

# **DRAFT**

**Statutory Notice No.**

**SECURITIES ACT  
Act No. 26 of 2014  
(Internet Trading Services) Regulations**

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**PART I****Preliminary (Regs 1-2)****1. Citation**

These Regulations may be cited as the Securities (Internet Trading Services) Regulations, 2017

**2. Interpretations**

In these Regulations, unless the context otherwise requires-

“Act” means the Securities Act, 2014;

“collective investment undertaking” has the meaning given in Section 6 of the Collective Investment Undertakings Act;

“controller” has the same meaning as in the Act

“electronic prospectus” means a prospectus relating to an offer of securities to the public which is distributed via the Internet being website of an issuer or website of an internet trading service provider, a computer network, CD-ROMs, floppy disks or any other electronic medium;

"e-mail" is a contraction for electronic mail and refers to written communication conveyed by electronic rather than physical means;

"encryption" refers to the scrambling of data into a private code to prevent it from being tampered with or accessed by unauthorised persons;

"firewall" refers to a software that is used to prevent outsiders from obtaining unauthorised access to a private computer network;

"hyperlinks" refers to electronic links that allow for the interconnection of information and materials within and between web sites;

“internet trading service provider” means a securities business approved by the Regulatory Authority under these regulations to offer internet trading services in securities and CIUs;

“investment advisory services” refers to advisory services provided by a securities institution licensed under the Act and carrying on business as such;

“listed securities” means securities that have been listed or admitted to trading on a securities exchange;

“other electronic medium” means hand held or wireless, or voice activated or SMS messaging, trading or communications devices;

“securities broker or dealer” means a member of a securities exchange;

“securities exchange” has the meaning given in Section 2 of the Act; and

“electronic trading service” means the provision of services by an internet trading service provider who acts as a securities business for his clients in connection with their internet purchase or sale of securities and / or CIUs, and includes the provision of any other matter reasonably incidental or ancillary to the provision of such services;

### **3. Application:**

These Regulations apply to a -

- (1) person who wishes to operate as an internet trading service provider of a security business listed and defined under the Act
- (2) person who wishes to operate as an internet trading service provider to offer units in a collective investment undertakings in terms of the Collective Investment Undertakings Act (Cap 56:09)
- (3) The internet trading services regulations provides regulatory framework but is not limited to system processes, operations, information security, confidentiality, and availability, integrity of the information system and infrastructure and personnel involved.
- (4) Internet trading service shall be based on order routing systems, which will route client orders for execution through internet trading system provided by a licensed internet trading service provider based on regular order matching principles.
- (5) The Regulations shall not apply to proprietary trade networks or internet facilities operated by a securities exchange or a recognized clearing house or central securities depository licensed by the Regulatory Authority.

## **PART II**

### **Licensing Requirements (Regs 4-5)**

#### **4. Application for licence**

- (1) No person shall carry out a business offering a trading service in a security in Botswana through the Internet or any other electronic medium without a licence issued by the Regulatory Authority.
- (2) No person may offer securities business services, or investment advisory services in respect of a security or units of a collective investment undertaking in Botswana through the internet or other electronic medium without the prior approval of the Regulatory Authority.
- (3) No person may offer a securities business or units of a collective investment undertaking for sale in Botswana through the Internet or other electronic medium other than in compliance with these regulations.
- (4) A trading service or offer of securities or units of a collective investment undertaking for sale will be deemed to be taking place in Botswana if –
  - (a) it is provided by an organisation located in Botswana; or
  - (b) it is targeted at investors in Botswana.
- (5) An application for a licence to carry out a business as an internet trading service provider shall be made to the Regulatory Authority in a form authorised by the Regulatory Authority.
- (6) An application for a licence shall be accompanied by-
  - a) Detailed guidelines relating to trading, matching, clearing and settlement facilities of transactions
  - b) the full personal details, qualifications, experience and economic interests of its-
    - (i) Controllers,
    - (ii) Key persons,
    - (iii) principal officer, and
    - (iv) other senior officers; or

- (c) the full personal details, qualifications, experience, economic interests and occupation of the-
  - (i) directors of its board,
  - (ii) shareholders of the applicant, and
  - (iii) beneficial owners of the applicant;
  - (d) the constitution and other incorporating documents of the applicant, which shall be a body corporate or a limited partnership;

