Statutory Instrument No. 138 of 2020

SECURITIES ACT
(Cap. 56:08)

SECURITIES (ONLINE TRADING SERVICES) REGULATIONS, 2020

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SCHEDULES

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 (Online Trading Services) Regulations, 2020.

Interpretation

2. In these Regulations, unless the context otherwise requires —

"day trading" means a strategy of short term investment that involves closing out all positions before the market closes;

"electronic Prospectus" means a Prospectus relating to an offer of securities to the public which is distributed through the internet, and includes a website of an issuer or a website of an online trading service provider, a computer network, CD-ROMs, a floppy disk or any other electronic medium;

"investment advisory service" means an advisory service provided by a securities institution licensed under the Act and carrying on business as such;

"online trading service" means the provision of a service by an online trading service provider which acts as a securities business for the online service provider's clients in connection with their internet purchase or sale of securities, and includes the provision of any other matter reasonably incidental or ancillary to the provision of such services;

"online trading service provider" means a securities broker, dealer or securities exchange approved by the Regulatory Authority under these Regulations, to offer online trading services in securities;

"other electronic medium" means any hand held, wireless, voice activated, SMS messaging, trading or communication device; and

"Regulatory Authority" has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act.

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Application

3. (1) These Regulations shall apply to any person who wishes to operate as an online trading service provider of a securities business listed under the Act.

(2) These Regulations provide a regulatory framework, but shall not be limited to system processes, operations, information security, confidentiality and availability, integrity of the information system and infrastructure, and personnel involved.

(3) An online trading service shall be based on an order routing system, which shall route client orders for execution through an internet trading system provided by a licensed online trading service provider, based on a regular order matching principle.

(4) These Regulations shall not apply to a proprietary trade network or internet facility operated by a securities exchange or a recognised clearing house or central securities depository, licensed by the Regulatory Authority.

Part II — *Requirements for application for licence*

Application for licence

4. (1) A person shall not carry out a business which offers an online trading service in a security, offer securities business services, or investment advisory services in respect of a security in Botswana through the internet or other electronic medium, unless such a person has been issued a licence by the Regulatory Authority.

(2) An online trading service or offer of securities for sale shall be deemed to be taking place in Botswana where it is —

(*a*) provided by an organisation in Botswana; or

(*b*) targeted at investors in Botswana.

(3) An online trading service provider shall not provide a service unless such a service facilitates the trading of listed securities through a licensed securities exchange or a foreign securities exchange recognised by the Regulatory Authority.

(4) An application for a licence under subregulation (1) shall be made to the Regulatory Authority in Form 1 set out in Schedule 1, and shall be accompanied by the prescribed information set out in Schedule 2.

(5) A securities exchange may provide an online trading service to a securities broker or dealer provided that the securities broker or dealer complies with these Regulations, and has been approved by the Regulatory Authority.

(6) A securities broker or dealer may supply its own internet trading service provided that it complies with these Regulations, and the securities broker or dealer obtains prior written approval of the Regulatory Authority.

(7) A securities broker or dealer may use an online trading service supplied by another organisation such as a recognised foreign securities exchange, provided that the securities broker or dealer obtains prior written approval of the Regulatory Authority.

(8) An applicant for a licence shall provide a detail of the services to be provided, and shall ensure that the services comply with these Regulations.

(9) An application for a licence shall be accompanied by —

(*a*) a certificate which is evidence of membership of a securities exchange duly registered in terms of the Act;

(*b*) detailed guidelines that relate to trading, matching, clearing and settlement facilities of transactions;

(*c*) detailed information relating to —

(i) a description of products, target market, marketing plan and step by step of processes end to end, and

(ii) an information technology system assessment to satisfy the nature, scale and complexity of business of which, assessment shall be evidence of resources sufficient to efficiently operate and manage the online service provider's facilities as provided for under Part III of these Regulations;

(*d*) an agreement that the applicant has with any licensed third party on provision of a trading and clearing platform or any facility that shall be used for purposes of trading securities on the internet; and

(*e*) a certificate of good standing with the Regulator of the third party or a broker providing the platform, or of the securities exchange offering its platform in the case of a securities broker or dealer who intends to engage in providing an online trading service with a securities exchange outside Botswana.

(10) Any person who contravenes subregulations (1), (2) and (3) commits an offence and is liable to penalties provided in the Act.

Issue of licence

5. (1) Where the Regulatory Authority is satisfied that the applicant has —

(*a*) complied with the requirements of regulation 4; and

(*b*) demonstrated the capacity to meet the obligations and compliance requirements as provided for under Part III of these Regulations,

the Regulatory Authority shall, within 90 days of receiving the application, issue a licence to the applicant in Form 2 set out in Schedule 1.

(2) A licence issued by the Regulatory Authority under this Part —

(*a*) shall be valid for a period of three years; and

(*b*) may be subject to such conditions as the Regulatory Authority may determine as necessary for the better carrying out of the online trading service provider's business.

Conditions of licence

6. The Regulatory Authority shall impose the following conditions on any licence issued by it under the Act —

(*a*) a licence issued under the Act shall not be transferable;

(*b*) a licence holder shall undertake only the online trading service provider activities specified in the licence;

(*c*) a director of an online trading service provider shall not be a director or partner, or have any direct or indirect interest in any other securities broker or dealer; and

(*d*) an online trading service provider shall be operated at all times by an officer who is an agent, partner, director or employee, and has the requisite skills acquired from an accredited trainer or training institute, and also has the power to execute orders on an online trading platform.

