

## CHAPTER 46:08 - NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY: RULES

### NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY (CAPITAL MARKETS SECTOR CORPORATE GOVERNANCE) RULES 2023

(Section 4)  
(FEBRUARY 2023)

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##### **1. CITATION**

- (1) These rules may be cited as the Non-Bank Financial Institutions Regulatory Authority (Capital Markets Sector Corporate Governance) Rules, 2023.

##### **2. INTERPRETATION**

- (1) In these Rules, all terms carry the same meaning as in the Act: -  
“Act” means the Non-Bank Financial Institutions Regulatory Authority Act.  
“Advertisement” means a communication including oral, written, virtual, and electronic communication to the public, any section of the public, to clients, or any group of clients that provides information about products, services and investment opportunities offered by the NBFIs.  
“Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority.  
“Board” means the Board of directors, partners or governing body of the Non-Bank Financial Institutions (NBFIs). Where the business is

conducted in another legal form, the persons registered with the Regulatory Authority as having responsibility for the conduct of the business;

“Securities broker/dealer” has the meaning assigned to it in the Securities Act

“Capital Markets Sector” for the purpose of these Rules this refers to all entities that are licensed/registered/ recognised/approved as per the Securities Act, Collective Investment Undertakings (CIU) Act and/or any other entity or a person declared by NBFIRA to be a capital markets entity.

“Client” is a person to whom the NBFI provides services, or intends to provide services in the course of its regulated activity and includes a potential client.

“Close relation” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild.

“Controller” has the meaning assigned to it in the NBFIRA Act

“Executive Director” -is an individual that is involved in the day-to-day management and / or is in full time employment of the NBFI and /or its subsidiaries

“Functionaries of a Collective Investment Undertaking” means the asset manager, management company, person operating the collective investment undertaking, trustee and custodian.

“Group” means a group of companies comprising a holding company and all of its subsidiaries, as defined under of the Companies Act (Cap 42:01):

“Independent Non-Executive Director” means a director who:

(i) has not been employed by the NBFI in an executive capacity within the last three years; or is a related party to such executive manager

(ii) is not an adviser or consultant or associated to the adviser or consultant to the NBFI or a member of the NBFI’s senior management or a person employed by the NBFI in an executive capacity within the last three years or a significant client/customer or supplier of the NBFI or with a not-for-profit entity that receives significant contributions from the NBFI or within the last three years, has not had any business relationship with the NBFI (other than service as a director) for which the NBFI has been required to make disclosure;

(iii) does not have contract of service with the NBFI, or a member of the NBFI’s senior management;

(iv) is not a close relation of an adviser or consultant to the NBFI or a member of the NBFI’s senior management or is a member of the governing body or the executive management of another organisation which is a related party, a significant client/customer or supplier of the NBFI ; or

(v) is not a provider of financial capital, or ongoing funding to the organisation; or is an officer, employee or a representative of such provider of financial capital or funding;

(vi) if the organisation is a company, does not participate in a sharebased incentive scheme offered by the company;

(vii) has not been the designated external auditor responsible for performing the statutory audit for the organisation, or a key member of the audit team of the external audit firm, during the preceding three financial years;

viii) is not entitled to remuneration contingent on the performance of the organisation or has not received or does not receive additional remuneration from the company apart from a director's fee, ,

(ix) When used as the measure by which to judge the appearance of independence, or to categorise a non-executive member of the Board of an NBFIs or its committees as independent, it means the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making in the best interests of the company.

(x) Holds no cross-directorships or has no significant links with other directors through involvement in other companies or bodies; is not a shareholder; or has not served on the board for more than nine years from the date of their first appointment.

Where any of these or other relevant circumstances apply, and the board nonetheless considers that the non-executive director is independent, a clear explanation should be provided.

"Key Person" NBFIs has the meaning assigned to it in the NBFIRA Act  
"Management of a Market Intermediary" means the persons who the Regulatory Authority has been informed, in writing, are responsible for the day-to-day administration of the NBFIs;

"NBFIs" means the non-bank financial institutions as defined in the NBFIRA Act;

"Person Operating a Collective Investment Undertaking" means the management company of a collective investment undertaking

"Related party transactions" carries the same meaning as in the Related Party Transactions Guidelines

"Securities Business" has the same meaning assigned to it in the Securities Act

"Securities infrastructure business" has the meaning assigned to it in the Securities Act

### **3. APPLICATION**

- (1) These Rules apply to all NBFIs under the Capital Markets Sector. Where an NBFIs business is part of a financial group, these Rules shall apply to the financial group which conducts activities in one or more sectors listed under Section 2 of the NBFIRA Act. Where such financial activities are subject to comprehensive group-wide corporate governance supervision within Botswana or within a foreign jurisdiction, the locally licensed entity shall adhere to these Rules.

### **4. LEGAL FORM**

- (1) NBFIs may include a company limited by shares or a limited partnership incorporated under the Companies Act (CAP42:01), or operates under a form or structure approved by the Regulatory Authority to conduct the

business of NBFIs with a registered office or place of business in Botswana or solicits non-banking financial services business in Botswana,

- (2) An NBFIs that is a limited company or partnership shall have at least two directors or partners, who have the skills, experience and qualifications necessary for the business undertaken by the NBFIs.
- (3) The NBFIs may be conducted in a form other than a company if:
  - (a) the Regulatory Authority is satisfied that the business can be safely conducted in the form proposed;
  - (b) the NBFIs has a registered office or place of business or agent in Botswana, with at least two resident key persons registered with the Regulatory Authority as having the responsibility for the conduct of the NBFIs
- (4) Where the NBFIs is a trustee or custodian, it shall be a bank approved by the Bank of Botswana, unless:
  - a. the Regulatory Authority is satisfied that the NBFIs business is a law or accountancy firm;
  - b. the Regulatory Authority has placed a licence condition on the trustee or custodian limiting its business to the holding of assets of private funds as defined under the CIU Act; and
  - c. the Regulatory Authority is satisfied that the NBFIs has the systems and controls necessary for the safe custody of the assets.

## **5. THE BOARD**

- (1) The governing body of any organisation should consider allocating oversight of, and reporting on, organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships to a dedicated committee, or adding it to the responsibilities of another committee as is appropriate for the company. The responsibilities of the social and ethics committee should include its statutory duties (if applicable) and any other responsibilities delegated to it by the governing body. The social and ethics committee should have executive and non-executive members, with a majority being non-executive members of the governing body.
- (2) The Board of Directors should lead ethically and effectively by ensuring the following:
  - (a) Members of the Board should individually and collectively cultivate the following characteristics and exhibit them in their conduct:
    - i. Integrity:- the Board should act in good faith and in the best interest of the NBFIs and its members should avoid conflict of interest as well as inculcate an ethical culture. All directors must act with integrity, lead by example and promote the desired culture. The board should take action to identify and manage conflicts of interest, including those resulting from significant

shareholdings, and ensure that the influence of third parties does not compromise or override independent judgement. The Board should have a code of conduct that addresses conflicts of interest, particularly relating to directors and partners which shall be regularly reviewed and updated as necessary;

ii. Competence:- members of the Board should ensure that they have at least a working knowledge of the NBF, its industry, the capital it uses as well as compliance requirements applicable to the NBF. At all times members of the Board should act with due care, skill and diligence and take reasonable steps to become informed about matters for decision;

