

**NOTICE OF 2016**  
**FINANCIAL SERVICES BOARD**  
**FINANCIAL MARKETS ACT 19 OF 2012**

**CRITERIA FOR AUTHORISATION AS AN OVER-THE-COUNTER DERIVATIVES  
PROVIDER**

Under section 6(8)(a) of the Financial Markets Act, 2012 (Act No. 19 of 2012), I, Dube Phineas Tshidi, Registrar of Securities Services, hereby publish for public comment the criteria for authorisation as an over-the counter derivatives provider as set out in the Schedule.

**D P TSHIDI**

**REGISTRAR OF SECURITIES SERVICES**

**SCHEDULE**

**1. Definitions**

In this Schedule, “**the Act**” means the Financial Markets Act, 2012 (Act No.19 of 2012), and “**the Regulations**” means the Regulations prescribed under section 5(1)(c) of the Act, and any word or expression to which a meaning has been assigned in the Act or the Regulations bears the meaning so assigned to it, and unless the context otherwise indicates- “**provider**” has the same meaning as “authorised OTC derivative provider”.

**2. Application**

A person who applies for authorisation as a provider must submit to the registrar a written application on Form FM 6 accompanied by the information–

- (a) specified in Annexure 1 to Form FM 6; and
- (b) required in respect of members of the controlling body of the provider specified in Annexure 2 to Form FM 6.

### **3. Address**

Applications must be submitted to:

The Registrar of Securities Services

P O Box 35655

Menlo Park

0102

Riverwalk Office Park

Block B

41 Matroosberg Road

Ashlea Gardens Ext 6

0081

### **4. Criteria for authorisation**

#### **4.1 Prudential requirements**

- (1) A provider must-
- (a) maintain capital, together with retained earnings and reserves proportional to the risks relating to the business of the provider in the Republic;
  - (b) hold sufficient capital and liquid net assets funded by equity in the Republic to cover potential general business losses to ensure-
    - (i) that the provider is adequately protected against operational, legal, custody, and investment risks so that it can continue providing services as a going concern; and
    - (ii) an orderly wind-down or reorganisation of the provider's critical operations and services over an appropriate time period of at least six months under a range of stress scenarios;
  - (c) hold equity capital in the Republic-
    - (i) which reflects a strong cash, cash-equivalent, or securities position to allow the provider to meet its current and projected operating expenses under a range of scenarios; provided that cash equivalents and securities consist of high-quality and sufficiently liquid assets that can easily be converted into cash at little or no loss of value, even in adverse market conditions;
    - (ii) which, is at a minimum, equal to six months of operating expenses, provided that the provider considers whether resources are required beyond that amount, taking into account its general business risk profile; and
    - (iii) which is permanently available for the provider to absorb operating expenses or losses on an ongoing basis;
  - (d) safeguard its assets-
    - (i) to minimise the risk of loss or delay in access to these assets; and

- (ii) by holding the assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets; and
- (e) have a viable plan, approved by its controlling body and updated regularly for raising additional equity should the equity fall below the amount required to cover all its operating expenses.

(2) (a) A provider must furnish the registrar with a quarterly report detailing the calculation of the required liquid net assets, calculated in terms of this Notice and the measures taken to obtain additional funding, if necessary.

(b) If the registrar is not satisfied that such liquid net assets are sufficient to cover the risks involved, the registrar may require a provider to obtain additional liquid assets funded by equity over a time period as determined by the registrar.

## **4.2 Fit and Proper**

A provider must satisfy the registrar that it complies with the following fit and proper requirements—

### **4.2.1 Honesty and integrity**

(1) A director or a senior manager of a provider must be a person who is honest and has integrity.

(2) In determining whether a director or senior manager complies with subparagraph (1), the registrar may refer to any information in possession of the registrar or brought to the registrar's attention.