(7) Business Plan detailing budgets for financial and non - financial resources, sources of funding, description of products, target market and marketing plan, step by step of processes end to end; IT system assessment to satisfy nature, scale and complexity of business which will evidence resources sufficient to efficiently operate and manage its facilities as provided for under Part III of these Regulations;

- (a) any evidence of the minimum financial requirements as provided in regulation 5;
- (b) *agreements the applicant has with any licensed third parties in relation to provision of a trading and clearing platform or any facility that will be used for purposes of trading securities on the internet;*
- (c) a certificate of good standing with the foreign regulator of the third party agent or broker providing the platform or of the securities exchange offering its platform for this purpose
- (d) a licence fee of P100 000

(8) Any person who contravenes the provisions of sub regulations (1), (2) and (3) commits an offence and is liable to penalties levied against him in terms of Section 59 of the Act and/or Section 60 of the Non-Bank Financial Institutions Regulatory Authority Act and Section 12 of the Securities Act.

#### 4. **Issue of licence**

(1) Where the Regulatory Authority is satisfied that the applicant has-

- (a) complied with the requirements of regulation 3; and
- (b) demonstrated the capacity to meet the obligations and compliance requirements as provided for under Part III of these Regulations and, where applicable, the Collective Investment Undertakings Regulations, it shall, within

90 days of receiving the application, issue a licence to the applicant in Form **XXX** set out in the Schedule.

- (2) A licence issued under this regulation-
  - (a) shall be for a period of three years; and
  - (b) may be subject to such conditions as the Regulatory Authority may determine.

## **5. Minimum financial requirements**

- (1) Any person applying to be an internet trading service provider shall have and maintain at all times a minimum financial balance of P1 000 000.
- (2) A person licensed as an internet trading service provider under these Regulations shall demonstrate to the Regulatory Authority, when requested to do so, that it is financially solvent.
- (3) The Regulatory Authority shall determine the financial solvency of an internet trading service provider by financial analysis conducted by the Regulatory Authority on the internet trading service providers operations from time to time.
- (4) The Regulatory Authority may declare an internet trading service provider that has failed to maintain a minimum financial balance or to demonstrate its state of solvency as provided in sub regulations (1) and (2) to be in an unsound financial position and may review the internet trading service provider to determine whether it qualifies to continue to be licensed as an internet trading service provider under these Regulations.
- (5) Where the Regulatory Authority, after reviewing an internet trading service provider, is of the view that the internet trading service provider is in an unsound financial position, it may suspend the internet trading service provider's licence for the period specified in the written notice given to the internet trading service provider and the Regulatory Authority shall in so doing act in accordance with section 7 of the Act. The foregoing shall not preclude the Regulatory Authority from imposing any administrative penalties as provided for in Section 60 of the Non-Bank Financial Institutions Regulatory Authority Act and Section 12 of the Act.

## **PART III**

### **Operational and Trading Requirements (Regs 6-8)**

## **6. Operational Requirements**

- (1) The Internet Trading Service Provider shall ensure that
  - a) The internet trading platform is compliant with regulations and safety standards.

- b) The processes for collection, distribution and handling of electronic and physical prospectuses, public offer documents, offering contracts and the electronic interface of its website with clients and issuers are available.

(2) An internet trading service provider shall;

- (a) ensure confidentiality of information in such a way that information is only accessible to an authorised person or system; and in particular 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, leading to unauthorised or illegal transactions;
  - (iv) unauthorised usage and inability to detect such malpractices in a timely fashion and/or 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 web-site;
  - (vi) analysis of data by unauthorised third parties;
- (b) safeguard the integrity of the service including controls to prevent –
  - (i) non-compliance with rules and regulations 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 or manipulation of data, unavailability or threat of unavailability of systems;
  - (vi) cyber extortion, selling data stolen from, or illegally obtained from, service providers;
- (c) ensure the availability of the service in the event that –
  - (i) the site is not reachable, and that there is no possibility to trade, or to get or give information;

