceedings, by any law enforcement, regulatory, or professional body in any jurisdiction, whether or not there were any sanctions or other findings as a result?

YES/NO

d. Has the applicant, ever been subject, in any jurisdiction to liquidation, insolvency proceedings, or compulsory winding up, as the case may be, or made other agreements or arrangements with creditors?

YES/NO

e. Has the applicant ever been refused a licence or equivalent authorisation to carry on a business activity in any jurisdiction?

YES/NO

f. Have any of the key persons or controllers ever been convicted of any offence by any court in any jurisdiction? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

g. Have any of the key persons or controllers ever been subject to investigations, disciplinary proceedings, or termination by an employer in any jurisdiction, or resigned from a position in any jurisdiction in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

h. Is the applicant engaged in any litigation in any jurisdiction?

YES/NO

i. Are you aware of any other matter that may be material to an assessment, by the Regulatory Authority of the balance of skills available to, the integrity of or the financial soundness of the applicant?

YES/NO

j. Have you supplied all the information specified in Schedule 2 of the Licensing Regulations?

YES/NO

(6) Certification

I certify that the above information and all information supplied with this application is complete and correct of the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the applicant ceases to conduct licensed activity.

I authorise the Regulatory Authority to contact any person named herein to verify the contents of this form. In so doing, the Regulatory Authority may refer to the application.

Name

Position

Signature..... Date.....

Form 2
(regs. 6 (2), 7 (2) and 12 (1))

**APPLICATION FOR A KEY PERSON OR CONTROLLER/APPLICATION
FOR RENEWAL OF KEY PERSON OR CONTROLLER**

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied. The term "controller" includes a partner. A partner or controller may also be a key person.

- (1) Name of applicant** (Please give the name of the securities infrastructure business)
 - a. Name and capacity of the person submitting this form** (Please note that this form must be submitted by the chief executive or another executive director)
 - b. Current registered office address** (Please give the full physical address. A postal address is not acceptable)
 - c. Name and address of the key person or controller**
 - d. Position the key person is to take up** (controllers who are not also key persons may state that this question is not applicable)
 - e. Explanation how the skills and experience relate to the position** (controllers who are not also key persons may state that this question is not applicable)

- f. **Assessment of how the new appointment will affect the balance of skills available to the securities infrastructure business** (controllers who are not also key persons may state that this question is not applicable)

(2) **Declaration** (Please answer “Yes” or “No” to each of the following questions. If the answer is “Yes”, please give full details on a separate sheet of paper.)

- a. Has the key person or controller ever been convicted of any offence by any court in any jurisdiction? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

- b. Has the key person or controller ever been subject to investigations, disciplinary proceedings, or termination by an employer in any jurisdiction, or resigned from a position in any jurisdiction in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

- c. Are you aware of any other matter that may be material to an assessment, by the Regulatory Authority of the balance of skills available to, the integrity of or the financial soundness of the applicant?

YES/NO

(3) Certification

I certify that the above information is complete and correct of the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the securities infrastructure business ceases to operate.

I authorise the Regulatory Authority to contact any person named herein to verify the contents of this form. In so doing, the Regulatory Authority may refer to the application.

Name
Capacity

Signature..... Date.....

Schedule 2
(reg. 4(6)(a))

INFORMATION TO BE SUPPLIED WITH AN APPLICATION FOR A LICENCE

1. The additional information to be supplied by an applicant for a licence to operate a securities infrastructure business shall be as follows —