(3) Without limiting the generality of subparagraphs (2) and (4), any of the following factors constitutes *prima facie* evidence that the person does not qualify in terms of subparagraph (1), namely that the person—

- (a) has within a period of five years preceding the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in the Republic of South Africa or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
- (b) has within a period of five years preceding the date of application been found guilty by any professional or financial services industry body (whether in the Republic of South Africa or elsewhere) of an act of dishonesty, negligence, incompetence or mismanagement;
- (c) has within a period of five years preceding the date of application been denied membership of anybody referred to in sub-paragraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement;

- (d) has within a period of five years preceding the date of application—
- (i) been found guilty by any regulatory or supervisory body (whether in the Republic of South Africa or elsewhere); or
  - (ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body,
- on account of an act of dishonesty, negligence, incompetence or mismanagement;
- (e) has within a period of five years preceding the date of application, had any licence granted by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement; or
- (f) has at any time prior to the date of application been disqualified or prohibited by any court of law (whether in the Republic of South Africa or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

(4) An provider, director or senior manager must in the application be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to the provider, director and senior manager and which may be relevant for purposes of a decision by the registrar whether the provider, director or senior manager complies with subparagraph (1).

(5) A provider must submit its application with completed Annexure B and C Forms in respect of each of its directors or senior managers.

#### **4.2.2 Competency**

(1) A provider must satisfy the registrar that its directors or senior managers have the competency to undertake the relevant duties and functions, and where appropriate, detailed knowledge of the structure, purpose and risks of the OTC derivatives associated with the duty or function.

(2) To demonstrate competence, a director or senior manager involved in carrying out the duties and functions must act in a knowledgeable, professional and efficient manner.

(3) Without limiting the generality of subparagraph (1), in determining a person's competence, the registrar may have regard to the following matters:-

- (a) the person's past performance or expertise in the nature of the business being conducted;
- (b) the person's skills and experience to understand, operate and manage the regulated activities and financial affairs; and

(c) the person's technical knowledge and ability to perform prescribed duties for which he or she is engaged, including recognised professional qualifications and membership of relevant professional institutions.

(4) A provider must, in addition to any conditions imposed by the registrar to the authorisation of the provider,-

- (a) maintain an updated register of directors and senior managers;
- (b) promptly inform the registrar when an appointment of a director or senior manager is terminated, and the reason for the termination;
- (c) complete Annexure B when a new director or senior manager is appointed, and promptly submit it to the registrar;
- (d) annually submit a written statement to the registrar wherein continued compliance with this Notice with respect to each director and senior manager is confirmed.

#### **4.2.3 Operational ability**

A provider must have and be able to maintain the operational ability to fulfil the responsibilities imposed by the Act, including the following-

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

#### **4.2.4 Financial soundness of the provider**

(1) A provider may not be under liquidation or in provisional liquidation, or subject to business rescue proceedings as contemplated in the Companies Act, or have made arrangements with creditors, filed for sequestration or for winding-up.

(2) The assets of the provider (excluding goodwill and other intangible assets) must exceed its liabilities (excluding loans validly subordinated in favour of all other creditors).

(3) A provider-

- (a) must maintain current assets which are at least sufficient to meet current liabilities;
- (b) may not be subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period; and
- (c) must provide the registrar with a satisfactory credit reference.

#### **4.2.5 Financial soundness of directors and senior managers**

A director or senior manager of a provider-

- (a) may not be an unrehabilitated insolvent or subject to debt review as contemplated by the National Credit Act, 2005 (Act No. 34 of 2005);
- (b) may not be subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period; and
- (c) must provide the registrar with a satisfactory credit reference.

#### **4.3 Risk management and internal control**

- (1) A provider must organise and control its affairs responsibly and effectively, with-
- (a) sound risk management principles, that takes into account-
    - (i) its risk appetite, risk profile, market and macroeconomic conditions; and
    - (ii) the risk of a significant deterioration in market liquidity; and
  - (b) prudent policies and processes, systems and resources, approved by its controlling body, to identify measure, evaluate, monitor, report and control or mitigate risks on a timely basis.

(2) The provider's controlling body is responsible to oversee management of the provider in such a way that ensures that the policies and processes are implemented effectively and fully integrated into the provider's management process.

