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LEGAL NOTICE NO. 107 OF 2014

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## LEGAL NOTICE NO. 107 OF 2014

**Central Bank  
(Capital Markets) Regulations, 2014**

In exercise of the powers conferred by section 6(j) and section 69 of the Central Bank Act of 2000<sup>1</sup>; I,

**DR. RETŠELISITSOE MATLANYANE**

Governor of the Central Bank in consultation with the Minister of Finance make the following regulations -

**PART I - PRELIMINARY****Citation and commencement**

1. These regulations may be cited as Central Bank (Capital Markets) Regulations, 2014 and shall come into operation on the date of publication in the Gazette.

**Application**

2. These regulations shall apply to offers of securities to the public.

**Purpose**

3. The purpose of these regulations is to establish the regulator for capital markets for purposes of promoting, regulating and facilitating the development of an orderly, fair and efficient capital markets in Lesotho and for associated purposes.

**Interpretation**

4. In these regulations, unless the context otherwise requires -

“advertisement” includes every form of advertising, whether -

(a) in a publication, by the display of notices, by means of

circulars or other documents;

- (b) by the exhibition of photographs, cinematograph films or videos;
- (c) by way of sound broadcast, television, or by the distribution of recordings; or
- (d) in any other manner;

“arbitrage transaction” means a purchase or sale by a person on his own account of securities on a securities exchange or facility with intent to sell or buy those securities on another securities exchange or facility to profit by the difference between the prices of those securities on such securities exchanges or facility;

“auditor” means a member of the Lesotho Institute of Accountants certified to provide auditing functions recognised by the Institute or a member of any other professional body as the Commissioner of financial institutions may approve;

“broker-dealer” means a person licensed to carry on business of buying and selling securities on behalf of other persons or on his own account,

“capital markets” has the same meaning assigned to it under section 2 of the Central Bank Act of 2000;

“capital market instrument” means any long term financial instrument whether in the form of debt or equity developed or traded directly between two or more parties for the purpose of raising funds for investment;

“Central Bank” means the Central Bank of Lesotho established under the Central Bank of Lesotho Act of 2000;

“company” has the same meaning as assigned to it under the Companies Act of 2011<sup>2</sup>;

“days” means calendar days excluding Saturdays, Sundays and public holidays;

“dealer” means a person who is licensed to carry on business of buying and selling securities for own account whether or not that person carries on other business;

“dealer’s licence” means a licence under Part VI of these regulations authorising a company to carry on business as a dealer.

“dealing in securities” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into -

- (a) an agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) an agreement for the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

“debt security” means an instrument creating or acknowledging indebtedness issued or proposed to be issued by a company including a debenture, debenture stock, loan stock, bond or note;

“exchange licence” means a licence to carry on the business of a securities exchange or exchange facility in terms of these regulations;

“exchange rules” means, in relation to a securities exchange or trading facility, the rules governing the activities and market conduct of a securities exchange or trading facility or of its members;

“Fund Manager” means a body corporate licensed by the Registrar which, pursuant to a contract or arrangement with a client, undertakes on behalf of a client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment;

“Government and public debt security” means any loan stock, bond, note or other instrument creating or acknowledging indebtedness issued by or on behalf of a Government, statutory corporation, parastatal body or local authority;

“initial public offering” means an offer to the public of any securities or a company, if -

- (a) no securities of that company have previously been the subject of an offer to the public; or
- (b) all of the securities of that company that had previously been the subject of an offer to the public have subsequently been reacquired by the company;

“investments” means;

- (a) securities listed on a licensed securities exchange or facility;
- (b) securities listed on a foreign securities exchange or facility;
- (c) participatory interests or units in a collective investment scheme approved under these regulations;
- (d) participatory interests or units in a collective investment scheme licensed or registered in a foreign country;
- (e) other instruments declared to be investments for the purposes of these regulations by the Central Bank by Notice published in the Gazette; or
- (f) funds intended for the purchase of such securities, units or other instruments;

“investment adviser” means a person who -

- (a) carries on the business of advising others concerning investments as part of a regular business, issues or promulgates analysis or reports concerning investment;
- (b) is a financial institution licensed to provide financial and investment advice under the Financial Institutions Act of 2012<sup>3</sup>; or

- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities for the purpose of investment;

but does not include -

- (d) an insurance company licensed under the Insurance Act of 2014<sup>4</sup>;
- (e) a lawyer or accountant in practice whose advice with respect to investment is wholly incidental to the practice of his or her profession;
- (f) a pension fund;
- (g) a licensed dealer or a licensed dealer's representative whose advice with respect to investments is solely incidental to the conduct of his business or employment in dealing in securities; or
- (h) a person who is the proprietor or publisher of a bona fide newspaper, magazine, journal or other periodical publication that is generally available to the public, in relation to any advice with respect to investments given therein, where -
  - (i) the advice is given or the analysis or reports are issued or promulgated only through that publication;
  - (ii) that person receives no commission or other consideration for giving the advice;
  - (iii) the advice is given and the analysis and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper, proprietor or publisher;

“investment adviser’s representative” means a person, by whatever name described, in the employment of, or acting for or by arrangement with,

an investment adviser and who performs for that investment adviser, the functions of an investment adviser, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration of that person is by way of salary, wages, commission or otherwise, and includes a director or officer of a company who performs those functions for the company, whether or not the remuneration of that director or officer is as aforesaid;

“investment adviser’s representative’s licence” means a licence issued under Part VI of these regulations authorizing a person to act as an investment adviser’s ~~representative~~ *\* 100 much space* - representative;

“issuer” in relation to securities, means a person by whom securities have been issued or are to be issued and shall include a company or other legal entity that offers securities to the public or a section thereof in Lesotho;

“licensed securities exchange” means a securities exchange to which an exchange licence has been issued in terms of these regulations;

“listed securities” means securities listed or quoted on a licensed securities exchange;

“listing rules” or “listing requirements” mean, in relation to a securities exchange, rules governing or relating to -

- should also have to be removed.*
- (a) the grant of a listing or quotation of, and permission to deal in securities on a securities exchange or the removal from listing and for other purposes; or
  - (b) the activities or conduct of issuers and other persons who are admitted to that list, whether those rules -
    - (i) are made by the securities exchange or are contained in any of the constituent documents of the securities exchange; or
    - (ii) are made by another person and adopted by the securities *\* 100 much space*



~~exchange~~ exchange;

“market intermediary” is a person licensed, registered or approved as such under these regulations;

“offer of securities” means a person is to be regarded as offering securities if, as principal, he or she makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or her or by another person with whom he or she has made arrangements for the issue or sale of the securities; or he or she invites a person to make such an offer, but not otherwise and except where the context otherwise requires, “offer” and “offeror” shall be construed accordingly;

“offer to the public” a person offers securities to the public in Lesotho if, to the extent that the offer is made to persons in Lesotho, it is made to the public and for this purpose, an offer which is made to any section of the public, whether selected as members or debentures holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public, and the terms

*this forms part of the above paragraph.*  
“public offer” and “public offering” shall be construed accordingly;

“professional investor” means a person whose ordinary business or regular activity involves the buying and selling of securities, as principal, including an underwriter, a bank, and an insurance company, a fund’s manager, stock broker, broker-dealer, a dealer, or their representatives, investment adviser or investment adviser’s representative acting as principal, subject to any exception that may from time to time be prescribed by the Registrar;

“promoter”, in relation to civil and criminal liability in respect of an untrue statement in a prospectus, means -

- (a) a person who was a party to the preparation of the prospectus, or of the portion of it that contains the untrue statement; but
- (b) does not include any person acting in a professional capacity for persons engaged in procuring the formation of the company or preparing the prospectus;

“public company” has the same meaning assigned to it under the Companies Act of 2011;

“Registrar” means the Registrar of Capital Markets referred to in regulation 6;

“share” means a share in the share capital of a body corporate, a unit in a unit trust or an interest in any collective investment scheme.

“securities” means -

- (a) debentures, shares, stocks, bonds, commercial paper (whether issued by the Government or a company having a share capital or any other body corporate or association of persons) notes, units of stock issued in place of shares, and options on stocks or shares or on such debentures, notes or units, and rights thereto, but excluding -
  - (i) shares in a private company; or
  - (ii) stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or representatives of the company, other than such consent or approval required by, under or by virtue of any law, or options on or rights to such stocks or shares; or
  - (iii) treasury bills, banker’s acceptances, negotiable certificates of deposit issued by a banking institution registered under the Financial Institutions Act of 2012, or any other similar short-term instrument designated by the Registrar by notice in the Gazette, or options on or rights to such bills, acceptances, certificates or instruments;
- (b) a right, warrant, option of futures in respect of any debenture, shares, bonds, notes or in respect of commodities;

- (c) a unit, interest or share offered under a collective investment scheme or other similar vehicles, whether established in Lesotho or not;

“securities exchange” means, in relation to premises of a licensed securities exchange, the one place in those premises which constitutes, maintains or provides a market or a facility by means of which -