iii. Responsibility:- Members of the Board should assume collective responsibility for steering and setting the direction of the organization; approving policy and planning; overseeing and monitoring of implementation and execution by management; ensuring accountability for performance. The Board should ensure formation of any Committees of the Board as may exist and their terms of reference. Members of the Board should attend meetings of the Board and its committees and dedicate time to prepare for meetings; should ensure compliance with the Act, with any other regulatory requirements imposed under the Act and with any other applicable statute. Where the Board chooses to engage third parties or agents to carry out some of the functions for which the Board is responsible, the Board shall retain responsibility for the performance of those duties as performed by the third party or agent. The Board shall adopt a policy for arranging its business. The policy shall include, inter alia; the method of appointing the Chairperson or, as the case may be, the managing partner or most senior key person;

iv. Accountability:- Member of the Board should be willing to answer for the execution of their decisions even when such were delegated. Board shall adopt a policy stating the decisions that shall be reserved to the Board or a statement of matters that are delegated to a Committee of the Board or to executives; the procedures for taking Board decisions, including inter alia the required majority, the use of a casting vote and the minimum quorum; the method of recording and disseminating Board decisions. The Board should ensure that the minutes of meetings accurately reflect the deliberations and decisions of the Board, including whether any director abstained from voting or deliberating on a particular matter. There should be a policy which includes a provision requiring the company to explain what action they intend to take in response to situations where a significant proportion of votes have been cast against a resolution at any general meeting;

(v) Fairness:- Members of the Board should adopt a stakeholder- inclusive approach in the execution of their governance role and responsibility and make decisions which are friendly to the natural environment, society and future generations;

(vi) Transparency:- Members of the Board should be transparent in the manner in which they execute their governance role and responsibility;

- (b) A company shall be led by an effective and entrepreneurial Board, whose role is to promote the long-term sustainable success of the NBF, generating value for the investors / stakeholders and contributing to wider society.
- (c) The governing body should embody the above ethical characteristics in order to offer effective leadership that results in achieving strategic objectives and positive outcomes over time. The arrangements by which the members of the governing body are being held to account for ethical and effective leadership should be disclosed. These arrangements would include, but are not limited to, codes of conduct and performance evaluations of the governing body and its members.
- (d) The Board should establish the NBF's purpose, values and strategy, and satisfy itself that these and its culture are aligned. The Board should ensure that the necessary resources are in place for the NBF to meet its objectives and measure performance against them. The Board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.
- (e) In order for the NBF to meet its responsibilities to shareholders and investors /stakeholders, the Board should ensure effective engagement with, and encourage participation from investors / stakeholders.
- (f) The Board should ensure that staff policies and practices are consistent with the NBF's values and support its long-term sustainable success. The staff should be able to raise any matters of concern.
- (g) The Board shall undertake an evaluation of the business plan, including, inter alia, the budget and staff complement at least annually and shall review that evaluation with a view to make such changes as it considers appropriate and necessary.
- (h)The Board shall adopt the procedures and controls that it considers necessary for managing the business.
- (i) The Board shall undertake an evaluation of the procedures and controls at least annually and shall review that evaluation with a view to make such changes as it considers appropriate and necessary.
- (j)The board should have a policy which limits the tenure of its independent directors to 3 terms, each term being 3 years i.e. nine years

## **5.1 Board Balance**

- (a) It is preferable for the Board to have a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the Board's decision

making and no undue reliance is placed on any individual. It is also desirable to achieve an appropriate mix of knowledge, skills, general experience, commercial and industry experience, and diversity for the Board to objectively and effectively discharge its governance roles and responsibilities.

- (i) The Board should comprise a majority of non-executive members, most of whom should be independent. Non-executive directors should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account. In the event that the NBF's solvency is of concern, the directors shall forthwith summon a Special Board Meeting of the NBF to discuss the issue and report to the Regulatory Authority the nature of the remedial action being taken.
  - (ii) The Board may consider provisions relating to gender parity at Board level and citizen representation for purposes of citizen empowerment and skills transfer in its policies.
  - (iii) The Board shall adopt a business plan, a budget, a staff structure and staff complement of employees that are adequate and appropriate for the nature, scope and size of the business.
- (b) For a director to be deemed "Independent" he/she should be able to exercise objective and unfettered judgement. The Board should include majority of independent non-executive directors for their views to carry significant weight in the Board's decisions
- c) The majority of non-executive directors should be Independent Non-Executive Directors.
- (d) The Annual Audit Report must:
- (i) identify all directors as executive, non-executive or Independent Non-Executive Directors;
  - (ii) make disclosure relating to the circumstances which are likely to impair, or could appear to impair, an Independent Non-executive or non-executive director's independence

## **5.2 The Chairperson and the Chief Executive Officer**

- (a) There are two key appointments at the top of every NBF responsible for running of the Board and the executive responsibility for the running of the NBF's business. There should be a clear division of responsibilities at the head of the NBF, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.
- (b) There should be a clear division of responsibilities between the leadership of the Board and the executive leadership of the NBF's business.
- (c) The posts of Chairperson and Chief Executive Officer or Managing Director, or any other person fulfilling a similar role, should not vest in one person. Each of the roles should be identified in the annual financial statements Audit Report.

(d) The Chairperson of the Board should be an independent non - executive director.

### **5.2.1 Chairperson's Role**

- (a) The chairperson leads the Board and is responsible for its overall effectiveness in directing the NBF. The chairperson should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chairperson facilitates constructive Board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information..
- (b) The Chairperson's role in preserving Good Corporate Governance is crucial. As the person responsible for running the Board, the Chairperson should preserve order and facilitate the effective discharge of Board functions.
- (c) The Chairperson should conduct 'Board proceedings' in a proper manner and ensure, inter-alia, that:
  - (i) the effective participation of both executive and non-executive directors is secured;
  - (ii) all directors are encouraged to make an effective contribution, within their respective capabilities, for the benefit of the NBF;
  - (iii) balance of power in the Board is maintained;
  - (iv) the sense or decision of directors on issues, under consideration, is ascertained; and
  - (v) the Board is in complete control of the NBF's affairs and alert to its obligations to all stakeholders.

### **5.3 Appointments to the Board**

- (a) There should be a formal and transparent procedure for the appointment of new directors to the Board.
- (b) A nomination committee should be established to make recommendations to the Board on all new Board appointments. A majority of the members of this committee should be non-executive directors and the Chairperson of the Committee should be a non-executive director. The Chairperson and members of the nomination committee should be identified in the annual Audit report.
- (c) The nomination committee or in its absence, the Board as whole should annually assess Board-composition to ascertain whether the combined knowledge and experience of the Board matches the strategic demands facing the NBF. The findings of such assessment should be taken into account when new Board appointments are considered and when incumbent directors come up for re-election.
- (d) Upon the appointment of a new director to the Board, the NBF should forthwith disclose to shareholders:
  - (1) A brief resume of such director, which should disclose;
    - (i) the nature of his/her expertise in relevant functional areas;
    - (ii) the names and registered addresses of directorships or memberships in other Board and committees in which they sit



- (iii) a brief professional profile of each candidate standing for election/re-election at the annual general meeting (AGM), including details of existing professional commitments. Consider the number of commitments on other Board(s) to determine whether the candidate would be able to discharge their roles effectively.
  - (iv) a statement from the Board confirming whether it supports the candidate's election or re-election.
- (2) A resolution for the appointment should be put to a vote and passed if a majority of shareholders vote in the candidate's favour.