(3) The policies and processes must be formulated and designed to ensure that the controlling body and senior management of the provider is able to-

- (a) identify, quantify and manage the risk exposures of the provider, which includes -
  - (i) effective information systems for accurate and timely identification, aggregation monitoring and reporting of risk exposures to the provider's controlling body and senior management;
  - (ii) appropriate risk limits consistent with the provider's risk appetite and risk profile, and which are understood by and regularly communicated to relevant staff;
  - (iii) exceptions tracking and reporting processes that ensure prompt action at the appropriate level of the provider's senior management or controlling body, where necessary;
  - (iv) adequate structures, processes systems and controls in respect of instruments, contracts or positions measured at fair value, which structures, processes and systems and controls –

- (aa) must ensure that the controlling body receives regular reports from senior management regarding matters related to the valuation oversight and valuation model performance that were brought to the attention of senior management for resolution, and all significant changes to valuation policies;
  - (bb) must be sufficiently robust to ensure and promote the quality, integrity and reliability of all relevant input that affects the valuation of instruments, contracts or positions, which must take into account-
    - (AA) the frequency and availability of relevant prices or quotes;
    - (BB) whether or not the relevant prices present actual regularly occurring transactions on an arm's length basis;
    - (CC) the timeliness of the information relative to the frequency of valuations;
    - (DD) the number of independent sources that produce the relevant quotes or prices;
    - (EE) whether or not the relevant quotes or prices are supported by actual transactions; and
    - (FF) the maturity of the market;
  - (b) to the extent that the provider relies on modelling for the purposes of valuation, to ensure that the model is validated by a function independent of the relevant risk-taking business units, no less frequently than once per year;
  - (c) monitor the performance of the business of the provider; and
  - (d) monitor the quality of the provider's assets and the control of its liabilities.
- (4) The system of internal control employed by the provider must be designed to ensure that-
  - (a) financial and other information used or provided by the provider is reliable;
  - (b) all transactions and financial commitments entered into are recorded and are within the scope of authority of the provider or an employee acting on behalf of the provider;
  - (c) there are procedures to safeguard the assets of the provider and assets belonging to any other person for which the provider is accountable, and
  - (d) there are measures, so far as is reasonably practicable, to minimize the risk of loss to the provider or the counterparties or clients of the provider from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the provider.

(5) A provider must conduct a regular review to ensure that it maintains adequate policies, procedures and controls to meet the objectives referred to in sub-paragraphs 4(b) and (c).

(6) A provider must take reasonable steps to document all material systems and controls and the relevant documentation must be kept up to date, and be signed off by the controlling body annually.

(7) A provider must be able to describe and demonstrate the objectives and operation of its risk management procedures and its systems and controls to the registrar.

(8) The registrar may request an additional capital amount to be held to the calculated capital, if the provider -

(a) fails to satisfy the condition stipulated in sub-paragraph 4(d) to the satisfaction of the registrar; or

(b) fails to demonstrate to the satisfaction of the registrar that the provider has a sufficient number of sufficiently skilled staff in—

- (i) the provider's trading area;
- (ii) risk control;
- (iii) audit, or independent review function; or
- (iv) the back-office.

(9) A provider must conduct an appropriate independent review of the provider's risk measurement system to ensure that it maintains adequate policies, procedures and controls to meet the objectives referred to in sub-paragraphs 4(b) and (c), which may be conducted as part of the provider's internal auditing process, and which must—

(a) include the activities of the relevant trading units, the independent risk control unit and the provider's overall risk management processes;

(b) be conducted at regular intervals but not less frequently than once a year; and

(c) include -

- (i) the adequacy of documentation relating to the provider's risk management policies, systems and processes;
- (ii) the organisation of the risk control unit;
- (iii) the integration of counterparty credit risk measures into daily risk management;
- (iv) the approval process relating to all relevant risk pricing models and valuation systems used by front and back office personnel;
- (v) the validation of any significant changes made in respect of the provider's risk management process;
- (vi) the integrity of the provider's management information system;
- (vii) the accuracy and completeness of relevant market variables and position data;

- (viii) the verification of the consistency, timeliness and reliability of data sources used to operate internal models, including the independence of the data sources;
- (ix) the accuracy of valuation and risk transformation calculations

### **4.3 Compliance function**

A provider must-

- (a) establish and maintain effective systems and controls to promote and monitor compliance with its regulatory obligations;
- (b) establish a compliance function, which must-
  - (i) form part of the overall risk management framework of the business of the provider;
  - (ii) be staffed with an appropriate number of competent individuals, as determined by the nature, size and complexity of the provider's business;
  - (iii) be sufficiently independent from the business activities it monitors;
- (c) appoint a head of compliance with the responsibility for-
  - (i) the compliance function;
  - (ii) oversight of the provider's compliance with the Act;
  - (iii) reporting to the provider's board of directors regarding compliance matters; and
  - (iv) reporting to the registrar, on an annual basis in respect of the provider's compliance with its regulatory obligations; and on an ad hoc basis, on-
    - (aa) any non-compliance instances;
    - (bb) any material irregularities encountered during the monitoring; and
    - (cc) any matter deemed necessary to be brought to the attention of the registrar.
- (d) notify the registrar of the appointment of the Head of Compliance.