- a. except for a newly formed securities infrastructure business, an applicant shall supply a copy, certified by the director or partner, as the case may be, of the last balance sheet and of the last profit and loss account, if any, of the business, incorporating the results of its last financial year, which have respectively been audited by a qualified auditor, including any document required by law to be attached, and a certified copy of the report of the auditor thereon;
- b. except for a newly formed securities infrastructure business, if the accounts referred to in paragraph (a) are for a period that ends more than six months before the date of application, the applicant, shall supply a copy, certified by a director or partner, as the case may be, of unaudited accounts for a period ending not earlier than six months prior to the date of the application;
- c. a business plan containing the names and addresses of the key persons and controllers, and the shareholding structure which shall disclose —
 - i. the shareholders which shall be participants in the securities infrastructure business,
 - ii. whether any of the shareholders will have an executive role to oversee the day to day operations of the business, and
 - iii. the incorporation of the controllers and the financial group structure;
- d. the financial projections for three years preceding the application for a licence, together with the key assumptions on which the business plan is based;
- e. one bank reference from the applicant's bank, or, if the applicant is yet to establish a bank account, the applicant should supply a bank reference for at least two of the directors;
- f. two business references relating to the applicant or, if the applicant is yet to commence the securities infrastructure business, references relating to at least two of the directors;
- g. the proposed premises suitably located and equipped or evidence acceptable to the Regulatory Authority that such premises will be available;
- i. the proposed independent auditor of the securities infrastructure business.
- j. an overview of its proposed corporate governance arrangement, which shall include —
 - i. the documents of incorporation,
 - ii. the particulars of the Board and Board Committees, if any, of the securities infrastructure,
 - iii. the details of any procedures, codes or protocols for the operation of the Board that the Board may have adopted at the time of the application for a licence and an overview of the procedures, codes and protocols that the applicant intends that the Board shall adopt by the time the securities infrastructure business commences its operation,
 - iv. the details of the management and organisation structure, providing an organisation chart with brief descriptions of the powers and duties of the posts on the organisation chart,
 - v. the applicant's assessment of risk associated with the operation of a securities infrastructure business and procedures to mitigate the risk,

- vi. the applicant's proposed internal controls that will be used to mitigate the risk associated with the operation of a securities infrastructure business,
 - vii. a copy of a manual on procedures designed to implement the internal controls referred to in paragraph (vi),
 - viii. a summary of the proposed contents of the manual referred to in paragraph (vii), and
 - ix. an undertaking that the manual referred to in paragraph (vii) will be completed by the time the applicant commences the operation of a securities infrastructure business;
- k. the applicant's proposals for monitoring compliance with the rules of the securities infrastructure business or the SRO, which shall be consistent with regulation 20 and shall include an off-site review of the returns submitted by the participants of the market;
 - l. a copy of the applicant's code of conduct for employees, which shall be consistent with these Regulations;
 - m. where the applicant seeks to use a third party to provide any service in the operation of a securities infrastructure business for which it will be responsible, the applicant shall provide the particulars of the third party and a copy of the contract with such third party and, where necessary, the service level agreement;
 - n. a copy of the criteria for participation in the securities infrastructure business;
 - o. a copy of the rules to which the participants of the securities infrastructure business shall be subject to and the procedures for making amendments to those rules;
 - p. a list of proposed participants; and
 - q. an enclosed application.
2. The additional information required from an applicant who seeks to operate a securities exchange shall be as follows —
- a. a list of transferable securities and listed derivatives and other instruments it proposes to list on the exchange;
 - b. details of the operating procedures, controls and trading system of the exchange and an explanation as to how this will enable the exchange to satisfy the requirement that a market be established in accordance with regulation 24 and the maintenance of the integrity of the market; and
 - c. details of the clearing and settlement system the applicant proposes to use which shall meet the requirements of Part V.
3. The additional information required from an applicant who seeks to be a settlement operator shall be as follows —
- a. where the applicant does not have a Certificate of Recognition in accordance with regulation 26, such applicant shall submit a copy of its application for the Certificate;
 - b. details of the applicant's operating procedures, controls and clearance and settlement system which shall meet the requirements of regulation 26; and
 - c. a copy of a legal opinion stating that its arrangements for transferring title to securities are legally valid.
4. The additional information required from an applicant who seeks to be a settlement operator that encompasses a central counterparty shall be as follows —
- a. a copy of the applicant's operating procedures, controls and systems which shall meet the requirements of regulation 26 (10), (11), (12) and (13); and
 - b. a copy of its assessment of its exposure in the event of its scenario testing and the financial resources it considers necessary in the light of that calculation.

Schedule 3
(regs. 4 (6) (b), 6 (3) and 7 (3))

QUESTIONNAIRE

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied.

(1) Name of Respondent (Please give the name of the person completing the questionnaire)

a. Name of applicant (Please give the name of the securities infrastructure business or applicant)

b. Proposed capacity in which the respondent is completing this questionnaire
(eg, key person or controller)

c. Current private address (Please give the full physical address. A postal address is not acceptable)

d. Date and place of birth (Please give the city and country)

e. Passport/Identity Card number (Please delete as appropriate)

f. Nationality

- (2) Current membership of professional bodies and year of admission.** (Please give name and address of the body, the nature of the membership and, the date of admission)

- (3) Present occupation or employment** (Please give the name and address of the employer, the nature of the employer's business, the position held and the date of appointment to the position)

- (4) All other positions** (Please state all other occupations or positions that will continue to be held concurrently with the appointment as key person or controller of the securities infrastructure business. Please state, in each case, the name, address and business of the entity with which the position is held, the nature of the position and the date of appointment)

- (5) Full curriculum vitae,** (Please attach a full CV, which gives the details requested at question 9 for each post or occupation and identify the posts or other occupations that were in the financial services sector and which are regarded as relevant experience for the proposed appointment)

- (6) Relevant qualifications or skills** (Please give, for qualifications, the name and address of the awarding body, the nature of the qualification and the date of the award)

(7) Bank details (Please provide the name and address of your main bank and state how long you have been a customer of that bank.)