Variation, suspension or cancellation of licence

7. The Regulatory Authority may vary, suspend or cancel a licence issued under the Act, and may exercise any of the other powers available to it where —

(*a*) an online trading service provider makes such a request subject to the approval of the Regulatory Authority;

(*b*) any information supplied to the Regulatory Authority by the online trading service provider, its key persons or controllers is false or misleading;

(*c*) the Regulatory Authority is no longer satisfied that the conditions which justify the granting of a licence continue to exist;

(*d*) an online trading service provider or any financial group of which it is a part of, has breached any of the requirements under the Act;

(*e*) an online trading service provider has breached a condition on the licence;

(*f*) the Regulatory Authority has reasonable grounds to believe that the online trading service provider, its key persons or controllers are not fit and proper persons;

(*g*) an online trading service provider has not commenced business within a period of 12 months from the date a licence was issued to the provider;

(*h*) an online trading service provider does not carry on or is likely not to carry on its business with integrity, prudence and professional skill;

(*i*) an online trading service provider is or likely to be in an unsound financial position;

(*j*) an online trading service provider causes or promotes instability in the financial system, or is likely to do so;

(*k*) an online trading service provider is or is likely to be involved in financial crime;

(*l*) an online trading service provider has failed to submit a report as required by the Regulatory Authority; or

(*m*) an online trading service provider has failed to pay a civil penalty imposed by the Regulatory Authority.

Renewal of licence

8. (1) A licensee shall apply to the Regulatory Authority for the renewal of a licence in Form 3 set out in Schedule 1, at least three months before the licence expires.

(2) Where an application for renewal is made after the licence has expired, the Regulatory Authority may renew the licence subject to payment of a penalty fee of P1000 per day during the period that the online trading service provider does not renew its licence.

(3) Where a licensee re-applies for a licence after a period of three months from the expiry date of the licence, the Regulatory Authority shall treat the re-application as a new application.

(4) An application under subregulation (3), shall be accompanied by the prescribed information set out in Schedule 2.

(5) Where an applicant provides insufficient information under subregulation (4), the applicant shall supply such additional information and meet such additional criteria as the Regulatory Authority may direct.

Extension of licence

9. Where an application for a renewal of a licence is still underway, the Regulatory Authority may extend the existing licence period for a term of not more than three months, on such terms and conditions as it deems fit.

Surrender of licence

10. Where an online trading service provider decides to withdraw from a regulated activity, the online trading service provider shall —

(*a*) give 30 days notice to the Regulatory Authority and each of its clients, of the decision;

(*b*) ensure to the satisfaction of the Regulatory Authority that any outstanding business is properly transferred to another licensed online trading service provider, or

(*c*) arrange for an orderly winding down of the business subject to any conditions that the Regulatory Authority may specify.

Part III — *Operational and trading requirements*

Appointment of compliance officer
Cap. 08:07

11. An online trading service provider shall, subject to an approval by the Regulatory Authority, appoint a resident of Botswana as a compliance officer, and whose functions shall include ensuring compliance with the Financial Intelligence Act.

Operational requirements

12. (1) An online trading service provider shall ensure that —

(*a*) the online trading platform is compliant with regulations and safety standards, including any additional rules set out by a securities exchange or recognised third parties; and

(*b*) the process for collection, distribution and handling of electronic and physical Prospectus, public offer documents, offering contracts and the electronic interface of its website for clients and issuers are available.

(2) An online trading service provider shall —

(*a*) ensure confidentiality of information in such a way that information is only accessible to an authorised person or system;

(*b*) ensure that satisfactory internet security measures are in place to prevent —

(i) unwanted disclosure of personal data, transactions, activity and presence on the internet,

(ii) misappropriation of identification,

(iii) impersonation that may lead to unauthorised or illegal transactions,

(iv) unauthorised usage, inability to detect malpractices in a timely fashion, or to identify the perpetrator,

(v) attacks from third parties designed to interrupt the service or aimed at the service becoming an agent for an attack against another website, and

(vi) collection and analysis of data by unauthorised third parties;

(*c*) safeguard the integrity of the service including controls to counteract —

(i) non-compliance with rules issued by the Regulatory Authority leading to illegal transactions, fraud or malpractice,

(ii) presentation of incorrect data, whether unintentionally or malevolently,
(iii) false presentation or the use of incomplete information for transactions,
(iv) manipulation of data,
(v) viruses leading to loss of data, unauthorised access to data, unavailability or threat of unavailability of systems, and
(vi) cyber extortion, selling data stolen from, or illegally obtained from service providers;

(*d*) ensure the availability of the service in the event that —
(i) the website is not reachable, and there is no possibility to trade, get or give information,
(ii) parts of the website are not reachable either through a denial of service, attack or lack of capacity, or
(iii) the provider of the service is unable to give timely access to the website or parts of the website;

(*e*) ensure that a satisfactory alternative arrangement and contingency plan are in place to ensure that business can continue in the event of a large-scale disruption;

(*f*) ensure that the identity of the person or system accessing the service is properly verified by the use of personal identification numbers, passwords, electronic signatures or such other approved mechanism so as to exclude unauthorised access;