#### **5.4 Appraisal of Board Performance**

- a) Boards should periodically appraise their own performance in order to ensure that prime Board responsibilities are satisfactorily discharged. The Board charter and other Board policies should clearly state the appraisal timeliness.
- b) The Board should annually appraise itself in the key responsibilities, inter-alia, of:-
  - (i) Reviewing/Formulating and Monitoring Implementation of a sound business strategy.
  - (ii) Ensuring that the CEO and Management Team are competent and the adoption of an effective CEO and Senior management succession strategy
  - (iii) Securing effective information, control and audit systems
  - (iv) Ensuring compliance with legal/ethical standards
  - (v) Ensuring prevention and Management of risks and
  - (vi) Fulfilling such other Board functions as are vital, given the scale, nature and complexity of the business concerned.
- c) The evaluation should not only be of the Board, but performance evaluation of Board committees, the Board Chairperson and individual Board.
- d) There should be a procedure for conducting Board evaluations, facilitated either internally or externally in accordance with methodology approved by the governing body, should be followed for evaluating the performance of the governing body, its committees, its chair and its individual members at least every two years.

#### **5.5 Appraisal of Chief Executive Officer**

- (a) The Board should be required, at least on an annual basis to assess the performance of the Chief Executive Officer. The Chairperson shall perform the performance appraisal of the CEO and be informed of performance appraisal findings of other board executives
- (b) At the commencement of every fiscal year, the Board, in consultation with the Chief Executive Officer, should set reasonable financial and non - financial targets, in line with the short, medium and long term objectives of the NBF1, that are to be met by the Chief Executive Officer during the course of the year.
- (c) The performance of the Chief Executive Officer should be evaluated by the Board at the end of each fiscal year in order to ascertain whether the targets set by the Board have been achieved and if not, whether the failure to meet such targets was reasonable in the circumstances.

- (d) In assessing the Chief Executive Officer's performance, compliance with these Guidelines, the level of compliance with Financial Services Laws, the number of internal registered fraud cases, number of cases brought against the NBFİ by law enforcement agencies and any Regulatory Authority should be taken into account (including their merits and materiality).

## **5.6 Executive Directors' Remuneration**

### **5.6.1 Remuneration Procedure**

- (a) The Board shall adopt a policy for determining the remuneration of the Board itself, the executive and staff of the business.
- (b) To avoid potential conflicts of interest, Boards of directors should set up remuneration committees of independent non-executive directors to make recommendations to the Board, within agreed terms of reference, on the NBFİ's framework of executive remuneration and its cost; and to determine on their behalf specific remuneration packages for each of the executive directors, including pension rights and any compensation payments. The responsibilities of the remuneration committee should include its statutory duties (if applicable). The responsibilities of the remuneration committee may be delegated to the Audit committee.
- (c) Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment.
- (d) The members of the remuneration committee should be listed each year in the Board's remuneration report to shareholders.
- (e) The Board as a whole, or where required by the constituting documents, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the constituting documents. Where permitted by the constituting documents, the Board may, however, delegate this responsibility to a small sub-committee, which might include the Chief Executive Officer.
- (f) Remuneration committees should consult the Chairperson and /or Chief Executive Officer about their proposals relating to the remuneration of other executive directors and have access to professional advice inside and outside the NBFİ.

### **5.6.2 Disclosure of Remuneration**

- a) The NBFİ's Audit Report should contain a statement of remuneration policy and details of remuneration of the Board as a whole.
- b) Total of the executive directors and the total of the non - executive directors remuneration and not the individual remuneration should be disclosed separately.
- c) The disclosure should include any bonus payment and share option schemes.

## **6. DIRECTORS AND PARTNERS**

- (1) Every NBFi should be headed by an effective Board, which should lead and control the NBFi.
- (2) The Board should meet regularly and Board meetings should be held at least once in every quarter of a financial year.
- (3) The Board should have a formal schedule of matters specifically reserved to it for decision including; inter-alia:
  - (i) Review / Formulate and monitor implementation of a sound business strategy;
  - (ii) Secure effective information, control and audit systems;
  - (iii) Ensure compliance with legal/ethical standards;
  - (iv) Ensure prevention and management of risks; and
  - (v) Fulfill such other Board functions as are vital, given the scale, nature and complexity of the business concerned.
- (4) There should be a procedure agreed by the Board for directors in the furtherance of their duties to take independent professional advice if necessary, at the NBFi's expense.
- (5) All directors should bring an independent judgment to bear on issues of strategy, performance, resources (including key appointments) and standards of conduct of business.
- (6) Every director should dedicate adequate time and effort to matters of the Board and the NBFi, in order to ensure that the duties and responsibilities owed by him/her to the company are satisfactorily discharged. All directors should objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company. Every director is required to keep abreast of his responsibilities as a director and of the conduct, business activities and development of the company.
- (7) Every director should receive appropriate induction on the first occasion that he/she is appointed to the Board of an NBFi and subsequently as necessary. The members of the Board may be provided with mentorship and encouraged to undergo training, where identified and deemed necessary. Training curricula should encompass both general aspects of Directorship as well as strategic focus of the NBFi. This may include regular briefings on legal and corporate governance developments, as well as risks and changes in the external environment of the organization.
- (8) Directors should be subject to heightened transparency requirements regarding their dealings in the company's securities. Directors of listed companies must disclose any interests they have in the shares of the company or its related body corporate. A director with a material personal interest in any matter that relates to the affairs of the company must notify the other directors of that interest.
- (9) The Regulatory Authority may prescribe the qualifications necessary for the Boards of different NBFis.
- (10) The Board shall adopt a protocol for the appointment of directors (or, where appropriate partners or senior key persons) which shall be designed

to ensure that they are fit and proper and shall include but not be limited to:

- a. the establishment of the skills and qualifications required for the appointment;
  - b. the enquiries that shall be made as to fitness and properness and the verification of skills and qualifications;
  - c. the terms and conditions of the appointment;
  - d. the process for evaluating the performance of the appointee; and
  - e. the period of appointment and the process for terminating the appointment.
- (11) The Board shall adopt a policy for determining the remuneration of Board itself, the executive and staff of the business. The remuneration policies and decisions should be made through a transparent and independent process.
- (a) Where the NBFIs is a securities infrastructure business:
- i. the Board's policy with respect to the composition of the Board and the appointment of Board shall, where the NBFIs is a mutual organisation, take account of the need to ensure appropriate representation of those who may be participants in the securities infrastructure business;
  - ii. The Board shall include at least three directors who are independent of any issuers, market intermediaries, clearing members or other market participants.

## **6.1 Responsibilities of the Board Secretary**

(1) All directors should have access to the advice and services of the Board secretary. The success and effectiveness of the Board's operations depend mainly on how the Secretary assumes the roles and duties in an efficient and proper manner. Any question of the removal of the Board secretary should be a matter for the Board as a whole and may not be terminated except by a Board resolution. Remunerations of the Board secretary shall be determined by a resolution of the Board unless the company's bylaws include provisions in connection in this regard.