- (ii) that parts of the site are not reachable either through a denial of service attack or lack of capacity; or
  - (iii) that the provider of the service is unable to give timely access to the site or parts of the site;
- (d) ensure that satisfactory alternative arrangements and contingency plans are in place to ensure that business can continue in the event of a large-scale disruption;
- (e) ensure that the identity of the person or system accessing the service is properly verified by the use of PINs, passwords, electronic signatures or such other approved mechanism so as to exclude unauthorized access;
- (i) ensure that satisfactory arrangements are in place so that an internet trading service provider can at all times uniquely identify each and every order during the different stages of processing;
- (j) ensure that orders placed through its systems are fairly allocated in accordance with the rules of the relevant trading platform where applicable;
- (k) ensure that the system shall have mechanisms to prevent executions of unintended duplicate orders.
- (l) ensure 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;
  - (iv) any granting, modification or revocation of systems access rights or privileges.
- (m) 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 but not be limited to the following:
  - (i) Details of the procedures for undertaking such an evaluation;
  - (ii) The time at which such evaluation is undertaken;
  - (iii) A copy of the results of such evaluation.
- (n) provide the Regulatory Authority, in advance, with information relating to any significant changes to its systems or any changes to the functionality of its systems identifying the areas and the reasons for the change. In the event that



the changes to the system are deemed to be material, the internet trading service provider shall, as soon as is reasonably possible and, in any event, within two months of the aforementioned changes, lodge with the Regulatory Authority a copy of its testing and implementation strategies. In addition, the Regulatory Authority may be present and participate during testing of the systems before the changes are introduced into live operation.

- (o) implement such further arrangements or plans which it is notified to implement by the Regulatory Authority

## **7. Trading Requirements**

- (1) An internet trading service provider shall –

- (a) Submit for vetting and approval to the Regulatory Authority the following:
  - (i) Procedures for the commencement of internet services in terms of which participants will be screened
  - (ii) have an agreement with clients to whom it offers an internet trading service that contains appropriate and prominent risk disclosures highlighting the risks associated with internet based transactions;
- (b) have appropriate arrangements in place to assess a client's suitability to undertake securities transactions via the Internet including a written consent of the client;
- (c) have appropriate arrangements in place to approve a client's account for day trading;
- (d) have adequate risk management systems for controlling exposure to Internet clients;
- (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 suitably qualified staff to operate and maintain the systems used for internet trading services or have an irrevocable agreement with a suitably qualified third party provider for the operation and maintenance of those systems;
- (g) be responsible for settlement of each and every trade executed through the internet trading service that it utilises.

- (2) A securities exchange may specify its own requirements, in addition to these regulations, for allowing an Internet Trading Service Provider to connect to a system operated by the exchange.
- (3) An Internet Trading Service Provider applicant shall provide the Regulatory Authority with details as to how it will satisfy itself as to the true identity of a person opening an account and what measures it intends to take to ensure that the account will be maintained and operated by the person opening the account.
- (4) Where an internet 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 will be put into effect in the event that the supplier of the service is unable to continue to provide a service.

## 8. **Display and disclosure of information**

- (1) An internet trading service provider shall display a prominent statement on its system that “This internet trading service provider has been licensed by the Non-Banking Financial Institutions Regulatory Authority of Botswana. The Authority shall not be liable to any action in damages suffered as a result of this approval”.
- (2) The following information shall be displayed by an internet trading service provider in a prominent place on the internet trading service homepage or landing platform-
  - (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 sub regulation (5);
  - (e) any disclosure which is required to be made in terms of Section 22 of the Securities Act, Part X Collective Investments Undertakings Act -or by order of the Regulatory Authority.
- (3) An Internet Trading Service Provider shall provide the following information in plain English language and in an easily accessible form –
  - (a) a basic explanation of securities trading; including definitions of common terms used on the trading screen;
  - (b) detailed procedures and processes regarding the manner in which orders are 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) procedures to cancel pending orders during a system failure;
- (e) a glossary explaining key investment terms and concepts such as:
  - (i) the differences between the various types of orders that may be placed;
  - (ii) 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 the client's orders are executed;
  - (iv) any situations in which clients may not receive an execution;
  - (v) any restrictions on the types of orders that clients can place; and
  - (vi) how market volatility can affect clients' orders.
- (f) the regulations affecting 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/circulars.
- (h) a hyperlink to the website of the Regulatory Authority.
- (i) a "Terms of Use" policy document which shall be approved by the Regulatory Authority.