(*g*) ensure that satisfactory arrangements are in place so that an online trading service provider can at all times uniquely identify each and every order during the different stages of processing;

(*h*) ensure that orders placed through its systems are fairly allocated in accordance with the rules of the relevant trading platform where applicable;

(*i*) ensure that the system has mechanisms to prevent executions of unintended duplicate orders;

(*j*) ensure that there is an effective audit trail to address risks arising from —
(i) the opening, modification or closing of a client account,
(ii) any transaction with financial consequences,
(iii) any authorisation granted to a client to exceed a limit, and
(iv) any granting, modification or revocation of systems access rights or privileges;

(*k*) evaluate its operational arrangements or plans from time to time in line with the standards of best practice and maintain a report of such evaluation which shall include –
(i) details of the procedure for undertaking such an evaluation,
(ii) the time at which such evaluation is undertaken, and
(iii) a copy of the results of such evaluation;

(*l*) where there are any significant changes to its system or to the functionality of the systems, —
(i) provide the Regulatory Authority with information relating to such changes, and
(ii) as soon as reasonably possible, and within two months of the said changes, lodge with the Regulatory Authority a copy of the online trading service provider's testing and implementation strategies; and

(*m*) implement such further arrangements or plans which it is directed to implement by the Regulatory Authority.

Trading requirements

13. (1) An online trading service provider shall —

(*a*) submit for vetting and approval to the Regulatory Authority, the following —

(i) a procedure for the commencement of internet services in terms of which participants are to be screened, and

(ii) an agreement with clients to whom it offers an online trading service that contains appropriate and prominent risk disclosures, and the online trading service provider shall comprehensively and fully state the risks associated with internet based transactions;

(*b*) have an appropriate arrangement in place to assess a client's suitability to undertake securities transactions via the internet, including a written consent of the client;

(*c*) have an appropriate arrangement in place to approve a client's account for day trading;

(*d*) have an adequate risk management systems for controlling exposure to an internet client;

(*e*) have an adequate number of suitably qualified staff under the control of a senior manager, to control and monitor transactions and render clients, services in accordance with the rules and regulations;

(*f*) either have —

(i) suitably qualified staff to operate and maintain the systems used for online trading services, or

(ii) an irrevocable agreement with a suitably qualified third party provider for the operation and maintenance of such systems; and

(*g*) be responsible for settlement of each and every trade executed through the online trading service that it utilises.

(2) A securities exchange may specify its own requirements, in addition to these Regulations, for allowing an online trading service provider to connect to a system operated by the securities exchange.

(3) An online trading service provider shall provide the Regulatory Authority with details on how it is to satisfy itself on the true identity of a person opening an account and the measures the online trading service provider intends to take to ensure that the account is maintained and operated by the person opening the account.

(4) Where an online trading service is to be operated on behalf of a securities broker or dealer, an application for a licence shall be accompanied by a statement from the securities broker or dealer detailing the contingency arrangements that are to be put into effect in the event that the supplier of the service is unable to continue providing the service.

Display and disclosure of information

14. (1) An online trading service provider shall display —

(*a*) in a prominent place within its office, a valid licence issued by the Regulatory Authority; and

(*b*) a statement on its system that, "This online trading service provider has been licensed by the Non-Bank Financial Institutions Regulatory Authority of Botswana. The Regulatory Authority shall not be liable for any action in damages suffered as a result of this approval".

(2) An online trading service provider shall display in a prominent place on the online trading service homepage or landing platform, the following information —

(*a*) a copy or a hyperlink to a copy of the current licence issued under regulation 4;
(*b*) formal hours of trading for each day of the week;
(*c*) relevant contact numbers;
(*d*) procedures referred to in subregulation (5); and
(*e*) any disclosure which is required to be made in terms of the Act or by an order of the Regulatory Authority.

(3) An online trading service provider shall provide the following information in plain English and in an easily accessible form –

(*a*) a basic explanation of securities trading, including definitions of common terms used on the trading screen;
(*b*) a detailed procedure and process regarding the manner in which an order is accepted, processed, settled and cleared via the internet;
(*c*) disclosure about the risks of internet securities trading, including the risk of systems outages and failures, and any alternative means of placing orders;
(*d*) a procedure to cancel pending orders during a system failure;
(*e*) a glossary explaining key investment terms and concepts including —
  (i) the difference between the various types of orders that may be placed,
  (ii) a notice that a market order may be executed at a price higher or lower than the quote displayed on the website at the time of order entry,
  (iii) an explanation of how a client's order is executed,
  (iv) any situation where a client may not receive an execution,
  (v) any restriction on the type of orders that a client may place, and
  (vi) how market volatility can affect a client's orders;
(*f*) the regulations affecting a client, broker or dealer relationship, arbitration rules, investor protection rules and the Tribunal;
(*g*) a hyperlink to the website or page on the website of the relevant securities exchange displaying rules, regulations or circulars; and
(*h*) a "Terms of use" policy document which shall be approved by the Regulatory Authority.