(a) The duties and responsibilities of the Board secretary include the following:

- i. Documenting the Board's meetings- The Secretary of the Board is responsible for documenting the Board's meetings and preparing minutes therefore, which shall include discussions and deliberations carried out during such meetings and recording the resolutions of the Board and voting results and retaining them in a special and organized register. The secretary of the Board shall present the draft minutes to the Board to provide their feedback before signing.
- ii. Record keeping-The Secretary of the Board must ensure that all reports submitted to the Board or prepared by it have been retained, including but not limited to quarterly and annual reports.

- iii. Providing the Board with Information and Minutes- The Secretary of the Board must provide the Board with all information needed in the course of their work.
- iv. Compliance- The Secretary of the Board must ensure that the Board comply and commit to the procedures approved by the Board.
- v. Notifying Board of the Dates of Board's Meetings- The Secretary of the Board serves as a liaison between Board, especially regarding coordinating dates of meetings. Therefore, the Secretary of the Board must notify Board of the dates of the Board's meetings within sufficient time prior to the date specified for the meeting.
- vi. Coordinating among Board- The Secretary of the Board shall coordinate among Board to help raise the efficiency of Boards' operations and enhance decision making expeditiously and efficiently.
- vii. Providing Assistance and Advice- The Secretary of the Board shall provide assistance and advice to Board.
- viii. Regulating Disclosure Register of the Board- The Secretary of the Board shall manage the disclosure register of the Board as per the disclosure requirements stipulated in the financial services laws.
- ix. Or any other functions as may be determined by the Board.

## **7. RISK GOVERNANCE PRINCIPLES**

- (1) The governing body should consider allocating the oversight of risk governance to a dedicated committee or adding it to the responsibilities of another committee as is appropriate for the company. If the committees for audit and risk are separate, the governing body should consider for one or more members to have joint membership of both committees for more effective functioning. The committee for risk governance should have executive and non-executive members, with a majority being non-executive members of the governing body.
- (2) The recommended practices that the governing body should perform, are summarized as follows:
  - (a) Set the approach for risk governance, including opportunities and risks when developing strategy and the potential positive and negative effects of the same risk on the achievement of objectives;
  - (b) Treat risk as integral part of decision making and adherence to duties, approve risk policy, evaluate and agree the risks it is prepared to take (i.e. risk appetite and risk tolerance levels);
  - (c) Delegate risk management implementation to management;
  - (d) Oversee the risk management (including assessment of risks and opportunities in relation to the use of capital, achievement of objectives, dependency on resources as well as the risk responses, business continuity and culture of the organization);
  - (e) Receive periodic, independent assurance on the effectiveness of risk management; and
  - (f) Risk governance committee or another committee as appropriate for the company should disclose to the Board the nature and extent of risks and opportunities; overview of the risk management system; areas of focus; key risks, unexpected risks, risks taken outside tolerance levels and actions to monitor and address risk management.

- (3) The Board shall assess the risks facing the NBF. This shall include, where relevant, any risks arising from, inter alia:
  - a. the products or services provided;
  - b. the facilities offered;
  - c. the clients targeted;
  - d. the financial capital applied to the business;
  - e. the reliance on certain employees;
  - f. the technology infrastructure;
  - g. the potential for internal fraud; and
  - h. any market, credit, operational, settlement, counterparty, regulatory and legal risks.
- (4) The Board should, in its disclosure, include a discussion on how key risk areas such as finance, operations, regulatory compliance, reputation, cyber security and sustainability were evaluated and the controls in place to mitigate or manage those risks.
- (5) The assessment of risks shall include the risks to the NBF arising from any other activities in which it is engaged or arising from the activities of any member of a financial group of which the NBF is a part. The Board shall adopt and document its assessment.
- (6) The Board shall adopt policies and procedures designed to mitigate the risks it has identified, which shall be:
  - a. documented; and
  - b. communicated to employees.
- (7) The Board shall adopt contingency plans for maintaining business continuity in the event of certain specified risks, including, inter alia:
  - a. technology failure;
  - b. the loss of access to the NBF's main offices;
  - c. the loss of records;
  - d. the default or failure of a counterparty; and
  - e. the loss of key persons.
- (8) Where the NBF is an exchange, the contingency arrangements shall include mechanisms for maintaining orderly markets in the event of a failure of the trading system, whether due to technical difficulties, loss of power or other matters.
- (9) The Board should assess and monitor key business risks to safeguard clients' investments and the company's assets. The Board should be committed to articulating, implementing and reviewing the company's internal control framework.
- (10) The Board shall ensure that the contingency arrangements are tested from time to time and no less frequently than annually.
- (11) The Board shall conduct an evaluation of its risk assessment and the effectiveness of its risk mitigation policies no less frequently than annually.

## **8. TECHNOLOGY AND INFORMATION GOVERNANCE PRINCIPLE**

- (1) The recommended practices that the governing body should perform are summarised as follows:

- a) Set the approach and approve the policy for technology and information governance (including adoption of appropriate frameworks and standards);
  - b) Delegate effective technology and information implementation to management;
  - c) Oversee results of management's implementation (including integration, business resilience, monitoring for responsiveness to cyber security and social media risks, third-party and outsourced service provider risks, value delivered from technology investments and projects, disposal of obsolete technology and information, ethical and responsible use and compliance with laws);
  - d) Oversee management of information (including use, information architecture, protection of privacy and security);
  - e) Oversee management of technology (including technology architecture, sourcing risks, developments and disruptions);
  - f) Receive periodic, independent assurance on the effectiveness of the technology and information, including outsourcing; and
  - g) Disclose overview of governance and management; areas of current and future focus; significant changes, acquisitions, incident management; monitoring and response thereto.
- (2) The Board shall identify and document the information it considers necessary to assess the performance of the business, the fulfilling of its obligations, the effectiveness of risk mitigation policies, the nature and magnitude of risks, the financial position of the NBF1 and other matters it considers necessary.
- (3) The Board shall consider the information regularly and in particular shall review the management accounts, major capital expenditure and the performance of the NBF1 no less frequently than quarterly.
- (4) The Board shall evaluate the adequacy of the management information arrangements no less frequently than annually.

## **9. INTERNAL CONTROLS**

- (1) The Board should maintain a sound system of internal control to safeguard stakeholders' investments and the NBF1's assets.
- (2) The Board should, at least annually, conduct a review of the effectiveness of the group's system of internal controls and should report to the Regulatory Authority that they have done so. The review should cover all controls, including financial, operational and AML /CFT compliance controls and risk management.
- (3) The Board is responsible for the policies and procedures (referred to as internal controls) of the NBF1 and for ensuring adherence to those controls.
- (4) The Board shall adopt internal controls that are designed to ensure that the NBF1 is conducted in a diligent and proper manner and in accordance with:
- a. the Board's policies;
  - b. the applicable requirements imposed by the Act, Regulations, Rules or any other statute; and

