

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

**NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY  
(SECURITIES BUSINESS CORPORATE GOVERNANCE) RULES 2012**

(Section 50)

( February 2012)

**ARRANGEMENT OF RULES**

**RULES**

1. Citation
2. Interpretation
3. Application
4. Legal Form
5. The Board
6. Director and partners
7. Risk management
8. Management Information
9. Internal controls
10. Internal audit
11. Record keeping
12. Employees
13. Whistle blowing procedures
14. Agents and third party suppliers
15. Transparency
16. Offences and penalties

**Schedule 1: Records to be kept by securities businesses**

**1. Citation**

- (1) These rules may be cited as the Non-Bank Financial Institutions (Securities Business)(Corporate Governance) Rules 2012.

**2. Interpretation**

- (1) In these Rules, all terms carry the same meaning as in the Act:-  
“the Act” means the Non-Bank Financial Institutions Regulatory Authority Act.

“advertisement” means a communication to the public, any section of the public, to clients, or any group of clients that provides information about products, services, investment opportunities offered by the securities business.

“the Authority” means the Non-Bank Financial Institutions Regulatory Authority;

“board” means:

- a. where the securities business is a company, the Board of directors;
- b. where the securities business is a partnership, the partners; or
- c. where the securities business is conducted in another legal form, the persons registered with the Regulatory Authority as having responsibility for the conduct of the business .

“broker” is a person whose licence permits the conduct only of the activities defined in paragraph (b) of the definition of “securities dealer” in Section 2 of the Act

“broker/dealer” is a person whose licence permits the conduct only of the activities defined in paragraphs (b) and (c) of the definition of “securities dealer” in Section 2 of the Act

“securities infrastructure business” means:

- (a) an exchange; or
- (b) a central securities depository;
- (c) a clearance and settlement system other than a central securities depository; or
- (d) a central counterparty

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

“dealer” is a person whose licence permits the conduct only of the activities defined in paragraph (c) of the definition of “securities dealer” in Section 2 of the Act

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

“key personnel” means the chief executive officer, directors, chief financial officer, company secretary, compliance officer and internal auditor of a securities business (and any other person fulfilling a similar function with a different name), and the term “key person” shall be construed accordingly;

“person operating a collective investment undertaking” means the management company of a collective investment undertaking

“securities business” means any of the following

- an asset manager,
  - a broker,
  - a broker/dealer,
  - a dealer,
  - a custodian,
  - an investment adviser,
  - a management company for a collective investment undertaking,
  - a person operating a collective investment undertaking a person operating a central securities depository,
  - a person operating a central counterparty,
  - a person operating a securities exchange, or
  - a trustee of a collective investment undertaking
- that holds a license under Section 43 of the Act.

### **3. Application**

- (1) These Rules apply to all securities businesses.
- (2) Where a securities business is part of a financial group, certain rules, where specified, shall apply to the financial group as a whole.
- (3) Where a securities business has fewer than 5 persons, including key persons and employees, the Regulatory Authority may agree that:
  - a. the following rules need not apply:

- i. Rule 5(4) on Board policies for arranging its own business
  - ii. Rule 8 on management information and
  - iii. Rule 12(6) on succession planning; and that
- b. Evaluation of Board policies, risk assessment, internal controls and other internal matters required by these Rules to be conducted annually may be conducted every two years

#### **4. Legal Form**

- (1) The securities business shall be a company limited by shares incorporated under the Companies Act (Ch. 42:01) unless sub rule 2 applies
- (2) Where the securities business is a market intermediary, it 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. there are at least two key persons registered with the Regulatory Authority as having responsibility for the conduct of the business; and
  - c. the securities business has a registered office or place of business or agent in Botswana.
- (3) Where the securities business 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 securities business is a law or accountancy firm;
  - b. the 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 securities business has the systems and controls necessary for the safe custody of the assets.

#### **5. The Board**

- (1) The Board shall be responsible for the operation of the securities business and this responsibility shall include, inter alia:
  - a. responsibility for fulfilling any duties with respect to the securities business itself, or any other entity, to which duties are owed by applicable statute, Regulation, rule or contract;
  - b. responsibility for compliance with the Act, with any other regulatory requirements imposed under the Act and with any other applicable statute;
  - c. responsibility for ensuring that there are adequate human, technology and other resources for the management of the business;
  - d. responsibility for the standards of conduct of the securities business, its employees, agents and others through whom services are delivered;
  - e. responsibility for ensuring that the financial resources available to the business not only meet the statutory or regulatory requirements but also are adequate with respect to the nature, size, and complexity of its business for the purpose of guarding against the risk of failure to fulfil liabilities as they fall due.