(4) An online trading service provider's trade confirmations and contract notes —

(*a*) may, subject to the rules of the online trading service provider or securities exchange, be sent by email on condition that the securities broker or dealer —
  (i) notifies in writing, 30 days in advance the Regulatory Authority, the internet service provider and securities exchange concerned, of the intention to use electronic trade confirmations or contract notes, and
  (ii) obtains prior written consent from the clients concerned; and
(*b*) sent by email shall be digitally signed by electronic signature in accordance with the Electronic Communications and Transactions Act.

(5) An online trading service provider shall have in place, a procedure to address complaints by a client so as to ensure that —

(*a*) due process is upheld on an ongoing basis to the satisfaction of the Regulatory Authority, which shall include —
  (i) an effective arrangement for the investigation and resolution of the complaint made against the online trading service provider,
  (ii) establishing and maintaining a register of complaints made against the online trading service provider, and resolutions reached,

(iii) a Dispute Resolution Policy Procedure including the place and contact numbers of where a complaint may be lodged, or

(iv) a record of the complaints which shall be maintained for a minimum of 20 years, and

(*b*) where a dispute is not satisfactorily resolved, the complainant confirms this in writing, and the online trading service provider shall notify the Regulatory Authority within 30 calendar days, of the unresolved complaint.

(6) An online trading service provider which contravenes the provisions of these Regulations commits an offence and is liable to a penalty under the Act.

Part IV — *Offer of securities and Prospectus*

Offer of securities Cap. 42:01

15. (1) An offer of securities for sale by way of a Prospectus shall be made in compliance with the Companies Act.

(2) Where an electronic Prospectus is to be distributed, the issuer shall ensure that paper copies of the Prospectus are made available to investors, and the issuer shall state prominently in the electronic Prospectus —

(*a*) that a paper Prospectus is also available; and

(*b*) a convenient location for collection of the paper Prospectus.

(3) An online trading service provider shall ensure that —

(*a*) it adheres to the sponsor's, issuer's or the share registrar's instructions in relation to the overall coordination and timing of the offering;

(*b*) the electronic Prospectus, offer documents and the application input screen are readily accessible on its website and the public offer documents are identical to those provided by the issuer;

(*c*) the electronic Prospectus, public offer documents and application input screen are complete, located close to each other and cannot be tampered with;

(*d*) it provides a hyperlink to the electronic Prospectus or public offer documents on the issuer's website;

(*e*) as an alternative to providing a copy of the electronic Prospectus or public offer documents on its website, an online trading service provider may, establish a hyperlink from its website to the website of the issuer or any standalone website set up by the issuer, for the duration of the public offering or that of a suitable third party, and any intermediary wishing to use the method shall —

(i) obtain prior consent from the issuer or the third party to establish the hyperlink, and the online trading service provider shall indicate on its webpage containing the hyperlink whether consent has been obtained,

(ii) ensure that the webpage or the icon containing the hyperlink contains a clear message to inform a client that he or she is leaving the online trading service provider's website and entering the website of another person,

(iii) ensure that the webpage or the icon containing the hyperlink clearly describes where the hyperlink leads and the hyperlink shall only provide direct access to the front cover or table of contents of the relevant document,

(iv) put in place a procedure to monitor the performance of the hyperlink to ensure that an applicant using the online trading service provider's webpage can access the electronic Prospectus or public offer documents for as long as applications are being accepted through such online trading service provider, and

(v) immediately cease to accept applications through its website where the hyperlink fails to provide applicants with proper access to the electronic Prospectus or public offer documents on the issuer or third party's website;

(*f*) the electronic Prospectus or public offer documents on the online trading service provider's website is first displayed or made available at the same time as the electronic Prospectus is made available to the public by the issuer;

(*g*) a statement is made to the effect that no applications or monies can be accepted —

(i) once the public offering has closed,

(ii) where the online trading service provider has any reason to believe that the electronic Prospectus or public offer documents or processes for collection and handling of applications have been tampered with, or

(iii) where duplicate or multiple applications have been made to the issuer;

(*h*) the information required by the sponsor or issuer is provided to enable the online trading service provider to monitor the public offer, including information in relation to the level of application and volume of the online trading service provider's processes during the offer, is given to the sponsor or issuer upon request;

(*i*) the online trading service provider's website and operation —

(i) give a client access to free software to download, extract compressed files, view and print the public offer documents or application input screen,

(ii) give an applicant contact information for technical support or enquiries in connection with the operation of the public offer service and the website, or

(iii) give a client an opportunity to read or access the electronic Prospectus or public offer documents before being given access to the webpages where the particulars relating to the application are collected;

(*j*) a confirmation is given to the applicant as soon as possible once an application has been submitted;

(*k*) an applicant is able to print a copy of the relevant webpages containing the details of application information inputted by him or her and the confirmation message;

(*l*) the website and presentation of the public offer information encourages an investor to make an investment decision based only on the content of the Prospectus or public offer documents, rather than promotional or marketing materials and media coverage;

(*m*) there are sufficient procedures to monitor the electronic Prospectus of the public offer service, the online trading service provider provides, and that the public offer service is offered in accordance with the sponsor's or the issuer's instructions;

(*n*) there are reasonable measures to ensure that the online trading service provider's computer system has sufficient capacity and security to protect the integrity of the transactions, and that the contingency plans are put in place to deal with the situation where the internet is disrupted;

(*o*) information is provided on the online trading service provider's website to enable a potential applicant to determine whether the service is suitable for him or her, and shall include —