(8) Previous regulatory history (Please give details of any regulatory authority that has exercised financial services supervisory authority over you or an entity with which you have been associated in the past seven years)

(9) Declaration (Please answer “Yes” or “No” to each of the following questions. If the answer is “Yes”, please give full details on a separate sheet of paper.)

a. Are you, through any previous or current occupation, employment, or otherwise, precluded in any way from carrying on (fully or partially) the services which the company (identified in paragraph (1) above) offers?

YES/NO

b. Have you at any time been convicted of any offence by any court in any jurisdiction?

YES/NO

c. Have you or any entity with which you are or have been associated ever been the subject of any disciplinary, legal, other investigations or other comparable proceedings, by any law enforcement, regulatory, or professional body in any jurisdiction, whether or not there were any sanctions or other findings as a result?

YES/NO

d. Have you or any entity with which you are or have been associated ever been refused a licence or equivalent authorisation to carry on a business activity in any jurisdiction?

YES/NO

e. Have you ever been subject to investigations, disciplinary proceedings, or termination by an employer in any jurisdiction, or have you ever resigned from a position in any jurisdiction in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal?

YES/NO

f. Have you or any entity with which you have been associated, ever been subject in any jurisdiction to bankruptcy, liquidation, insolvency proceedings, or compulsory winding up, as the case may be, or made other agreements or arrangements with creditors?

YES/NO

g. Are you engaged in any personal litigation with respect to the management of any business entity in any jurisdiction?

YES/NO

h. Are you aware of any other matter that may be material to an assessment, by the Regulatory Authority of your competence, integrity or financial standing?

YES/NO

(10) Certification

I certify that the above information is complete and correct of the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as I am no longer connected to the applicant entity.

I authorise the Regulatory Authority to contact any person named herein to counter-verify the contents of this form. In so doing, the Regulatory Authority may refer to the application

Name of Respondent

Signature..... Date.....

Schedule 4
(regs. 21 (1) (b) and 24 (5)(a))

REPORTING REQUIREMENTS

1. Annual reporting by all securities infrastructure businesses

- a.* A person operating a securities infrastructure business shall inform the Regulatory Authority of the financial year that it adopts for its annual accounts and shall only change that financial year with the approval of the Regulatory Authority.
- b.* A person operating a securities infrastructure business shall provide the Regulatory Authority, annually, with an updated list of its key persons or controllers, its address, and a list of its participants.
- c.* A person operating a securities infrastructure business shall provide the Regulatory Authority with an updated list of employees and their qualifications and experience in the case where they are occupying positions where such qualifications or experience are specified.
- d.* A person operating a securities infrastructure business shall provide the Regulatory Authority with a report on the key decisions the governing body of the business has made in accordance with the Non-Bank Financial Institutions (Corporate Governance) Rules.
- e.* A person operating a securities infrastructure business shall provide the Regulatory Authority with details of applications for participation received during the financial year, showing the outcome of each application and the reasons for any decision taken by the business.
- f.* A person operating a securities infrastructure business shall provide the Regulatory Authority with a consolidated report, providing an overview of the quarterly reports on —
 - i.* the performance of the business,
 - ii.* complaints, and
 - iii.* compliance by participants with their obligations.
- g.* A person operating a securities infrastructure business shall submit a report on the outcomes of the governing body of the business' evaluations, as required by the Non-Bank Financial Institutions (Corporate Governance) Rules, of its —
 - i.* risk assessment,
 - ii.* review of internal controls,
 - iii.* review of the performance of any third party suppliers,
 - iv.* review of its compliance with regulatory obligations, and
 - v.* review of its business plan.