### **4.5 Business continuity planning**

A provider must-

- (a) maintain a business continuity plan which adequately identifies and mitigates material business continuity risks faced by the provider; and
- (b) regularly test the effectiveness of the plan and address any deficiencies.

### **4.6 Record keeping and data retention**

A provider-

- (a) must maintain proper, complete, accurate and secure records;

- (b) must have appropriate procedures and systems in place to store and retrieve in a manner safe from destruction records of all-
  - (i) instructions relating to an OTC derivative transaction with a client, or counterparty, including verbal instructions given by the client or counterparty to the provider; and
  - (ii) documentation relating to the contractual arrangement between the provider and the client or counterparty;
- (c) may keep records in electronic or voice recorded format;
- (d) may keep records at a third-party, provided that the records must be made available for inspection within seven days;
- (e) must keep a record referred to in-
  - (i) paragraph 4.6(b)(i) for a period of at least six months after the instruction has been given;
  - (ii) paragraph 4.6(b)(ii) for a period of at least five years after the contractual relationship has been terminated.

## **5. Suspension and termination of authorisation**

### **5.1 Involuntary termination**

(1) The registrar may suspend or terminate the authorisation of a provider if satisfied, on the basis of available facts and information, that the provider-

- (a) has ceased to exist
- (b) no longer meets the requirements contemplated in this Notice;
- (c) has failed to make a full disclosure of all relevant information to the registrar, or furnished false or misleading information in its application for authorisation; or
- (d) has failed to comply with any other provision of this Notice or the Act;

(2) Before suspending or terminating any authorisation, the registrar must-

- (a) inform the provider of the intention to suspend or terminate and the grounds for suspension or termination; and
- (b) give the provider a reasonable opportunity to make a submission in response.

(3) Where the registrar contemplates the suspension of a provider, the registrar must inform such provider of-

- (a) the intended period of the suspension; and
- (b) any terms to be attached to the suspension, including-
  - (i) a prohibition on concluding any new business by the provider as from the effective date of the suspension and, in relation to outstanding business, such measures as the registrar may determine for the protection of the interests of clients of the provider; and

(ii) terms designed to facilitate the lifting of the suspension.

(4) The registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the authorisation of the provider, and must notify the provider of the decision.

(5) Despite the provisions of sub-paragraph (2), the registrar may under urgent circumstances, where the registrar is satisfied on reasonable grounds that substantial prejudice to clients or the general public may occur, provisionally suspend or terminate the authorisation of a provider, and inform the provider of-

(a) the grounds of suspension; and

(b) the period and terms of suspension as referred to in sub-paragraph (3)(a),

and give the provider a reasonable opportunity to respond thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed.

(6) The registrar must, within a reasonable time after receipt of any response contemplated in sub-paragraph (2) consider the response, and may decide to-

(a) lift the provisional suspension or termination; or

(b) render the suspension or termination final,

and must inform the provider accordingly.

(7) During any period of suspension, whether provisional or final, the provider concerned is for the purposes of this Notice and the Act regarded as a person who is not authorised to act as a provider.

(8) A person whose authorisation has been withdrawn under this section is prohibited from carrying on the business of an OTC derivatives provider for a period specified by the registrar and from applying for a new authorisation.

(9) The registrar may, on good cause shown, vary any such period.

## **5.2 Voluntary termination**

(1) A provider may voluntarily terminate its authorisation by making a submission to the registrar at least 30 days prior to such termination.

(2) The registrar may –

(a) accept such termination unconditionally; or

(b) terminate the membership subject to such measures as the registrar may determine for the protection of the interests of clients of the provider.

## **6. Commencement**

This Notice comes into operation on the same date on which the Regulations come into operation.