(i) a clear criteria used to sign on a new client,

(ii) the type of person who is eligible to use the service and existing clients,

(iii) a clear delineation of the area containing the electronic Prospectus or public offer documents, and a warning to an applicant that —

(aa) any information falling outside those areas shall not form part of the electronic Prospectus or public offer documents; and

(*bb*) the securities are offered solely on the basis of the information in the Prospectus or public offer documents;

(iv) the procedure which an applicant shall go through to make a valid application, including the issuer's terms and conditions,

(v) the date and time for various stages of the public offer, including deadlines for submitting applications and making payments,

(vi) instructions and information in relation to the application procedure including any requirement or arrangement which an applicant shall have in place so that the applicant may use the service such as —

(*aa*) a list of payment methods;

(*bb*) limitations associated with the payment method such as service lead time or transaction limits;

(*cc*) circumstances and procedures for refunding monies to an applicant;

(*dd*) a procedure for distributing and registering securities certificates, or crediting an applicant's account;

(*ee*) description of the fees and charges that may be made to the applicant; or

(*ff*) deadlines for submission of the application;

(vii) a statement that a potential applicant shall read the public offer documents prior to making an investment decision and shall make the investment decision based on the public offer documents rather than on information, particularly a promotional, marketing material or media coverage that may accompany the offering,

(viii) a warning that, in using the service, the client assumes the risks associated with conducting transactions over the internet,

(ix) a list of suggested alternative places where an applicant may obtain a copy of the public offer documents, and

(x) a prominent statement on the online trading service provider's website informing an applicant that the website belongs to the online trading service provider and not the issuer, and that when using the public offer e-service, the online trading service provider is the applicant's and not the issuer's agent.

(4) The offer for securities shall clearly specify —

(*a*) the procedure for payment;

(*b*) the procedure for refunding money to an applicant;

(*c*) the procedure for distribution of securities certificates or crediting the applicant's securities account in the event that an application is successful;

(*d*) a full description of any additional fees and charges that are to be paid by the applicant other than anything already specified in the Prospectus; and

(*e*) the deadline for the submission of an application by the applicant.

Prospectus

16. (1) The following enhancements or differences between a paper version and an electronic version of any public offer document shall be acceptable —

(*a*) a search facility for a defined expression;

(*b*) a hypertext link within the Prospectus;

(*c*) prompts to assist readers to use and find information in the document and the prompts shall not contain any information that does not appear in the registered paper document; and

(*d*) a zoom facility which shall ensure that a reader may enlarge or reduce the information displayed.

(2) An online trading service provider shall ensure that an electronic supplemental Prospectus is provided on the online trading service provider's website at the same time it is made available to the public by the issuer.

(3) Notwithstanding the issuance of a Prospectus in an electronic form, an application form for securities shall only be issued when accompanied by a Prospectus in a paper form, and an issuer shall take all reasonable steps to ensure that where an investor is able to receive an electronic application form, such application form when dispatched, is attached to or accompanied by an electronic Prospectus.

(4) Where an electronic Prospectus is made available online, an issuer shall provide —

(*a*) a full version of the Prospectus on the website which can effectively be read, printed, or downloaded;

(*b*) a full version of the Prospectus via a hyperlink to another website which can effectively be read, printed, or downloaded; or

(*c*) such other method of obtaining a full version of the Prospectus, including e-mail, provided that the distribution method is clearly identified on the website and does not involve any charge.

(5) An online trading service provider shall ensure that a Prospectus is made available to an investor prior to the investor gaining access to an application form or a webpage for the execution of an order to purchase securities, and a prominent statement shall be placed on the website to advise investors to read the Prospectus prior to submitting an application or executing an order.

(6) An online trading service provider shall —

(*a*) implement measures to ensure that an investor can access a webpage for executing an order, only if the investor has been given an opportunity to read or access the electronic Prospectus;

(*b*) implement measures to ensure that an investor may access a webpage for executing an order only if the investor has confirmed that an opportunity has been given to him or her to read or access the electronic Prospectus, by providing a confirmation facility on the webpage containing the Prospectus or the hyperlink to allow investors to positively declare, by clicking on the facility, that they have been provided with sufficient opportunity to access or read the relevant Prospectus and the information disclosed therein; and

(*c*) ensure that where an investor has made a positive declaration referred to in paragraph (*b*), the investor shall not be given access to the webpage for executing an order to purchase securities.

(7) An online service provider shall ensure that in a website where an electronic Prospectus is made available, the website shall clearly specify the areas that contain the electronic Prospectus, and hyperlinks from an electronic Prospectus to other documents or webpages shall not be acceptable unless the other documents and information are required to be made available for inspection or, directly referred to in or form part of the Prospectus.

(8) Subject to subregulation (7), a hyperlink which provides an exit from the electronic Prospectus to the previous start point shall be acceptable.

Part V — *Provisions for securing of data and independent assessment*

Security of data

17. (1) The online trading service provider shall ensure that its system uses an encryption to reduce the risk of third party interception of information sent between a client's computer and the information technology system of the online trading service provider.

(2) The encryption shall apply to all orders being entered and to any communication with any client, which contains confidential information.

(3) The online trading service provider shall ensure that its system —

(*a*) uses a firewall to prevent any intrusions by an unauthorised person; and

(*b*) is configured to allow auto-logoff in case of inactivity of the trading terminal or the trading website.