2. Quarterly reporting by all securities infrastructure businesses

A person operating a securities infrastructure business shall, no later than one month after the end of each quarter of its financial year, submit to the Regulatory Authority —

- i.* the number of complaints received by the securities infrastructure business about itself or its participants during the specified period and the number that have been outstanding for more than three months,
- ii.* an overview of the compliance by participants with the rules of the securities infrastructure business, including, the number of on-site inspections, the number of investigations, and the number and nature of any sanctions imposed by the person operating the securities infrastructure business,

- iii. any changes to the information given by the person operating the securities infrastructure business in respect of its name, address, key personnel, nature of business, and
- iv. any material change in other information that would reasonably be regarded as relevant to a determination of the continuing fitness and properness of the person operating the securities infrastructure business.

3. Advance notification by all securities infrastructure businesses

- a. A person operating a securities infrastructure business shall provide the Regulatory Authority with four weeks advance written notification of the following matters —
 - i. any change in the name or address,
 - ii. any changes to its rules,
 - iii. any new appointments of the key persons or new controllers,
 - iv. any change to the external auditor,
 - v. any decision to seek a licence from another regulatory authority in Botswana or abroad,
 - vi. a substantial change to its capital structure,
 - vii. any change to its premises and any new premises it may acquire,
 - viii. any other material change in the information supplied in its application, or
 - ix. a decision to seek termination or revocation of its licence.
- b. The advance notification shall be accompanied by an application for permission to make the change if required by these Regulations.
- c. If a person operating a securities infrastructure business becomes aware that the person has failed to give advance notification in respect of any matter specified in these Regulations, the person shall give immediate notice of the matter to the Regulatory Authority, together with an explanation of the circumstances that resulted in a failure to provide the prescribed advance notice.

4. Immediate notification by all securities infrastructure businesses

- a. A person operating a securities infrastructure business shall inform the Regulatory Authority immediately should any of the following events occur —
 - i. any event which could reasonably be expected to affect the Regulatory Authority's assessment of the on-going fitness and properness of the person, its controllers, or key personnel,
 - ii. any serious failure of the systems of the securities infrastructure business,
 - iii. any event that may interfere with the ability of the securities infrastructure business to carry out its responsibility to enforce its rules,
 - iv. a material failure by the person operating the securities infrastructure business to meet its responsibilities including its regulatory requirements and any material change in any of the information provided to support the initial application that might reasonably be expected to affect investors' interests or the Regulatory Authority's assessment of the on-going fitness and properness of the securities infrastructure business, its controllers, or key person,
 - v. a reduction in financial resource requirements below 120% of the minimum specified in these Regulations or a reduction of 50% since the previous report to the Regulatory Authority,
 - vi. any concern by the person operating the securities infrastructure business that it may not be able to meet obligations as they fall due,
 - vii. any inability to comply with any instruction or direction of the Regulatory Authority imposed in accordance with the Act, Regulations or Rules,

- viii. any misstatement or error in any return or application previously submitted to the Regulatory Authority of which the person operating the securities infrastructure business becomes aware,
 - ix. any fraud on the securities infrastructure business or its participants by any person,
 - x. any disciplinary action against any of the key personnel of the securities infrastructure business,
 - xi. any investigation, finding or conviction relating to the securities infrastructure business, any of its controllers, or any of its key persons by a law enforcement regulatory authority or professional association,
 - xii. any regulatory finding that may reasonably be expected to affect the Regulatory Authority's assessment of the continuing fitness and properness of a member, of or participant, in the securities infrastructure business,
 - xiii. any civil claim against the securities infrastructure business, or
 - xiv. any litigation instigated by the person operating the securities infrastructure business.
- b. A person operating a securities infrastructure business shall make public the information described in paragraphs (ii), (iii), (i), (ix), (xiii) and (xiv), unless it is able to satisfy the Regulatory Authority that such public disclosure would not be in the interests of the Botswana capital markets.

5. Additional reporting requirements for persons operating an exchange

- a. A person operating an exchange shall provide a report, annually and quarterly on the performance of the exchange, including –
- i. an overview of market developments, including, inter alia relevant data on market size, turnover and significant price movements,
 - ii. the number and nature of transferable securities or listed derivatives on the exchange, including details of any new listings,
 - iii. details of any new forms of securities,
 - iv. any action taken in respect of potential or actual defaults, and
 - v. any other information material to an assessment of whether the market is continuing to function in an orderly fashion.
- b. A person operating a securities infrastructure business shall submit a weekly market report including –
- i. an overview of market developments, including, inter alia relevant data on market size, turnover and significant price movements,
 - ii. any action taken in respect of potential or actual defaults, and
 - iii. market positions or credit exposures of market participants that exceed a limit agreed with the Regulatory Authority.
- c. A person operating an exchange shall make an immediate notification of the following events –
- i. any decision to halt or suspend trading,
 - ii. substantial market movements, or
 - iii. any indication that there may be serious market misconduct, or financial crime or money laundering.
- 6. Additional reporting requirements for persons operating a central securities depository or other clearance and settlement system**
- a. A settlement operator shall include, within its quarterly financial report, the margin payments held from participants.
- b. A settlement operator shall provide immediate notification of any –