- c. any applicable rules of any self regulatory organisation of which the NBF1 may be a member.
- (5) The Board shall designate a person as Compliance Officer. The Compliance Officer may have other duties, provided that they do not create a conflict of interest with the role as Compliance Officer.
- (6) The Regulatory Authority may prescribe the qualifications for a Compliance Officer.
- (7) The responsibility of the Compliance Officer (subject to the overall responsibility of the Board for compliance with regulatory requirements) shall be:
- a. to advise the Board on the policies and procedures necessary to comply with the regulatory requirements to which the NBF1 is subject;
  - b. to monitor compliance with internal controls, including those designed to meet regulatory requirements;
  - c. to ensure that all relevant persons are aware of the regulatory requirements, including, inter alia employees and agents;
  - d. to report material breaches to the Board and the Regulatory Authority;
  - e. to report to the Board if there are material weaknesses in internal controls that require attention;
  - f. to report to the Board the results of any inspections or investigations conducted by the Regulatory Authority; and
  - g. To report no less frequently than annually to the Board on the adequacy of the internal controls.
- (8) The Board shall ensure that the Compliance Officer:
- a. has sufficient seniority, authority and skills to carry out the tasks;
  - b. has direct access to the Board and the Regulatory Authority;
  - c. is able, without requiring any other prior authority:
    - i. to examine all books, documents and other records, in whatever media they are held; and
    - ii. to require any Board member, employee, agent or other relevant person to answer questions about any aspect of their work.
- (9) The Board shall adopt a procedures' manual that includes, inter alia, a description of the internal controls and this manual shall be provided to all employees.
- (10) The Board shall ensure that there are internal controls including policies, that ensure that for each employee, except where the Board determines that the nature of the post makes it unnecessary:
- a. there is a description of the duties of the post;
  - b. there is a description of the key areas of discretion of the post, which shall include (but not be limited to) a description of the limits of that discretion and the criteria to be applied in exercising that discretion; and
  - c. there is a designated person who has oversight responsibility for the officer occupying the post and for ensuring that discretion is exercised in accordance with the established parameters.
- (11) The Board shall ensure that there are adequate financial controls, including the determination of what should be regarded as a significant



financial commitment and a requirement for dual signatures prior to the NBFi accepting such a commitment.

- (12) The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual financial statements return. The monitoring and review should cover all material controls, including financial, operational and compliance controls
- (13) The Board shall require its Compliance Officer to make a report to it and to any parent company of the NBFi, when there are any disciplinary actions taken by the Regulatory Authority against the NBFi, its controllers and key persons or key personnel. The Board shall have appropriate arrangements for protecting against the risks involved when payments are made or accepted in cash.
- (14) The Board shall make arrangements to segregate duties within the NBFi, (except where the Regulatory Authority has agreed such segregation to be unnecessary) between:
  - a. those responsible for making payments;
  - b. those responsible for incurring financial, investment or trading commitments; and
  - c. those responsible for preparing accounts.
- (15) The Board shall ensure that there are adequate arrangements for securing and safeguarding the legal title to the assets of the NBFi and those of its clients.
- (16) The Board shall ensure that the information in its possession is subject to adequate confidentiality protection, taking account of statutory obligations and the duty of care to all whose confidential information is entrusted to the Board. Where the Board determines that it is appropriate and consistent with statutory and regulatory obligations to share confidential information with others as part of its business, it shall take reasonable steps to ensure that the recipient of the information affords the confidential information appropriate protection.

## **9.1 Audit Committee and Auditors**

- (a) The Board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the NBFi's auditors.
- (b) The Board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non - executive directors, should be named in the annual financial statements.
- (c) The duties of the audit committee should include keeping under review the scope and results of the audit and its effectiveness and the independence and objectivity of the auditors.
- (c) The audit committee should draw up a recommendation to the Board for consideration and acceptance by the shareholders for the appointment of the external auditors.

- (d) The audit committee should ensure that the independence of auditors are maintained and that any consultancy or any work contracted with the auditing firm will not have a material impact on the auditor's independence.
- (e) The audit committee should set principles for recommending to the Board rotation and remuneration of auditors and terms of engagement of the external auditor.
- (f) The Audit Committee should have policies and procedures to assess the suitability and objectivity of its function. This should include:
  - i. Ensuring mandatory external auditor rotation every five (5) years;
  - ii. pre-approving any proposed agreement with the auditor for the provision of non-audit services;
  - iii. Ensuring that at least one member of the audit committee has recent and relevant financial experience and that the committee as a whole has relevant sector experience.
- (g) Functions of Audit Committee shall include, inter alia:
  - i. to review regular internal audit reports to management prepared by the internal auditor and any management response to such reports;
  - ii. to review the NBF's periodical financial statements and any other reports or financial information deemed appropriate by the committee;
  - iii. to satisfy themselves that the financial statements are prepared in accordance with the requirements of Regulations or rules issued under the Act and with the Financial Reporting Act as well as preparing a report to be submitted to the Regulatory Authority annually describing how the committee carried out its functions, and commenting on the financial statements, accounting practices and internal financial control measures of the company.
  - iv. to review with management and external auditors, prior to public release, the audited and unaudited financial statements; and
  - v. the audit committee is responsible for conducting the tender process and making recommendations to the board, about the appointment, reappointment and removal of the external auditor,
  - vi. the Chair of the audit committee must not be the Chair of the Board.
  - vii. the audit committee should have a policy that requires a former key audit partner to observe a cooling-off period of at least two years before being appointed as a member of the audit committee.
  - viii. ensure that the entity has established appropriate financial reporting procedures and that those procedures are operating

## **10. ACCOUNTABILITY AND AUDIT**

### **10.1 Financial Reporting**

- (a) The Directors Report, which forms part of the annual financial statements report, should contain declarations by the directors to the effect that:
  - i. The company has not engaged in any activities, which contravene laws including financial services laws.

- ii. The directors have declared all material interests in contracts involving the NBFIs and refrained from voting on matters in which they were materially interested.
  - iii. The business is a going concern, with supporting assumption or qualification as necessary.
  - iv. They have conducted a review of the internal controls which cover financial, operational and AML / compliance controls and risk management and the resultant report has been submitted to the Regulatory Authority.
  - v. The Assets Under Management (AUM) are safe and have been accurately reported in the returns submitted during the financial year under review with supporting assumption or qualification as the case may be. These assets should be verified and signed off by the entity's Chief Executive Officer/Director and Compliance Officer. At least once a year the AUM must be audited by the company's external auditor.
  - vi. The challenges encountered during the financial year under review in connection with investment and management of the AUM
- (b) The annual financial statements report should contain a statement setting out the responsibilities of the Board for the preparation of financial statements, together with a statement by the auditors about their reporting responsibilities.
- (c) The annual financial statements report should contain a Management Report, discussing, among other issues:
- (i) Industry structure and development
  - (ii) Opportunities and threats
  - (iii) Risks and concerns
  - (iv) Internal Control Systems and their adequacy
  - (v) Financial performance
  - (vi) Material developments in Human Resources / Industrial relations
  - (vii) Prospects for the future

## **10.2 Internal Audit**

- (1) The Board shall appoint an internal auditor:
- a. which position shall be separate from the Compliance Officer;
  - b. who shall have appropriate qualifications which may be prescribed by the Regulatory Authority; and who may be:
    - i. a member of staff; or
    - ii. an external appointment.
- (2) The internal auditor may carry out other functions within the NBF, provided that those functions are not subject to audit.
- (3) The responsibility of the internal auditor shall be determined by the Board but shall, include, inter alia:
- a. evaluation of the effectiveness of internal controls, risk management and management information systems;
  - b. reporting any weaknesses in internal controls to the Board (or the Audit Committee);
  - c. reporting to the Board (or the Audit Committee) no less frequently than annually; and

- d. performing any other duty that the Board may regard as appropriate, provided that it does not conflict with the duties of an internal auditor.
- (4) The Board shall ensure that the internal auditor
    - a. has sufficient seniority, authority and skills to carry out the tasks;
    - b. determines an annual audit programme that is subject to the approval of the Board (or Audit Committee);
    - c. has direct access to the Board and the Regulatory Authority;
    - d. is able, without seeking any other prior authority:
      - i. to examine all books, documents and other records, in whatever media they are held; and
      - ii. to interview any Board member, employee, agent or other relevant person about any aspect of their work.
  - (5) The Board shall review the internal auditor's report no less frequently than annually and also submit the report as part of the annual financial statements return to the Regulatory Authority.
  - (6) Where the NBFIs is a management company or a person operating a collective investment undertaking, the internal auditor shall be able to interview any of the functionaries of the undertaking.
  - (7) The Board should ensure that assurance services and functions enable an effective control environment and that these support the integrity of information for internal decision-making and of the entity's external reports.