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**FORM FM 6**

**FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012)**

**Application under section 6(8)(a) of the Act for authorisation as an over the counter derivatives provider**

The registrar

1. I....., the chief executive officer of  
..... (hereunder) referred to as the provider), being specifically authorised thereto by the controlling body of the provider, apply on behalf of the provider for authorisation as an over the counter derivatives provider.
2. The prescribed application fee of ..... is enclosed.
3. The place at which the business of the provider will be carried on is .....

Signed at ..... on this ..... day of ..... 20 ...

.....  
Chief Executive Officer

Witnesses:

1.....

2.....

## ANNEXURE 1 TO FORM FM 6

### Information which, if applicable to the provider in question, must be contained in an application for authorisation as an over the counter derivatives provider

1. The following administrative information:
  - (a) The postal, physical and electronic mail addresses of the provider's registered address or head office at which it will receive all documents for the purpose of this application
  - (b) The telephone and facsimile numbers of the provider and the chief executive officer.
  - (c) A list which reflects the full names, addresses and telephone numbers of persons, if any, who alone or with associates will exercise control over the provider.
  - (d) A list which reflects the full names of the members of the controlling body of the provider, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body.
  - (e) A list which reflects the names, physical and postal addresses, telephone and facsimile numbers of –
    - (i) the bank;
    - (ii) the auditor; and
    - (iii) the attorney,of the provider.
2. A copy of the founding documents of the provider which regulates at least the following:
  - (a) The structure of the provider;
  - (b) the composition and functions of the controlling body;
  - (c) the procedures for election or appointment of members of the controlling body, their terms of office, and when membership may be terminated;
  - (d) the procedures for the calling of meetings of people who hold ownership interests in the provider;
  - (e) the voting powers of people who hold ownership interests in the provider;

- (f) the appointment of auditors; and
  - (g) the procedures for the dissolution of the provider.
3. Adequacy of financial resources
- (a) If the provider has been in existence for more than a year, a copy of its audited annual financial statements as at its latest financial year-end.
  - (b) A copy of the budgeted income statement, balance sheet and cash flow statement for a three year period from the date of the latest financial statements.
  - (c) A statement signed by the chief executive officer of the provider specifying the critical assumptions made in the preparation of budgets and the sources from which the provider will derive its funding.
  - (d) Where arrangements have been made for the funding of any temporary shortfall in available cash resources, a statement must be provided by the party or parties concerned setting out the extent and terms of their commitment.
4. Adequacy of management and human resources
- (a) An explanation of the management structure of the provider including the names of the individuals responsible for the major functional areas and the number of personnel employed in each functional area.
  - (b) A *curriculum vitae* in respect of each member of the management of the provider who is responsible for a major functional area, which indicates his or her relevant experience and training.
  - (c) A projection of management and staff requirements for the period covered by the budgets referred to in paragraph 3(b).
5. The business plan of the provider, which has been approved by the controlling body and which deals at least with the following matters:
- (a) The planned development of the information technology systems and infrastructure of the provider and arrangements for their supply, management, maintenance, upgrading and security;
  - (b) the planned approach to qualifying, quantifying and managing risk within the provider;
  - (c) plans to ensure the integrity of the market;
  - (d) security procedures to ensure the integrity of the systems for recording transactions and the maintenance of records, the capacity of these systems in relation to the

budgeted number of transactions and the back-up resources available in the event of a systems failure; and  
(e) the corporate governance principles that will be implemented;

6. A report from the auditor of the provider to the effect that adequate systems and procedures are in operation relating to risk reduction, particularly by means of processing, physical, logical security, back-up and contingency controls.
7. The provider must supply any other information, which the registrar may reasonably require.

**Additional information, which must be contained in an application for an over the counter derivatives provider**

1. Details of the securities services to be provided by the provider.
2. Details of the asset classes in respect of which the provider will be rendering securities services.
3. Details of the licensed trade repository that will be used for the reporting of transactions.
4. Details of the licensed independent clearing house or associated clearing house appointed by the provider, where applicable.
5. Details pertaining to the settlement and custody and administration arrangements to be put in place by the provider.
6. Details of additional and/or unregulated business to be provided by the provider.
7. Details pertaining to whether the provider provides any securities services in respect of over the counter derivatives in a foreign jurisdiction.
8. Details pertaining to the trading method or facility through which the provider will trade its securities.
9. The range of counterparties and clients, both local and foreign, expected to transact with the provider.
10. The extent and manner of the arrangements in place for the valuation of securities.
11. The extent and manner of the arrangements in place for the facilitation of portfolio compression, where applicable.
12. The arrangements in place to effectively and efficiently manage the risks associated with the activities of the provider.