- i. event that prompts the securities infrastructure business to consider using its powers to take action to prevent a default by a participant,
- ii. default by a participant, and
- iii. potentially disruptive large position held by a participant.

7. Additional reporting requirements for settlement operators encompassing a central counterparty

A settlement operator that also encompasses a central counterparty shall provide immediate notification of any default by a participant.

Schedule 5
(reg. 5 (3))

MINIMUM QUALIFICATION REQUIREMENTS FOR KEY PERSONS

Securities Infrastructure Business

Securities exchange:

- Chief executive officer
- Directors
- Compliance officer
- Internal auditor

Minimum qualifications

CEO, compliance officer and internal auditor, director, or any other person fulfilling a similar function

- a degree or diploma or certificate offered by an Institution of Higher Education or Learning;
- a qualification obtained in another country similar to the above qualifications;
- an industry or specific qualification;
- financial examination approved by Regulatory Authority; or
- an industry, professional or special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider.

Compliance officer (additional qualifications)

- hold a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- has attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- is an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has least has three years of experience in compliance or risk management function in the financial services industry;

Internal auditor (additional qualifications)

- hold a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience
- have attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;

Clearing and settlement system

Chief executive officer

Directors

Compliance officer

Internal auditor

- be an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has at least five years of experience in internal auditing or risk management function in the financial services industry

CEO, compliance officer and internal auditor, directors, and any other persons fulfilling a similar function

- a degree or diploma or certificate offered by an Institution of Higher Education or Learning;
- a qualification obtained in another country similar to the above qualifications;
- an industry or specific qualification;
- financial examination approved by the Regulatory Authority; or
- an industry or professional/specialist qualification (e.g. regulatory examinations offered through a professional body recognised by the regulator or an accredited provider).

Compliance officer (additional qualifications)

- holds a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience
- has attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- is an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- at least have three years of experience in compliance or risk management function in the financial services industry.

Internal auditor (additional qualifications)

- holds a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- has attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the

Central Securities Depository
Chief executive officer
Directors,
Compliance officer
Internal auditor

Regulatory Authority, or has the relevant experience;

- be an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- at least have five years of experience in internal auditing or risk management function in the financial services.

CEO, compliance officer and internal auditor, directors, and any other person fulfilling a similar function

- a degree or diploma or certificate offered by an Institution of Higher Education or Learning;
- a qualification obtained in another country similar to the above qualifications;
- an industry or specific qualification;
- Financial examination approved by Regulatory Authority; or
- an industry, professional or special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider.

Compliance officer (additional qualifications)

- holds a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- has attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- is an accredited member of any organisation recognized by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has at least three years of experience in compliance or risk management function in the financial services industry.

Internal auditor (additional qualifications)

- holds a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience;

Clearing and settlement
system encompassing
a central counterparty
Chief executive officer
Directors,
Compliance officer
Internal auditor

- has attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- be an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has at least have five years of experience in internal auditing or risk management function in the financial services.

CEO, compliance officer and internal auditor, directors, and any other person fulfilling a similar function

- a degree or diploma or certificate offered by an Institution of Higher Education or Learning;
- a qualification obtained in another country similar to the above qualifications;
- an industry or specific qualification;
- Financial examination approved by Regulatory Authority; or
- an industry, professional or special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider.

Compliance officer (additional qualifications)

- holds a legal or business diploma or degree recognized by the Regulatory Authority, or has the relevant experience;
- has attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- is an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has at least three years of experience in compliance or risk management function in the financial services industry.

Internal auditor (additional qualifications)

- holds a legal or business diploma or degree recognised by the Regulatory Authority, or has the relevant experience;

- has attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the Regulatory Authority, or has the relevant experience;
- is an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose, or has the relevant experience; or
- has at least five years of experience in internal auditing or risk management function in the financial services.

MADE this 9th day of March, 2017.

O. K. MATAMBO,
*Minister of Finance and
Economic Development.*