## **11. RECORD KEEPING**

- (1) An NBFIs shall maintain all records reasonably required for the orderly management of the business.
- (2) An NBFIs shall keep the records specified in Schedule 1, where relevant to its business. An NBFIs shall maintain any other records that the Regulatory Authority may, from time to time, specify.
- (3) The records maintained by a NBFIs shall be kept up to date.
- (4) Records shall be kept, whether in electronic or other form and shall be:
  - stored so as to:
    - minimise any risk of their loss due to theft, fire, flood, corruption or unauthorised erasure;
- (5) prevent unauthorised access; and
- (6) backed up or otherwise duplicated so that copies shall be available if the originals are lost, destroyed, corrupted or erased.
- (7) Records, including duplicates, shall be kept in line with requirements of the Financial Intelligence Act, from the date of the matter being recorded,
- (8) Records shall be kept in a form and location that ensures that they are available to the NBFIs and the Regulatory Authority in a timely manner.
- (9) If the Regulatory Authority is of the view that the form or location of the records is not permitting proper Regulatory oversight, the Regulatory Authority may give directions as to the form and location of the records and the NBFIs shall comply with that direction.

## **12. EMPLOYEES**

- (1) For the purpose of this Rule, the term “employee” shall be taken to include Board, agents and other persons who carry out functions at the behest of the Board.
- (2) The Board shall ensure that there are internal controls including policies, that make certain that all employees are fit and proper for their roles, including, inter alia the following:
  - a. that they have the qualifications and experience for their tasks;
  - b. that the skills available to the Board, taken as a whole are sufficient to carry out the functions of the NBFi;
  - c. that reasonable steps have been taken to verify employees’ experience and qualifications;
  - d. reasonable steps have been taken to establish that there is no evidence of lack of integrity or of financial difficulties.
- (3) The Board shall ensure that the experience and qualifications needed for each post is documented. The experience and qualifications shall meet any requirements that may be published by the Regulatory Authority.
- (4) The Board shall adopt a policy that defines the training that each employee shall be given and this training shall include, inter alia, for each employee:
  - a. the NBFi’s relevant internal controls,
  - b. the regulatory and legal obligations relevant to the employee concerned; and
  - c. the code of conduct for employees.
- (5) The Board shall ensure that all training is carried out according to a programme based on the needs of the NBFi and regulatory requirements and is properly documented.
- (6) The Board shall determine what succession planning arrangements are appropriate and ensure that appropriate succession planning is undertaken and documented.
- (7) The Board shall adopt an employees’ code of conduct appropriate for the nature of business which requires employees to abide by a high standard of ethical conduct and which shall include (but not be limited to):
  - a. a ban on trading in any securities (however executed) or, at a minimum, a ban on trading without the permission of a senior officer;
  - b. a ban on trading (or procuring any other person to trade) in any securities whilst in possession of confidential price sensitive information, whether about issuers, listed securities, market orders, unpublished research, the positions adopted by market participants, or any other matter;
  - c. a requirement that all employees shall provide a list of the related party investments held by them and their affiliates; and
  - d. a requirement that all employees sign an annual undertaking to disclose to the Board and accept Board instructions with respect to any potential conflict of interest of which they may be aware.

### **13. WHISTLE BLOWING PROCEDURE**

- (1) An NBFi shall have appropriate procedures and protections for allowing employees to disclose any information to the Regulatory

Authority or other appropriate bodies involved in the prevention of market misconduct, financial crime and money laundering.

#### **14. AGENTS AND THIRD-PARTY SUPPLIERS**

- (1) Where the NBFBI decides to employ agents or other third party suppliers to provide services for which it is responsible, the Board shall ensure that there are internal controls including policies that will specify:
  - a. the duties and obligations of the agent or third party supplier;
  - b. the duties and obligations of the NBFBI;
  - c. the remuneration and other terms;
  - d. the performance standards and the method by which they will be judged; and
  - e. the right of the Board or its employees to call for information or make an inspection, at any time, of the books, records and premises of the agent or third-party supplier to satisfy itself that the terms and conditions of the agreement are being met.
- (2) The Board shall ensure that there are internal controls including policies to conduct appropriate due diligence on the agent or other third-party supplier to ensure that
  - a. they are capable of performing the tasks assigned to them, that they have (or have staff who have) sufficient qualifications and experience;
  - b. the agent or third-party supplier and its employees meets the standards of integrity to which the NBFBI is itself subject under the Act, Rules and Regulations; and
  - c. the agent or third-party supplier has sufficient financial resources to be able to continue to supply the services without causing instability to the NBFBI itself or the Botswana financial services markets.
- (3) The Board shall ensure that there are internal controls including policies that guarantee that performance is regularly monitored and that there is a report to the Board, no less frequently than annually, of the performance of the agent or third-party supplier.
- (4) The Board shall ensure that there are internal controls including policies to adopt appropriate contingency plans for resuming direct control of the services provided by the agent or third-party supplier, or for finding an alternative supplier, in the event that the agent or third-party supplier, as the case may be, fails to provide an acceptable service.

#### **15. TRANSPARENCY**

- (1) The NBFBI shall make available to stakeholders, on request the identity of senior management and those authorized to act in the name of the NBFBI; the category of license held; its current status and the scope of authorized activities.

#### **16. RELATED PARTY TRANSACTIONS**

- (1) The Board of directors should devise a policy that would guide the NBFBI on all major transactions and related party transactions which are

entered into by the NBFIs. This policy should be developed in line with the Related Party Transactions Guidelines NBFIs (Capital Markets Sector).

## **17. OFFENCES AND PENALTIES**

- (1) The penalties that may be imposed by the Regulatory Authority in the event of a breach, in accordance with the Act shall include:
  - a. fines
  - b. a public statement of censure;
  - c. a condition on a licence;
  - d. revocation or suspension of a licence or
  - e. any other penalty provided for in the relevant financial services laws.

## **18. TRANSITIONAL PROVISIONS**

- (1) All entities in the Capital Markets Sector licensed by the Regulatory Authority shall operationalize these Rules within six months from the date of the commencement thereof, or within the timeframe set by the Regulatory Authority

- (2) The Regulatory Authority may modify these or prescribe additional requirements as it may deem appropriate for the discharge of its mandate from time to time.