(4) An online trading service provider shall demonstrate that it has in place, a written security policy based on or containing these Regulations as part of its security policy.

Independent assessment

18. The Regulatory Authority may engage technical experts to undertake an independent assessment of the operational capacity and security of an information technology system for which approval is sought, at the cost of the applicant and subject to the applicant agreeing in advance to a maximum charge.

Part VI — *Reports and record keeping*

Reports and record keeping

19. An online trading service provider shall maintain —

(*a*) monthly reports on the reliability and compliance status of the service and the report shall include the —

(i) number of users of the system as at the end of the month,

(ii) daily average number of all types of transactions processed by the system during the month,

(iii) highest number of transactions processed by the system on a single day during the month,

(iv) percentage of the scheduled time for availability for which the service was not available,

(v) number of incidences in which the system remained partially or fully inaccessible for trading,

(vi) reasons for non-availability, and

(vii) system modifications if any, and the impact on the existing services.

(*b*) a quarterly report of the number of complaints received during that quarter; and

(*c*) financial information for a three month period which information shall include —

(i) a statement of comprehensive income,

(ii) a statement of financial position,

(iii) the cash flow statement, and

(iv) information on controllers, key persons or shareholders.

Submission of information to Regulatory Authority

20. (1) An online trading service provider shall within five business days, inform the Regulatory Authority in writing, where —

(*a*) the online trading service provider or any of its branches ceases to operate;

(*b*) the online trading service provider becomes unable to pay any of its debts promptly and in full;

(*c*) there is a change in contact numbers or address of the online trading service provider; or

(*d*) there is a change in the business affairs of the online trading service provider that has or may have a negative effect on a client.

(2) An online trading service provider shall, within 90 days of the end of its fiscal year complete and submit to the Regulatory Authority, a compliance report in Form 1 set out in Schedule 3.

(3) An online trading service provider who fails to submit any information required under these Regulations commits an offence and is liable to the penalties specified in the Non-Bank Financial Institutions Regulatory Act and other applicable written laws.

Part VII — *General*

Compliance with other Acts Cap. 08:06

21. (1) These Regulations shall not preclude an online trading service provider from complying with provisions of the Financial Intelligence Act and the Cybercrime and Computer Related Crimes Act.

(2) An online trading service provider shall ensure that its information technology system —

Cap. 08:08

(*a*) scans each applicant in compliance with the Counter-Terrorism Act; and

(*b*) identifies and generates alerts for suspicious transactions.

Suspension of licence and administrative penalties

22. (1) The Regulatory Authority shall assess the effectiveness of systems and processes of an online trading service provider in accordance with these Regulations.

(2) The Regulatory Authority may suspend the licence of an online trading service provider if it violates any of these Regulations.

(3) Notwithstanding subregulations (1) and (2), the Regulatory Authority shall not be precluded from imposing any administrative penalties as provided for in the Non-Bank Financial Institutions Regulatory Authority Act and other applicable laws.

SCHEDULES

SCHEDULE 1

Form 1
(*reg. 4 (4)*)

Application for licence

APPLICATION FORM FOR A LICENCE TO CARRY OUT A BUSINESS AS AN ONLINE TRADING SERVICE PROVIDER/PLATFORM OPERATOR

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.

Name of applicant: (Please give the name of the applicant for a licence)

Name and capacity of the person submitting this form: (Please note that this form shall be submitted by the Chief Executive Officer or another Executive Director or Partner)

Current Registered Office Address: (Please give the full physical address and the Postal address)

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)

Nature of business to be conducted: (Please indicate which of the activities described below you wish to undertake. Show all that apply.)

Online Trading Service Provider ----------

Online Trading Platform ----------

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)

Name and address of the key persons, controllers or shareholders

---

Position the key persons are to take up

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.)

- Is the applicant, for any reason, precluded in any way from carrying on (fully or partially) the services which the applicant proposes to offer?

  YES/NO

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

  YES/NO

- 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

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

  YES/NO

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

  YES/NO

- Have any of the key personnel, controllers or shareholders 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

- Have any of the key personnel, controllers or shareholders ever been subject, in any jurisdiction to investigations, disciplinary proceedings, or termination by an employer, or ever resigned from any 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

- Is the applicant engaged in any litigation in any jurisdiction?

  YES/NO

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

  YES/NO

- Have you supplied all the information specified in Schedule 2?

  YES/NO

Certification

I certify that the above information and all information supplied with this application is complete and correct to 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 a 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
(reg. 5 (1))

Licence

Certificate No: NBFIRA XX/XX/XX

NBFIRA
Non-Bank Financial Institutions Regulatory Authority

REPUBLIC OF BOTSWANA
SECURITIES ACT NO. 26 OF 2014
Section 4 (1)

LICENCE TO OPERATE AS AN ONLINE TRADING SERVICE PROVIDER

I hereby certify that_____ **(name of entity)** has been duly licensed by the Non-Bank Financial Institutions Regulatory Authority to carry out the business of An Online Trading Service Provider in the Republic of Botswana.

This licence is not transferable and remains the property of the Non-Bank Financial Institutions Regulatory Authority.

VALID UP TO: ....., 20XX

Dated ....., **20XX** in Gaborone.