- (a) offers to sell, purchase or exchange securities are regularly made or accepted;
- (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities;
- (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities; or
- (d) clearing service for securities traded in the exchange takes place;

“stock-broker” means any person who is licensed to carry on the business of buying and selling securities on behalf of other persons;

“stock broker’s; broker-dealer’s; dealer’s representative” means a person by whatever name described, who is in the direct employment of, or acting for, or by arrangement with, a stock broker, broker-dealer or a dealer, and who performs for that stock broker, broker-dealer or dealer, any of the functions of a dealer, other than work ordinarily performed by accountants, clerks or cashiers, whether or not the remuneration of that person is by way of salary, wages, commission or otherwise, and includes any director of a company who performs for the company any of those functions, whether or not the remuneration of that director or officer is as aforesaid;

“Stock broker; broker-dealer; dealer’s representative’s licence” means a licence under Part VI of these regulations authorizing a person to act as a representative;

“unit trust” means any scheme or arrangement in the nature of a trust in pursuance whereof members of the public are incited or permitted, as beneficiaries under the trust, to acquire an interest or undivided share (unit of investment) in one or more groups or blocks of specified securities and to participate proportionately in the income or profits derived there from;

“untrue statement” includes a statement that is misleading in the form and context in which it is made and includes an omission from a prospectus or written statement of any matter that, in the context, is calculated to mislead by omission constitutes the making of an untrue statement in that prospectus or written statement, irrespective of whether these Regulations require that matter to be included in the prospectus or written statement;

“underwriting” means the purchase of newly issued securities for the purpose of public resale on behalf of the issuer, or the guaranteeing to an issuer that the unsold residue of the issuer’s public issue or sale will be taken up.

## PART II - REGISTRAR OF CAPITAL MARKETS

### **Registrar**

5. A person appointed in terms of Section 2 of the Financial Institutions Act of 2012 as the Commissioner of financial institutions shall be the Registrar of Capital Markets.

### **Functions of the Registrar**

6. (1) The principal objectives of the Registrar shall be -
- (a) the creation, maintenance and regulation, through implementation of systems in which the securities market participants are self-regulatory and markets in which securities can be issued and traded in an orderly, fair, effi

cient and transparent manner;

- (b) the protection of investors;
- (c) the reduction of systemic risk; and
- (d) promotion of market confidence.

(2) For the purpose of carrying out the objectives of the office, the Registrar shall -

- (a) licence, regulate, monitor and supervise the activities of any securities market, exchange or facility;
- (b) take reasonable steps to ensure that these regulations and rules made under these regulations are complied with;
- (c) advise the Minister on all matters relating to the development and operation of capital markets;
- (d) maintain surveillance over securities to ensure orderly, fair and equitable dealings in securities;
- (e) make rules or guidelines and issue directives on all matters within the jurisdiction of the Registrar under these Regulations and ensure that investors are adequately protected and can develop increased confidence in the capital market;
- (f) establish conditions for, registering, licensing, approving and regulating, in accordance with these regulations or any other regulations made under the Central Bank Act, securities exchanges, investment advisers, dealers, fund managers, stock brokers, dealers, and representatives of the foregoing and any other persons dealing in securities or exercising any functions related to the securities, and their agents and to control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;

- (g) approve standards of competence for market intermediaries and their respective representatives, whether by way of examination or otherwise;
- (h) monitor and enforce regulations for the conduct of licensed persons and for the supervision and investigation of that conduct;
- (i) promote and encourage high standards of investor protection and integrity among licensed persons;
- (j) take reasonable steps to -
  - (i) safeguard the interests of persons who invest in securities and to protect the integrity of the securities market against any abuses; and
  - (ii) promote and maintain the integrity of market intermediaries and encourage the promulgation by them of balanced and informed advice to their clients and to the public at large;
- (k) disseminate to the public information on the capital market and on securities and create facilities from the regular publication of prices, indices, dealings and securities;
- (l) conduct an inspection of the activities, books and records of market intermediaries or any persons in possession of records on securities and derivatives transactions and on identification of beneficial ownership;
- (m) encourage savings and investments in securities and encourage the development of market intermediaries and other securities professionals;
- (n) regulate and oversee the issue and subsequent trading both in primary and secondary markets of capital market instruments;
- (o) enter into arrangements with regulatory agencies outside

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Lesotho in order to facilitate the simultaneous listing of securities in Lesotho and elsewhere;