## **SCHEDULE 1**

### **RECORDS TO BE KEPT BY AN NBF**

#### **1. The records to be kept by all NBFs**

- (1) An NBF shall keep records of all decisions by the Board and any Board Committees.
- (2) An NBF shall keep records of the internal organisation and operation of the business.
- (3) An NBF shall keep records of all relations with clients (if any), counterparties and third parties.
- (4) An NBF shall keep records sufficient to be able to establish the financial position of the NBF, with reasonable accuracy at any one time and these will include, inter alia:
  - a. all accounting records necessary to prepare financial statements according to International Financial Reporting Standards, the Financial Reporting Act, Audited in accordance with the international standards on auditing, and such other standards as may be determined by the Regulatory Authority including, inter alia:
    - i. assets and liabilities, including commitments, contingent liabilities and potential or actual off-balance sheet commitments;
    - ii. profit and loss; and
    - iii. income and expenditure;
  - b. all payments made to and by the NBF (distinguishing between those made on its own account and those on behalf of others), together with the reason for the payment, name and address of the counterparty and the bank account into which or from which the payment was made; and
  - c. the calculations of financial resources, as required by Regulations or Rules issued by the Regulatory Authority and any reconciliations required by the Rules to be undertaken.
- (5) Where the NBF is part of a financial group, the financial group shall maintain records that will enable the financial group to calculate with reasonable accuracy, at any time, the financial records identified in sub paragraph (4) above in respect of:
  - a. the financial group as a whole, on a consolidated basis, including the NBF; and
  - b. the NBF taken on its own.
- (6) The financial records described in sub paragraphs (3) and (4) shall be maintained in Botswana Pula unless the Regulatory Authority otherwise approves.
- (7) An NBF shall keep records of all complaints filed with it, together with the action taken to resolve the complaint.
- (8) Records held by an NBF in respect of employees shall be sufficient to enable the NBF to be satisfied that it is able to meet all relevant employer obligations and to demonstrate that each employee is appropriately qualified and experienced. In particular, records of the NBF's personnel shall include, inter alia:



- a. application documents including copies of documents verifying qualifications and experience (or a record of the action taken to verify qualifications and experience);
  - b. job descriptions;
  - c. qualifications, experience and training (including a record of training undertaken during the period of employment with the NBFi);
  - d. terms and conditions of employment;
  - e. remuneration;
  - f. any securities transactions undertaken by each officer and details of the permissions received;
  - g. declarations by each officer as appropriate relating to any potential conflict of interest; and
  - h. lists of investments for those officers for which the Regulations or rules require them.
- (9) An NBFi shall keep records of all relations with the Regulatory Authority.
- (10) An NBFi shall keep records sufficient to demonstrate its compliance with the Act, Regulations and Rules, any other applicable financial services law and any other regulatory requirement of the Regulatory Authority.
- (11) An NBFi shall keep records of any publication it issues, whether in the form of advertisements, financial promotions, or circulars to clients and, where the publication makes claims, evidence to substantiate those claims.
- (12) Where an NBFi engages a third party to undertake functions on its behalf, the records shall include, inter alia:
- a. the contract with the third party, which details the services to be provided and the service level agreement;
  - b. details of the third party including its legal form, verification documents and any documentation necessary to establish the financial viability of the third party;
  - c. details of the qualifications and experience of employees to be engaged on the NBFi's business; and
  - d. information on the performance of the third party in accordance with the service level agreement.

**2. The records to be kept by Capital Markets Sector (where applicable)**

*[Explanatory Note]*

This paragraph of Schedule 1 defines the records that shall be kept in respect of clients. Where the NBFi is a functionary of a collective investment undertaking the references to the client in this paragraph shall be read as referring to the collective investment undertaking, except that, for a management company of a collective investment undertaking, or a person operating a collective investment undertaking, the term client shall refer both to the undertaking and to the holders of units or shares in that undertaking.

- (1) A NBFi that is subject to this paragraph of Schedule 1 shall keep records that, in respect of clients shall show:

- a. the name and address of each client and verification documentation;
  - b. the legal form of the client and beneficial owner of the client (where the client is not a natural person, or when a person is acting on behalf of another) and appropriate documentation verifying these matters;
  - c. the identity of any agent who acts on behalf of the NBFIs in relation to each client and verification of the authority to act;
  - d. the current and previous client agreements with each client; and
  - e. the information concerning each client's business, which shall include, where appropriate, but not be limited to: financial circumstances, risk appetite, investment policy and objectives and any other information necessary for the nature of the services offered
  - f. any other information as required by the Financial Intelligence Act and any other financial services laws regarding clients' records;
- (2) The records maintained by an NBFIs subject to this paragraph shall be sufficient to permit the tracing of all client money into and out of any bank accounts controlled by the NBFIs from the time the money is paid to the NBFIs until the time the funds are deployed for a purpose that is in accordance with the client's instructions or the funds returned to the client. The records shall include, inter alia:
- a. the date and time, amount and purpose, recipient or source, as the case may be, of client money:
    - i. paid into and out of client bank accounts and
    - ii. not passed through client accounts;
  - b. the aggregate balances on client accounts and the amounts of individual client balances, specifying on whose behalf the balance is held;
  - c. copies of any statements issued to the client about the services provided, transactions undertaken or any other matter; and
  - d. details of all other services provided for the client, the fees charged and the identity of the officer that provided the services.
- (3) An NBFIs that is subject to this paragraph shall keep records that show the securities and other assets held for each client (whether the client is an individual, a legal person or other legal form or arrangement) and showing:
- a. the assets held for each client, including the nature of the asset, the form of its legal title, the quantity and latest value of the asset;
  - b. how title to the asset is established, the nature of the legal title and who has legal title;
  - c. the ultimate beneficial owner of the asset;
  - d. the details of any acquisitions or disposals, including the date, time, method, price and number;
  - e. the methodology and result of the calculation of the net asset value of the assets of each client.
  - f. where the securities are deposited with a third party, the name of that third party; and
  - g. where the securities are held by the NBFIs, the manner in which they are held, whether in a nominee account, or directly.

- (4) An NBFIs that is subject to this paragraph shall keep records showing:
  - a. the time, date, purpose and method of transmission of any instructions received from the client and the manner in which they were carried out such that the records will be capable of reconstructing any action taken in relation to the instructions from the time and date the client instruction was received to the time and date that the instruction was completed;
  - b. any complaints received from clients in accordance with the Rules; and
  - c. all other correspondence with the client.
- (5) Where the NBFIs is a management company or a person operating a collective investment undertaking, the records to be kept, in addition to those otherwise required for all NBFIs according to these Rules, shall include, but not be limited to:
  - a. the assets held for each collective investment undertaking, including the nature of the asset, the form of its legal title, the quantity and latest value of the asset;
  - b. the methodology and result of the calculation of the net asset value of each of the collective investment undertaking or client as the case may be; and
  - c. the holdings, subscriptions and redemptions of units or shares in the collective investment undertaking by the investors; and
  - d. the names, addresses and regulatory status of the other functionaries in each collective investment undertaking within the control of the management company or person operating a collective investment undertaking.

### **3. The records to be kept by Capital Markets Sector (where applicable)**

#### *[Explanatory Note]*

This paragraph of Schedule 1 defines the records that shall be kept in respect of transactions. Where the NBFIs is a functionary of a collective investment undertaking the references to the transactions in this paragraph shall be read as referring to the transactions undertaken for the collective investment undertaking, except that, for a management company of a collective investment undertaking, or a person operating a collective investment undertaking, the reference to transaction shall include both the transactions undertaken for the collective investment undertaking and the subscriptions and redemptions of units in the collective investment undertaking by each underlying client.