#### (4) Order/Trade Confirmation

- (a) Trade confirmations and contract notes shall be sent to the client. Subject to the rules of the internet trading service provider or securities exchange where applicable, these may be sent by email on condition that the securities broker or dealer –
  - (i) notifies the Regulatory Authority, the internet service provider and securities exchange concerned of the intention to use electronic trade confirmations and/or contract notes 30 days in advance; and
  - (ii) obtains prior written consent from the clients concerned.
- (b) Any trade confirmations and/or contract notes sent by email shall be digitally signed by electronic signature in accordance with the relevant provisions of the Part V of the Electronic Communications and Transactions Act, 2014.

- (5) An internet trading service provider shall have in place procedures to address complaints by clients so as to ensure that due process is upheld on an ongoing basis, to the satisfaction of the Regulatory Authority, which shall include –
  - (a) effective arrangements for the investigation and resolution of complaints made against the internet trading service provider;
  - (b) establishing and maintaining a register of complaints made against the internet trading service provider and resolutions reached.
  - (c) A Dispute Resolution Policy Procedure including the place and contact numbers where a complaint may be lodged.
- (6) Records of the complaints shall be maintained for a minimum of seven years.
- (7) Where a dispute is not satisfactorily resolved, the internet trading service provider shall ensure that the complainant confirms this in writing, and the internet trading service provider shall notify the Regulatory Authority within 30 calendar days of the unresolved complaint.
- (8) An internet trading service provider that contravenes the provisions of this regulation shall be liable to a civil penalty under Section 12 of the Securities Act to be imposed by the Regulatory Authority

#### **PART IV**

#### **Offer of Securities and Requirements for Collective Investment Undertakings (Regs 9-10)**

##### **9. Offer of Securities**

- (1) An offer of securities or units of a collective investment undertaking for sale in Botswana by way of a prospectus shall not be made until the requirements of Part XXII of the Companies Act, Part X the Collective Investment Undertakings Act, including the regulations thereunder, and any other relevant provisions have been fulfilled.
- (2) Where electronic prospectuses are to be distributed, the issuer shall ensure that paper copies of the prospectus are also prepared and made available to investors. The issuers shall state prominently in the electronic prospectus;
  - (a) that a paper prospectus is also available, and
  - (b) the location (which must be a location convenient for collection of such documents) where copies of the paper prospectus can be obtained.
- (3) An internet trading service provider should ensure that:

- (a) it adheres to the sponsor's (or, where there is none, the issuer's) and 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. The public offer documents must be 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) provide a hyperlink to the electronic prospectus or public offer documents on the issuer's website, where this is not possible:
- (i) As an alternative to providing a copy of the electronic prospectus or public offer documents on its website, an internet 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. Any intermediary wishing to use this method should:
  - obtain prior consent from the issuer (or the third party) to establish the hyperlink. The internet trading service provider should indicate on its webpage containing the hyperlink whether consent has been obtained;
  - ensure that the webpage or the icon containing the hyperlink contains a clear message to inform clients that they are leaving the internet trading service provider's website and entering the website of the other person;
  - ensure that the webpage or the icon containing the hyperlink clearly describes where the hyperlink leads. Subject to (c) above, a hyperlink described as leading to the electronic prospectus (or other public offer document, as the case may be) must provide direct access to the front cover or table of contents of the relevant document. Hyperlinks described as leading to the prospectus (or other public offer documents) which lead to webpages containing information other than the relevant document or to certain parts of the document are not acceptable for these purposes;
  - put in place procedures to monitor the performance of the hyperlink to ensure that applicants using the internet trading service provider's webpage can access the electronic prospectus or public offer documents on the relevant website for the duration of or for so long as applications are being accepted through that internet trading service provider; and