13. The governance arrangements in place that are clear and transparent, promote the safety and efficiency of provider, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
14. The arrangements in place to evidence compliance with the market conduct standards as prescribed by the registrar.
15. The arrangements in place for effective and efficient security and back-up procedures to ensure the integrity of the records of transactions effected through the over the counter derivatives provider.

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## ANNEXURE 2 TO FORM FM 6

### Information required in respect of members of controlling body of an over the counter derivatives provider

An application for authorisation as an over the counter derivatives provider must be accompanied by the following information in respect of members of the controlling body of the provider:

1. A *curriculum vitae* in respect of each member of the controlling body indicating the nature and extent of the member's qualifications and experience in the business operated by the provider and the names of three referees;
2. Whether the member has ever been convicted or found guilty of a criminal or disciplinary offence or liable in any civil proceeding by a court of law resulting from dishonesty, fraud, breach of fiduciary duty, a breach of the rules of any professional organisation, including a regulated person, or acting dishonourably or unprofessionally;
3. Whether the member has ever been involved in an entity that was placed under business rescue proceedings or in liquidation;
4. Whether the estate of a member has ever been sequestrated, and the date of rehabilitation, if any;
5. Whether the member has ever been barred from entry into any profession or occupation;
6. An indication if proceedings referred to in sub-paragraphs (2) to (5) are pending;
7. Full details of any fact which may have an impact on the evaluation by the registrar of the good character and integrity of a member of the controlling body.

## **FIT AND PROPER**

### **ANNEXURE A**

#### **GENERAL INFORMATION ON COMPLETION OF QUESTIONNAIRES AS CONTAINED IN ANNEXURES B AND C**

##### **A. Instructions for completion and submission**

1. The questionnaires in Annexure B and C must be properly completed and signed. Questions must be answered either in full or indicated not applicable ("n/a"). The signatory(ies) of the questionnaires must be duly authorised to furnish the information.
2. The questionnaires in Annexure B and C must be completed in respect of directors and senior managers as indicated therein.
3. The format of the questionnaire or the wording of questions may not be changed. However, this document may be reproduced.
4. Answers may be in handwriting or in typewriting.
  - 4.1. If the questionnaire is completed electronically (a) the solid lines in those areas provided for answers must be deleted before the answers are typed or alternatively the overtype mode whilst the answers are typed must be used; and (b) rows may be inserted where insufficient space is provided for answers.
  - 4.2. If the questionnaire is completed in writing and the space provided is not sufficient, the detail may be provided on a separate page, duly cross-referenced to the relevant question. Please indicate the number of any supplementary sheets attached to Annexures B and C.
  - 4.3. If the questionnaire submitted contains any changes to typed or written information, such changes must be duly signed.

**ANNEXURE B**

**QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF DIRECTORS AND SENIOR MANAGERS OF A PROVIDER**

**1. Personal details of the director or senior manager in respect of which this questionnaire is being completed:**

1.1. Surname and title:

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1.2. Full first name(s):

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1.3. Any previous surname(s) or first name(s):

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1.4. Indicate the proposed position to be held, e.g. director or managing director:

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1.5. Effective date of appointment:

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1.6. Residential address and telephone number:

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1.7. Postal address:

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1.8. Previous residential address(es) during the previous 5 years:

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1.9. Nationality

Date of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Identity Document number (attach a certified copy): \_\_\_\_\_

Passport number (attach a certified copy): \_\_\_\_\_

Expiry date: \_\_\_\_\_

Country of issue: \_\_\_\_\_

1.10. Nationality and indicate how it was acquired (e.g. birth, naturalisation or marriage):

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1.11. Professional qualification(s), the year(s) when, and the institution(s) at which, this was acquired (may be provided in separate sheet):

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1.12. Attach completed Personal Credential Verification Forms for purposes of the background screening of each director or senior manager. The forms are obtainable on application.