- (2) The Board shall adopt a statement of the securities business's strategy and objectives.
- (3) 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.
- (4) The Board shall adopt a policy for arranging its business. The policy shall include, inter alia:
  - a. the method of appointing the Chairman or, as the case may be, the managing partner or most senior key person;
  - b. the procedures for calling Board meetings (which shall be no less frequently than quarterly), which shall include, inter alia the required notice for the circulation of the agenda and the method for securing the adoption of agenda items;
  - c. the formation of any Committees of the Board as may exist and their terms of reference (such Committees shall include an Audit Committee, except where the securities business secures the consent of the Regulatory Authority that an Audit Committee is unnecessary, given the nature and other controls of the securities business);
  - d. a statement as to 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;
  - e. the procedures for taking Board decisions, including inter alia the required majority, the use of a casting vote and the minimum quorum;
  - f. a code of conduct that addresses conflicts of interest, particularly relating to directors and partners which shall be regularly reviewed and updated as necessary; and
  - g. the method of recording and disseminating Board decisions.
- (5) Where the Board has appointed an Audit Committee, the functions of that Committee shall include, inter alia:
  - a. to review regular internal audit reports to management prepared by the internal auditor and any management response to such reports;
  - b. to review the securities business's periodical financial statements and any other reports or financial information deemed appropriate by the committee;
  - c. 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;
  - d. to review with management and external auditors, prior to public release, the audited and unaudited financial statements; and
  - e. to oversee the appointment of external auditors.
- (6) 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.
- (7) 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.

- (8) The Board shall adopt the procedures and controls that it considers necessary for managing the business.
- (9) 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.

**6. Directors and partners**

- (1) A securities business that is a limited company shall have at least two directors, who have the skills, experience and qualifications necessary for the business undertaken by the securities business.
- (2) A securities business that is a partnership shall ensure that there are at least two partners with the skills, experience and qualifications necessary to control the business undertaken by the securities business.
- (3) A securities business that is conducted in any form other than a limited company or partnership shall have at least two key persons who are registered with the Authority as being responsible for the conduct of the business and who must have the skills, experience and qualifications necessary to control the business undertaken by the securities business.
- (4) The Regulatory Authority may prescribe the qualifications necessary for the Boards of different securities businesses.
- (5) 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.
- (6) The Board shall adopt a policy for determining the remuneration of Board itself, the executive and staff of the business.
- (7) The Board shall keep a register of directors and their qualifications that shall be held available for public inspection without charge at the registered office.
- (8) Where the securities business is a securities infrastructure business:
  - a. the Board's policy with respect to the composition of the Board and the appointment of Board members shall, where the securities business is a mutual organisation, take account of the need to ensure appropriate representation of those who may be participants in the securities infrastructure business;
  - b. The Board shall include at least three directors who are independent of any issuers, market intermediaries, clearing members or other market participants

## **7. Risk Management**

- (1) The Board is responsible for the management of the risks facing the securities business.
- (2) The Board shall assess the risks facing the securities business. 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.
- (3) The assessment of risks shall include the risks to the securities business 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 securities business is a part.
- (4) The Board shall adopt and document its assessment.
- (5) 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.
- (6) 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 securities business's main offices;
  - c. the loss of records;
  - d. the default or failure of a counterparty; and
  - e. the loss of key personnel.
- (7) Where the securities business 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.
- (8) The Board shall ensure that the contingency arrangements are tested from time to time and no less frequently than annually.
- (9) The Board shall conduct an evaluation of its risk assessment and the effectiveness of its risk mitigation policies no less frequently than annually.

## **8. Management Information**

- (1) 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 securities business and other matters it considers necessary.
- (2) The Board shall consider the information regularly and in particular shall review the management accounts, major capital expenditure and the performance of the securities business no less frequently than quarterly.

- (3) The Board shall evaluate the adequacy of the management information arrangements no less frequently than annually.

**9. Internal Controls**

- (1) The Board is responsible for the policies and procedures (referred to as internal controls) of the securities business and for ensuring adherence to those controls.
- (2) The Board shall adopt internal controls that are designed to ensure that the securities business 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 securities business may be a member.
- (3) The Board shall designate a person (who may be a member of the Board or an employee) as Compliance Officer. The Officer may have other duties, provided that they do not create a conflict of interest with the role as Compliance Officer.
- (4) The Regulatory Authority may prescribe the qualifications for a Compliance Officer.
- (5) 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 securities business 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;
  - 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.
- (6) 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;
  - 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.
- (7) 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.