- (ii) immediately cease to accept applications through its website if the hyperlink fails to provide applicants with proper access to the electronic prospectus or public offer documents on the issuer/third party's website.
- (e) the electronic prospectus or public offer documents (or a hyperlink to these documents) on the internet trading service provider's website are 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 to the effect that no applications or monies can be accepted once the public offering closes, or where the internet 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 (where applicable) duplicate or multiple applications have been made to the issuer;
- (h) information reasonably required by the sponsor (or, where there is none, the issuer) is provided to enable it to monitor the public offer, including information in relation to the level of application and volume the internet trading service provider processes during the public offer is given to the sponsor (or the issuer, as the case may be) upon request;
- (i) the internet trading service provider's website and its operation: –
  - give clients access to free software to download, extract compressed files (if necessary), view and print the public offer documents and/or application input screen;
  - give applicants contact information for technical support or enquiries in connection with the operation of the public offer service and the website;
  - give clients 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 (e.g. number of securities to be applied for, selection of payment methods) are collected;
  - require applicants to confirm separately the following before being given access to the webpages where the application information is collected:
    - they have been provided with sufficient opportunity to access the electronic prospectus or public offer documents and the information disclosed in the documents;
    - they have read and agree to be bound by the terms and conditions set out in the public offer service provider's website; and

- they are eligible to apply;
- (j) a confirmation is given to the applicants as soon as possible once it has received the application submitted by them;
  - (k) the applicants are able to print a copy of the relevant webpages containing the details of application information inputted by them and the confirmation message;
  - (l) the website and presentation of the public offer information encourages investors to make investment decisions based only on the contents of the prospectus or public offer documents rather than other information, particularly promotional or marketing materials and media coverage;
  - (m) there are sufficient procedures to monitor the electronic prospectus public offer service it provides and to ensure the public offer service is offered in accordance with the sponsor's (or, where there is none, the issuer's) instructions;
  - (n) there are reasonable measures to ensure that its computer systems have sufficient capacity and security to protect the integrity of the transactions. Moreover, documented contingency plans are put in place to deal with the situation where the securities application collection service or the display/download of the electronic prospectus or public offer documents provided through the Internet is disrupted;
  - (o) information is provided on its website to enable potential applicants to determine whether the service is suitable for them. This should include –
    - (i) a clear criteria used to sign on new clients;
    - (ii) the types of persons who are eligible to use the service, existing clients;
    - (iii) a clear delineation of the area containing the electronic prospectus or public offer documents and a warning to applicants that any information falling outside those areas is not part of the electronic prospectus or public offer documents and the securities or units in a collective investment undertaking are offered solely on the basis of the information in the prospectus or public offer documents;
    - (iv) the procedures which an applicant must go through to make a valid application, including the issuer's terms and conditions;
    - (v) dates and timing for various stages of the public offer including deadlines for submitting applications and making payments;

- (vi) instructions and information in relation to the application procedures including any requirements or arrangement which applicants must have in place so that they can use the service, e.g., a list of payment methods, limitations associated with the payment methods such as service lead time or transaction limits etc., circumstances and procedures for refunding monies to applicants, procedures for distributing and registering securities certificates, units in a collective investment undertaking or crediting to applicant's account, description of the fees and charges that may be made to the applicant and deadlines for submission of the application;
- (vii) a statement that potential applicants should read the public offer documents prior to making an investment decision and should make the investment decision based on the public offer documents rather than on information, particularly promotional or marketing materials and media coverage that may accompany the offering;
- (viii) warnings that, in using the service, the client assumes the risks associated with conducting transactions over the Internet (e.g. that the transactions may be subject to interruption, transmission blackout, delayed transmission due to Internet traffic or incorrect data transmission due to the public nature of the internet);
- (ix) a list of suggested alternative places where applicants can obtain copies of the public offer documents and
- (x) a prominent statement on its website informing applicants that the website belongs to the internet trading service provider and not the issuer and that in using the public offer e-service, the internet trading service provider is the applicant's (and not the issuer's) agent.

#### **Other matters**

- (4) The following enhancements or differences between the paper version and an electronic version of any public offer documents are acceptable –
  - (a) a search facility for defined expressions;
  - (b) hypertext links within the prospectus;
  - (c) prompts to assist readers to use and find information in the document. The prompts should not contain any information that does not appear in the registered paper document; and
  - (d) a zoom facility so that readers may enlarge or reduce the information displayed.