Signed: _____
CHIEF EXECUTIVE OFFICER

3rd Floor exponential Building Plot 54351 New CBD

Form 3
(*reg. 8 (1)*)

Application for renewal of licence

APPLICATION FOR RENEWAL OF LICENCE AS AN ONLINE TRADING SERVICE PROVIDER/PLATFORM OPERATOR

By: .....
Name of the Online Trading Service Provider/Platform Operator

Address of the Online Trading Service Provider/Platform Operator
.....
.....
Date .....

The Chief Executive Officer
Non-Bank Financial Institutions Regulatory Authority
Private Bag 00314
Gaborone
Botswana

Dear Sir/Madam

1. I/We apply for renewal of registration of
.....
(Full name of the Online Trading Service Provider/Platform Operator)

2. The physical address of the registered office of the company is
.....
.....
.....

3. The addresses of the head office of the company are:
(a) Physical address
.....
.....
.....

(b) Mailing address
.....
4. The Compliance Officer's name and title are:
.....
.....(1)

APPLICATION FOR RENEWAL OF LICENSING AS AN ONLINE TRADING SERVICE PROVIDER/PLATFORM OPERATOR

5. The amount of paid-up capital (excluding debentures, preference shares, non-voting shares and paid-up capital subscribed directly or indirectly in itself) of the company is ..... (2)

Documents to be attached to this application

- Documentation as set out in Schedule 2 of the Securities (Institutions) Licensing Regulations.

I/We enclose proof of payment in the amount of ..... being the fee for renewal of registration, as provided for by Supervisory Levies & Licensing Fees Regulations.

Yours faithfully

COMPANY SEAL

.....
Authorised Name & Signature

SCHEDULE 2

(regs. 4 (4) and 8 (4))

Information to accompany a licence application

- General licence application requirements

1. An application for a licence in the form prescribed in Schedule 1, together with any relevant attachments shall be enclosed in a sealed envelope and filed with the Regulatory Authority.

2. An application shall be accompanied by personal questionnaires signed and dated by each key person, controller and shareholder.

3. An applicant shall upload all the required information on the NBFIRA Portal.

- Information to be supplied by applicants for a licence

1. Each applicant shall supply a description of the kind of business it seeks to undertake and the licence category for which it is applying.

2. Each applicant, unless it is a newly formed business, shall supply copies (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), incorporating the results of its last financial year, and which have respectively been audited by a qualified auditor (including every document required by law to be attached). The copies of the financial statements shall be accompanied by a copy of the report of the auditors thereon (certified as aforesaid).

3. Where the audited accounts are for a period that ends more than 6 months before the date of application, the applicant, unless it is a newly formed business, shall supply unaudited accounts for a period ending not earlier than 6 months prior to the date of application (which shall also be certified by a Director or Partner, as the case may be, as being a true and fair reflection of the company's financial position to the best knowledge of the applicant.

4. Each applicant shall supply a business plan containing the particulars of the names and addresses of the key personnel, controllers and shareholders;

5. The names of the key personnel (of which there shall be at least two) who shall be registered with the Regulatory Authority as being responsible for the conduct of the business;

6. Where the applicant is a company, the shareholding structure which shall disclose;

6.1 whether any of the shareholders will have an executive role to oversee the day to day operations of the business; and

6.2 where controllers are incorporated, the full group structure;

7. Where the applicant is a partnership, the names and addresses of the partners and information as to which of the partners will have an executive role to oversee the day to day operations of the business;

8. The qualifications, experience and expertise of key personnel and an explanation of how those qualifications individually and collectively will be sufficient for the business to be undertaken;

9. The financial projections for three years, together with the key assumptions on which the business plan is based;

10. One bank reference from the applicant's current bank, or, if the applicant has yet to establish a bank account, the applicant should supply a bank reference for at least two of the directors or partners;

11. Two business references relating to the applicant or, if the applicant has yet to commence business, references relating to at least two of the directors or partners;

12. The proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Regulatory Authority that such premises will be available;

13. The human and technology resources available to the market intermediary that will be capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Regulatory Authority that such resources will be available; and

14. The proposed independent auditor.

15. Each applicant shall give an overview of its proposed corporate governance arrangements, which shall include the legal form of the applicant and —

    15.1 if it is a company, its certificate of incorporation and memorandum and articles of association,

    15.2 if it is a partnership, its partnership agreement,

    15.3 if it takes any other legal form, details of that legal form and accompanying verification documents,

    15.4 particulars of the Board and Board Committees (if any),

    15.5 particulars of any procedures, codes or protocols that the Board may have adopted at the time of the application and an overview of the procedures, codes and protocols that the applicants intends that the Board shall adopt by the time business commences,

    15.6 particulars of the management and organisation structure, providing an organisation chart with brief descriptions of the powers and duties of the posts,

15.7 an overview of the applicant's assessment of risks and policies to mitigate those risks,

15.8 an overview of the applicant's proposed internal controls, including —

15.8.1 an explanation of how the controls mitigate the risks to which the market intermediary is subject;

15.8.2 a copy of the procedures manual designed to implement internal controls;

15.8.3 an overview of the proposed contents of such a manual;

15.8.4 an undertaking that such a manual will be completed by the time the applicant commences licensed activities; and

15.8.5 the applicant's code of conduct for staff, which shall include —

15.8.5.1 the provisions regarding the holding or trading of securities,

15.8.5.2 other measures for avoiding staff conflicts of interest,

15.8.5.3 confidentiality provisions, and

15.8.5.4 the measures to be taken in the event of any breach of the code where the applicant seeks to use agents or other third parties to provide the services for which it will be responsible, the applicant should provide details of the agents or other third parties and should supply a copy of the contract and, where appropriate and available, the service level agreement.