- (8) The Board shall 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.
- (9) 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 securities business accepting such a commitment.
- (10) The Board shall require its Compliance Officer to make a report to it and to any parent company of the securities business, when there are any disciplinary actions taken by the Regulatory Authority.
- (11) The Board shall have appropriate arrangements for protecting against the risks involved when payments are made or accepted in cash.
- (12) The Board shall make arrangements to segregate duties within the securities business, (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.
- (13) The Board shall ensure that there are adequate arrangements for securing and safeguarding the legal title to the assets of the securities business and those of its clients.
- (14) 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.

## **10. 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 securities business, 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;
  - 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;
  - 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.
- (6) Where the securities business 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.

## **11. Record Keeping**

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

## **12. Employees**

- (1) For the purpose of this Rule, the term “employee” shall be taken to include Board members, agents and other persons who carry out functions at the behest of the Board.
- (2) The Board shall ensure 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 securities business;
  - 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 securities business’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 securities business 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 investments held by them and their close associates; 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) A securities business 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 Board decides to employ agents or other third party suppliers to provide services for which it is responsible, it shall enter into a written agreement with the agent or supplier that will specify:
  - a. the duties and obligations of the agent or third party supplier;
  - b. the duties and obligations of the securities business;
  - 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 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 securities business 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 securities business itself or the Botswana financial services markets.
- (3) The Board shall ensure 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 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 securities business shall make available to the public, on request the identity of senior management and those authorized to act in the name of the securities business; the category of license held; its current status and the scope of authorized activities.

**16. Offences and Penalties**

- (1) The civil penalties that may be imposed by the Regulatory Authority in the event of a breach, in accordance with Section 79 of the Act shall include:
  - a. fines up to a maximum of [50 000]pula;
  - 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 Section 79 of the Act.

**SCHEDULE 1**  
**RECORDS TO BE KEPT BY A SECURITIES BUSINESS**

**1. The records to be kept by all securities business**

- (1) A securities business shall keep records of all decisions by the Board and any Board Committees.
- (2) A securities business shall keep records of the internal organisation and operation of the business.
- (3) A securities business shall keep records of all relations with clients (if any), counterparties and third parties.
- (4) A securities business shall keep records sufficient to be able to establish the financial position of the securities business, 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 and any regulatory requirement imposed by the 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 securities business (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 securities business 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 securities business; and
  - b. the securities business 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) A securities business shall keep records of all complaints filed with it, together with the action taken to resolve the complaint.
- (8) Records held by a securities business in respect of employees shall be sufficient to enable the securities business 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 securities business'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 securities business);
  - 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) A securities business shall keep records of all relations with the Authority.
- (10) A securities business 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) A securities business 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 a securities business 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 securities business'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 brokers, broker/dealers, asset managers, investment advisers, management companies, custodian, trustee and persons operating a collective investment undertaking**

*[Explanatory Note]*

This paragraph of Schedule 1 defines the records that shall be kept in respect of clients. Where the securities business 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 securities business 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 securities business 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;
- (2) The records maintained by a securities business 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 securities business from the time the money is paid to the securities business 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) A securities business 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 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 securities business, the manner in which they are held, whether in a nominee accounts, or directly.
- (4) A securities business 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 securities business 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 securities businesses 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 brokers, dealers, broker/dealer, asset managers, investment advisers, management companies, custodians and persons operating a collective investment undertaking**

*[Explanatory Note]*

This paragraph of Schedule 1 defines the records that shall be kept in respect of transactions. Where the securities business 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 a securities business 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 securities business in each transaction in its entirety and shall include, inter alia, the following:

- a. the identity of the securities business'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 securities business 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 securities business involved in the transaction;
  - f. details of any connection between the securities business 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 securities businesses and earned by the securities business;
  - 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) A securities business 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) A securities business shall keep records of all advertisements that are approved or issued by the securities business.

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

- (1) Where the securities business 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 dealer, broker or broker/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 broker, dealer or broker/dealer, including, the date, time, price, amount and nature of the securities for which a bid or offer was

- made and, for each broker or broker/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 broker, dealer or broker/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 brokers, dealers and broker/dealers
  - f. any investigations into the activities of the brokers, dealers and broker/dealers and any findings or sanctions imposed on them
  - g. any contracts with broker dealers who have the status of market makers whereby they have committed to provide quotes for certain securities; and
  - h. all other correspondence with brokers, dealers and broker/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 securities business is a person 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 brokers, dealers, broker/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 broker, dealer or broker/dealer and, in the case of the broker or broker/dealer, the client;
  - c. the method of calculating and the actual net obligations of each broker, dealer or broker/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 brokers, dealers and broker/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 securities business is a person 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 securities business is a person 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 securities businesses 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 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.