- (5) the internet trading service provider shall ensure that an electronic supplemental prospectus is provided on its website at the same time as it is made available to the public by the issuer.
- (6) Notwithstanding the issuance of a prospectus in electronic form, an application form for securities shall only be issued when accompanied with a prospectus which complies with the requirements of Part XXII of the Companies Act and any other relevant legislation. Issuers shall take all reasonable steps to ensure that where investors are able to receive an electronic application form, such application form, when dispatched, is attached to or accompanied by an electronic prospectus.
- (7) Where an electronic prospectus is made available online, an issuer shall provide;
  - (a) a full version of the prospectus on the website, and which can be effectively read, printed, and downloaded;
  - (b) a full version of the prospectus via hyperlink to another website (for example, from the website of an intermediary to an issuer's website), and which can be effectively read, printed, and 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 charges.
- (8) A prospectus shall be available to investors prior to their gaining access to an application form or the web-pages for the execution of an order to purchase securities, i.e. a prospectus shall be available "up front". 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. In this connection, offerees are required to –
  - (a) implement measures to ensure that investors can access a web-page for executing an order only if they have been given sufficient opportunity to read or access the electronic prospectus, e.g. the web-page for executing an order shall be preceded by web-pages containing the prospectus or a web-page containing a hyperlink to the prospectus;
  - (b) implement measures to ensure that investors can access a web-page for executing an order only if they have confirmed that sufficient opportunity has been given to them to read or access the electronic prospectus, e.g. a confirmation facility is provided on the web-page 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 unless and until investors have made a positive declaration referred to in paragraph (b) above they shall not be given access to the web-page for executing an order to purchase securities.
- (9) A website where an electronic prospectus is made available shall clearly specify the areas that contain the electronic prospectus. Hyperlinks from an electronic prospectus on a website to other documents or web-pages are not acceptable unless the other documents and information on the other web-pages are required to be made available for inspection and/or directly referred to in or form part of the prospectus. A hyperlink providing exit from the electronic prospectus to the previous start point is acceptable.
- (10) The offeror shall specify clearly –
  - (a) the procedures for payment;
  - (b) the procedures for refunding money to applicants;
  - (c) the procedures for distribution of securities certificates or crediting the applicant's securities account in the event that an application is successful;
  - (d) a description of any additional fees and charges that are to be paid by the applicant other than anything already specified in the prospectus;
  - (e) the deadline for the submission of an application by the applicant.
- (11) Electronic prospectuses should be presented to investors in such a way that encourages investors to make decisions on the basis of the contents of the prospectus and not on the basis of promotional or aggressive marketing material.

#### **10. Collective Investment Undertakings**

- (1) Every advertisement for a collective investment undertaking targeting investors in Botswana shall comply with the Collective Investment Undertakings Regulations and a hard copy of the relevant web-pages shall be submitted to the Regulatory Authority.
- (2) If the website supports multimedia presentation then a script and description of the presentation shall also be submitted.
- (3) Information on the website is required to be updated and current, and outdated information is required to be appropriately removed or archived in order to avoid confusion.
- (4) With regard to dealings in units of collective investment undertakings on the Internet, all the proper operational procedures, including client identity authentication, shall be followed and all applicable regulations complied with.

- (5) Where information or documents are required to be delivered to holders of interests in collective investment undertakings, such notices may be delivered by any media provided that the media permits effective communication and the investors concerned have positively consented to the use of the specified media for the delivery of specified communications.
- (6) Consent to receive information through electronic means shall be obtained from investors in a manner that assures its authenticity and a record shall be retained. Consent shall be revocable by investors at any time and the means to revoke consent prominently displayed.
- (7) Where consent is given by an investor that a communication (such as a notice to unitholders) can be posted on the website to satisfy delivery to the investor, there shall be effective means to ensure that the investor is notified or made aware on a timely basis that new information exists.
- (8) Where information or documents are distributed by electronic means to investors in accordance with their consent, the Regulatory Authority requires that paper copies are made available to these investors if they revoke their consent and ask to obtain paper copies.
- (9) Documents on a website shall remain available for as long as it is necessary for investors to have a reasonable opportunity to access or read them. As in the case of paper documents, investors shall have the opportunity to retain the information by printing or downloading the documents or have ongoing access equivalent to personal retention.