16. Each applicant shall provide evidence that it has the minimum financial resources required for the activities it proposes to undertake as may be specified by the Regulatory Authority from time to time.

17. Each applicant shall provide evidence that it has the required insurance policies in place as may be specified by the Regulatory Authority from time to time.

SCHEDULE 3

Form 1
(*reg. 20 (2)*)

Compliance report for Online Trading Services

In accordance with Regulation 20 (2) of the Securities (Online Trading Services) Regulations, I ..... (Managing Director or Compliance Officer) hereby report as follows as regards compliance with the Regulations by..... (full name of the regulated entity) for the reporting period ..... (date reporting period started) to..... (date reporting period ended).

Regulation		Column 1 Yes	2 No	3 Not Applicable	4 Annexure Number
	Question Does the entity have a minimum financial balance of P1 000 000				
	Operational requirements				
12 (1) (*b*)	The entity's collection, distribution and handling of; i) electronic and physical Prospectus is available ii) public offer documents iii) offering contracts The entity's electronic interface of its website with clients is available The entity's electronic interface of its website with issuers is available				
12 (2) (*b*)	Security measures are sufficient to ensure confidentiality of information and prevent the events listed in regulation 12 (2) (*b*) and no lapses have been identified during the reporting period.				
12 (2) (*c*)	The integrity of the service is safeguarded with controls that prevent the events listed in regulation 12 (2) (*c*) and no lapses have been identified during the reporting period.				

12 (2) (*d*)	Controls have been implemented to ensure availability of the service in the events listed in regulation 12 (2) (*d*) and no lapses have been identified during the reporting period.
12 (2) (*e*)	Satisfactory alternative arrangements and contingency plans are in place to ensure that business can continue in the event of a large-scale disruption
12 (2) (*f*)	The identity of the person or system accessing the service is properly verified by the use of personal identification numbers, passwords, electronic signatures or such other approved mechanism so as to exclude unauthorised access
12 (2) (*g*)	Satisfactory arrangements are in place so that the internet trading service provider can at all times uniquely identify each and every order during the different stages of processing
12 (2) (*h*)	Orders placed through our systems are fairly allocated in accordance with the rules of the relevant trading platform where applicable
12 (2) (*i*)	The system has mechanisms to prevent executions of unintended duplicate orders
12(2)(j)	There is an effective audit trail to address the risks arising from the events listed in regulation 12 (2) (j)
12 (2) (*k*)	The entity evaluates and maintains a report on its operational arrangements which includes the items listed in regulation 12 (2) (*k*)
12 (2) (*l*)	Have any significant changes to its systems or any changes to the functionality of its systems been made
	Trading requirements
13 (1) (*a*) (i)	Procedures for the commencement of internet services in terms of which participants shall be screened have been approved by the Regulatory Authority

13 (1) (*a*) (ii)	The agreement with clients to whom it offers an internet trading service has been vetted and approved by the Regulatory Authority
13 (*b*)	The entity has appropriate arrangements in place to assess a client's suitability to undertake securities transactions via the internet including a written consent of the client
13 (*c*)	Have appropriate arrangements in place to approve a client's account for day trading
13 (*d*)	Have adequate risk management systems for controlling exposure to Internet clients
13 (*e*)	The entity has an adequate number of suitably qualified staff in accordance with regulation 13 (*e*) and (*f*)
13 (*f*)	The entity does not have suitably qualified staff to maintain the systems used for the internet trading service because it has an irrevocable agreement with suitably qualified third party provider for its operation and maintenance
13 (*g*)	The entity is responsible for settlement of each and every trade executed through the internet trading service that it utilises
	Display and disclosure of information
14 (1) and (2)	The disclosures required by regulation 14 (1) and (2) are made
14 (3)	All the information listed in regulation 14 (3) is provided in plain english and is easily accessible
14 (5) (*b*)	The Regulatory Authority has been notified of all unresolved complaints within 30 calendar days of the unresolved complaint
	Offer of securities
15 (2)	The electronic Prospectus, offer documents and the application input screen are readily accessible on the website for every offer that occurred during the reporting period

15 (3) (*e*)	Alternatively, where a hyperlink is established linking its website to the website of the issuer, the conditions listed in regulation 15 (3) (*e*) have been met.
15 (3) (*o*)	Information listed in regulation 15 (3) (*o*) is available on the entity's website.
	Security of data
17	Data has been secured in line with the requirements of regulation 17
	Compliance with Financial Intelligence Act
21	The internet trading service system scans each applicant in compliance with Financial Intelligence Act requirements
21	The internet trading service system generates alerts for suspicious transactions

In this report, "the entity" refers to the internet trading service provider submitting the compliance report unless the context indicates otherwise.

Signature of Compliance Officer or Managing Director/CEO _____

Date: _____

MADE this 9th day of November, 2020.

Dr. THAPELO MATSHEKA,
Minister of Finance and Economic Development.