1.13. Attach detailed curriculum vitae.

**2. General details in respect of an individual.**

2.1. State in what capacity you are completing this document, i.e. as a current or prospective director (executive or non-executive) or senior manager. State full job title and describe the particular duties and responsibilities:

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2.2. Record of Investments and significant shareholding history (including indirect holdings) over at least the last five years (including those holdings which provided you a significant influence over the operations and affairs of the entity)

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**3. Specific test to assess fitness and probity**

**If the answer to a question is 'yes' please provide details with proper referencing.**

3.1 Have you ever been within a period of five years preceding the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in the Republic of South Africa or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty?

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3.2 Have you, within a period of five years preceding the date of application been found guilty by any professional or financial services industry body (whether in the Republic of South Africa or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement?

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3.3 Have you within a period of five years preceding the date of application been denied membership of anybody referred to in question 3.2 above on account of an act of dishonesty, negligence, incompetence or mismanagement?

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3.4 Have you within a period of five years preceding the date of application been found guilty by any regulatory or supervisory body (whether in the Republic of South Africa or elsewhere) on account of an act of dishonesty, negligence, incompetence or mismanagement?

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3.5 Have you within a period of five years preceding the date of application had your authorisation to carry on business refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement?

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3.6 Have you within a period of five years preceding the date of application, had any licence granted by any regulatory or supervisory body referred to questions 3.4 and 3.5 above, suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement?

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3.7 Have you at any time prior to the date of application been disqualified or prohibited by any court of law (whether in the Republic of South Africa or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

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3.8 Have you ever been or are you currently an unrehabilitated insolvent or subject to debt review as contemplated by the National Credit Act, 2005 (Act No. 34 of 2005)?

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3.9 Have you ever made any arrangements or composition with your creditors, filed for bankruptcy, been adjudged bankrupt, had your assets sequestrated, or been involved in proceedings relating to these?

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3.10 Have you ever been or are you currently subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period?

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3.11 Have you ever been a senior officer or director of a company or a shareholder of a company or been in a position to exercise influence in the company that:

(a) Has been the subject of any adverse judgment or award, in the Republic of South Africa or elsewhere, which remains outstanding or was not satisfied within a reasonable period?

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(b) Has, in the Republic of South Africa or elsewhere, made any arrangements or composition with its creditors, filed for business rescue, filed for bankruptcy, been adjudged bankrupt, had assets repossessed or liquidated, or been involved in proceedings relating to any of the foregoing?

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**ANNEXURE C**

**QUESTIONNAIRE TO BE COMPLETED IN RESPECT OF THE PROVIDER**

**1. Details of the Entity and Operational Ability**

1.1 Entity Name:

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1.2 Registration Number:

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1.3 Any other name under which the business is conducted and where is it used:

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1.4 Registered address, website address and email address:

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1.5 Postal address:

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1.6 Telephone and facsimile numbers of the provider:

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1.7 Name, Physical and, postal addresses and telephone numbers of the provider's bank

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1.8 Name, Physical and, postal addresses and telephone numbers of the provider's auditor

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1.9 Confirmation that the provider has adequate access to communication facilities including at least a full-time telephone or cell phone service, and administrative facilities, including electronic, typing and document duplication facilities

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1.10 Confirmation that the provider has adequate storage and filing systems for the safe-keeping of records, business communications and correspondence

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**2. Specific test to determine the financial soundness of the provider:**

**If any answers to any of these questions is 'yes' please provide details on separate pages or in the space provided with proper referencing**

2.1 Provide confirmation that the assets of an provider (excluding goodwill and other intangible assets) must exceed the provider's liabilities (excluding loans validly subordinated in favour of all other creditors).

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2.2 Confirm that the provider maintains current assets which are at least sufficient to meet its current liabilities.

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2.3 Has the provider been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period?

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2.4 Has the provider ever been or currently is under liquidation or provisional liquidation, or subject to business rescue proceedings as contemplated in the Companies Act, 2008, or has the provider ever made or has made arrangements with creditors, filed for bankruptcy or filed for winding-up.

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## **DECLARATION**

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

I undertake that, as long as I continue to be a directors or senior managers of the market infrastructure, I will notify the registrar of any material changes to, or changes affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in no event later than 21 days from the day that the change comes to my attention.

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

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

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

**Position held:**

**SIGNATURE**

**DATE**

## **Documents to be submitted**

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

DRAFT