## **PART V**

### **Provisions for securing data and independent assessment (Regs 11-12)**

#### **11. Security of data**

- (1) To reduce the risk of third party interception of information sent between a client's computer and the system of an internet trading service provider, the system shall use some form of encryption.
- (2) The encryption shall apply to all orders being entered and to any communication with clients that contains confidential information.
- (3) The system shall use a firewall to prevent intrusions by unauthorised persons (e.g., a cracker or hacker, who may obtain unauthorised access to a computer system by bypassing passwords or otherwise breaching computer security).
- (4) The system shall be configurable to allow auto-logout in case of inactivity of the trading terminal and the trading website.

- (5) An internet trading service provider shall demonstrate that it has in place a written security policy based on or containing these regulations as part of their security policy.

## **12. Independent assessment**

- (1) The Regulatory Authority may employ technical experts to undertake an independent assessment of the operational capacity and security of a system, for which approval is sought, at the costs of the applicant, subject to the applicant agreeing in advance to a maximum charge.

## **PART VI**

## **13. Reports and Record Keeping (Regs 13-14)**

### **(1) Monthly Reports**

- (a) An internet trading service provider shall maintain monthly reports on the reliability and compliance status of the service. The report shall inter-alia include:
  - (i) Number of users of the system as at the end of the month;
  - (ii) Daily average number of transactions (of all types) processed by the system during the month and the highest number of transactions processed by the system on a single day during the month;
  - (iii) Percentage of the scheduled time for availability for which the service was not available;
  - (iv) Number of incidences in which the system remained partially or fully inaccessible for trading;
  - (v) Reasons for non-availability, if any; and
  - (vi) System modifications, if any, and its impact on the existing services.

### **(2) Quarterly reports**

- (a) number of complaints received during the quarter in the prescribed form
- (b) financial information for the three (3) month period which information shall include; statement of comprehensive income, statement of financial position, the cash flow statement, information on controllers/key persons/ shareholders

## **14. Submission of information to Regulatory Authority**

- (1) An internet trading service provider shall within five business days, inform the Regulatory Authority, in writing, where-

- (a) the internet trading service provider or any of its branches ceases to operate;
  - (b) the internet trading service provider becomes unable to discharge any of its debts promptly and in full;
  - (c) there is a change in contact numbers or address of the internet trading service provider; or
  - (d) there is a change in the business affairs of the internet trading service provider that has or may have a negative effect on clients.
- (2) An internet 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 XXXX as set out in the Schedule.
- (3) A internet trading service provider who fails to submit any information required under these Regulations may be declared by the Regulatory Authority as not carrying on business with integrity, prudence and professional skill and shall be liable to the penalties specified under section 60 of the Non-Bank Financial Institutions Regulatory Authority Act.
15. **Compliance with the Financial Intelligence Act and Cybercrime and Computer Related Crimes Act**
- (1) None of the provisions contained in these regulations in respect of the duty of an internet trading service provider to capture, retain and secure data and information shall preclude an internet trading service provider from complying with the provisions of the Part IV of the Financial Intelligence Act and the Cybercrime and Computer Related Crimes Act.
  - (2) ensure that the internet trading service system scans each applicant for compliance with Money Laundering and Counter Terrorism Financing activities
  - (3) ensure that the internet trading service system identifies and generates alerts for suspicious transactions

## **PART VII**

### **General (Reg 16)**

16. **Suspension of licence and administrative penalties**
- (1) The Regulatory Authority shall assess the effectiveness of systems and processes of an internet trading service provider in accordance with these regulations and procedures devised from time to time and approved by the Regulatory Authority.

- (2) The Regulatory Authority may suspend the licence of an internet trading service provider if it violates any of the regulations, and such suspension shall continue until and unless the internet trading service provider complies with the regulations it has violated or removes the cause of suspension in the manner as prescribed by the Regulatory Authority.
- (3) The foregoing shall not preclude the Regulatory Authority from imposing any administrative penalties as provided for in Section 60 of the Non-Bank Financial Institutions Regulatory Authority Act.