- (1) Where an NBFIs subject to this paragraph executes transactions, including those taken on its own behalf or on behalf of others, including clients, the records shall be sufficient to reconstruct the role of the NBFIs in each transaction in its entirety and shall include, inter alia, the following:
  - a. the identity of the NBFIs's officer undertaking the transaction;
  - b. the time, date, nature, price and amount of the transaction;
  - c. the method of execution, including, inter alia:
    - i. where the transaction was done on an exchange, the name of the exchange;

- ii. where the transaction was done off exchange, the details of the counterparty;
  - d. where the transaction was undertaken for a client:
    - i. the name of the client;
    - ii. details of any advice given by or to the NBF1 in respect of the transaction (whether specific to a transaction or as part of a programme of transactions);
    - iii. details of any credit granted to the client (if any);
    - iv. details of any margin payments made by or on behalf of the client;
  - e. the identity of any other NBF1 or any other party involved in the transaction;
  - f. details of any connection between the NBF1 and the counterparty to the transaction or the investment that was made;
  - g. copies of confirmations, bills, receipts or contract notes as appropriate;
  - h. commissions paid to other NBF1s and earned by the NBF1;
  - i. the time and date on which payment was made and legal title to the securities was transferred;
  - j. the date on which documents of title, or documents evidencing title to the securities was received or despatched;
  - k. the time and date of any transfer of certificated securities to dematerialised securities and vice versa; and
  - l. the flow of funds and securities into and out of bank and brokerage accounts.
- (2) An NBF1 subject to this paragraph shall keep records of all securities that are its property, which shall show, inter alia, whether they are held as collateral against loans or advances.
- (3) An NBF1 shall keep records of all advertisements that are approved or issued by the NBF1.

#### **4. Records to be kept by persons operating a securities exchange**

- (1) Where the NBF1 is a person operating a securities exchange, the records to be kept, in addition to those otherwise required by these Rules, shall include, inter alia:
  - a. the names, addresses, license category, legal form of each securities broker or dealer that has trading rights on the securities exchange;
  - b. the names, addresses, and qualifications of all individual natural persons who are able to execute orders on the securities exchange;
  - c. the bids and offers posted on the securities exchange by each securities broker or dealer including, the date, time, price, amount and nature of the securities for which a bid or offer was made and, for each securities broker or dealer, the client for whom the bid and offer was made;
  - d. full trading information for the transactions undertaken on the securities exchange by each securities broker or dealer including, inter alia, for each transaction:
    - i. the date and time of the transaction,
    - ii. the price, volume and nature of the securities transacted and,

- iii. where the transaction was undertaken by a securities broker, the name of the client for whom the transaction was made; such that a full audit trail capable of reconstructing trading activity can be prepared at any time.
  - e. transaction fees and other payments made by and to the securities exchange by securities brokers or dealers
  - f. any investigations into the activities of the securities brokers or dealers and any findings or sanctions imposed on them
  - g. any contracts with securities broker or dealers who have the status of market makers whereby they have committed to provide quotes for certain securities; and
  - h. all other correspondence with securities brokers or dealers who are members of the exchange.
- (2) A person operating a securities exchange that lists securities issued by companies (issuers) shall keep records of relations with issuers of securities, including, inter alia:
  - a. the name and other details of the issuer;
  - b. details of the securities issued, including the nature, amount and dates of the public offers made;
  - c. details of any corporate events, including dividend payments, capital restructuring, takeover, mergers, offers and other events;
  - d. all disclosures made by the issuer;
  - e. all prospectuses published by the issuer and the details of the analysis by the exchange of its compliance with regulatory requirements;
  - f. any investigations into the activities of the issuer, any findings or sanctions imposed;
  - g. the payment of fees and charges by issuers; and
  - h. all other correspondence with the issuer.
- (3) A person operating a securities exchange shall keep records of all operations of the market, including:
  - a. all bids and offers made, showing the securities, the amount and the price;
  - b. all transactions undertaken, showing the securities, the amount and the price;
  - c. all notifications to the market participants and the clearing and settlement system relating to the transactions; and
  - d. all other market operations.
- (4) A person operating a securities exchange that trades securities that have not been created by an issuer (such as derivatives contracts) shall keep records showing the details of the securities traded on the exchange, including, inter alia :
  - a. The nature of the securities;
  - b. The details of the obligations imposed on buyer and seller; and
  - c. All other relevant details pertaining to the securities.

**5. Records to be kept by persons operating a clearing and settlement system, including a central securities depository**

- (1) Where the NBFIs are persons operating a clearing and settlement system, the records to be kept, in addition to those required by these Rules shall include but not be limited to:

- a. the names, addresses, licence category and legal form of each person that is a participant in the clearing and settlement system, including securities brokers or dealers clearing members and settlement banks;
  - b. the date and time of each securities transaction that is handled by the clearing and settlement system, together with the details of the price, volume and nature of the security to be settled and the name and identifying details of the securities broker/dealer and, in the case of the securities broker or dealer, the client;
  - c. the method of calculating and the actual net obligations of each securities broker or dealer in respect of securities to be delivered and money to be paid at the end of each day;
  - d. the payments and deliveries made by securities brokers or dealers;
  - e. the date, time and nature of instructions sent to the settlement bank for the payment of net obligations;
  - f. details of the contributions to and total resources within, any guarantee fund that may be established by the central securities depository
  - g. all relations with those who are participants in the clearing and settlement system; and
  - h. all relations with third parties.
- (2) Where the NBFIs are persons operating a central securities depository, the records shall include, inter alia:
- a. the date and time of the transfer of ownership of securities;
  - b. the transactions with company registrars in relation to the dematerialisation and rematerialisation of securities and reconciliations of ownership records;
  - c. all relations with those who are participants in the central securities depository;
  - d. all relations with third parties and
  - e. all transactions and correspondence with the person responsible for the clearing and settlement of securities recorded in the depository.

**6. Records to be kept by persons operating a central counterparty**

- (1) Where the NBFIs are persons operating a central counterparty, the records to be kept, in addition to those otherwise required by these Rules shall include but not be limited to:
- a. the names, addresses, licence category and legal form of each person that is permitted to hold contracts with the central counterparty, including all clearing members and, where there are any, the NBFIs for which the clearing members are acting;
  - b. the nature of the obligations owed by the central counterparty to all other participants in the securities settlement system and the obligations owed to the central counterparty by the other participants;
  - c. for each of the contracts that are novated to the central counterparty, the date, time, price, amount and nature of securities that are to be bought and sold and the identifying details of the securities broker or dealer and, in the case of a securities broker/client broker (the client); and

- d. the termination or closing out of each contract to which the central counterparty is a party.
- (2) Where the central counterparty is responsible for setting the financial obligations of the clearing members, the records to be kept, in addition to those otherwise required by these Rules, shall include, but not be limited to:
- a. the method of calculating and the actual net obligations, at any one time, of each clearing member and the person for whom the clearing member is acting;
  - b. the payments and deliveries made by clearing members and the persons for whom the clearing members are acting.
- (3) The person operating the central counterparty shall keep records of all relations with all those who are clearing members or otherwise have contracts with the central counterparty.
- (4) A person operating a central counterparty shall keep records of all relations with:
- a. those who are participants in or counterparties of the central counterparty; and
  - b. all other third parties.