- (p) act as an appellate body for appeals from securities exchange actions brought by aggrieved parties;
- (q) attend meetings of the securities exchange, as if he or she were a member of the securities exchange and take part in all the proceedings at such meetings;
- (r) share both public and non-public information with domestic and foreign counterparts and, in particular -
  - (i) establish information sharing mechanisms, through memorandum of understanding or otherwise, that set out when and how to share both public and non-public information with domestic and foreign counterparts; and
  - (ii) provide assistance to foreign counterparts who need to make inquiries in the discharge of their functions and exercise of their powers; or
  - (iii) exercise and perform such other powers, authorities and duties as may be conferred or imposed upon the Registrar by or under these regulation and do all such other acts as may be incidental or conducive to the attainment of the objectives of the Registrar or the exercise of the powers of the Registrar under these regulations;
- (s) in exercising the powers and discharging the functions and duties under these regulations, the Registrar shall adopt processes which are consistently applied, comprehensible, transparent to the public and fair and equitable.

#### **Power of Registrar to make rules**

7. (1) Without prejudice to the generality of the power conferred by



regulation 6, the Registrar may, by Notice published in the Gazette, make guidelines or rules applying to licensed persons as may be required for the purpose of ensuring the protection of investors including, but not limited to rules or guidelines regulating the -

- (a) orderly and fair trading in capital market instruments;
- (b) listing of securities on a securities exchange;
- (c) disclosures about securities transactions by -
  - (i) dealers and their representatives;
  - (ii) persons who acquire or dispose of securities; and
  - (iii) a securities exchange;
- (d) proper maintenance of books, records, accounts and audits by all licensed persons of their affairs;
- (e) conduct of business by any bodies corporate or persons licensed or approved to undertake any capital market instruments;
- (f) financial resources requirements for licenses and other approved market participants.

(2) All rules and guidelines made by the Registrar shall take into account and be consistent with the objective of promoting and maintaining effective and efficient capital market.

### **PART III - CAPITAL MARKETS TECHNICAL COMMITTEE**

#### **Capital Markets Technical Committee**

8. (1) There shall be a Capital Markets Technical Committee which shall serve as an advisory to the Registrar on -

- (a) policy matters relating to capital market development in Lesotho;



- (b) an appropriate regulatory framework for the development of capital markets in Lesotho; and
- (c) the exercise of the functions of the Registrar under these regulations.

(2) The Registrar may request the advice of the Committee on administrative, technical or policy matter regarding the performance by the Registrar of his or her functions under these regulations.

(3) Nothing in subregulation (2) shall prevent the Committee from providing advice to the Minister or the Registrar on its own initiative.

(4) The Committee shall, in the exercise of its functions, have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

#### **Composition of the Capital Markets Technical Committee**

9. (1) The Committee shall consist of the following members -
- (a) a Chairperson;
  - (b) a representative of each licensed securities exchange or trading facility;
  - (c) the Principal Secretary of the Ministry of Finance, or a person authorized in writing by the Principal Secretary to act on behalf of the Principal Secretary;
  - (d) one member appointed by the Registrar;
  - (e) the Registrar or a person authorized in writing by the Registrar to act on behalf of the Registrar, who shall be secretary to the Committee;
  - (f) a representative of Lesotho Bankers Association; and
  - (g) a representative of the Ministry of Trade.

(2) The Chairperson and a member under subregulation (1)(d) shall be appointed by the Registrar and shall be persons with experience and expertise in legal, commercial, industrial, capital markets or financial matters.

### **Meetings of the Committee**

10. (1) The Committee shall meet as often as may be necessary but, in any event, at least twice a year.

(2) A meeting of the Committee may be convened at any time -

(a) by the chairperson;

(b) by the Registrar; or

(c) at the request of at least one third of the members of the Committee.

(3) The Chairperson shall preside in all meetings of the Committee.

(4) The quorum for a meeting of the Committee shall be at least half of its members and the Committee may, subject to the requirement for a quorum, regulate the procedure in regard to meetings and conduct of business at such meetings.

(5) All decisions at a meeting of the Committee shall be decided by the vote of the majority of the members present and, in case of an equality of votes, the Chairman shall have a casting vote.

(6) A member of the Committee, who has a direct or indirect interest in any decision that is to be taken on any specific matter by the Committee, shall disclose the nature of such interest at the meeting of the Committee where such decision is being taken and the disclosure shall be recorded in the minutes of the meeting.

(7) Where a member or the majority of the members of the Committee believe that a member's interest in a matter is such as to influence that member's judgment, that member shall not participate in the deliberation or the decision of the Committee on that matter.

(8) Nothing contained in subregulation (6) or (7) shall prevent the Committee members from voting upon matters which affect them generally.

(9) The Registrar shall be responsible for the administrative work incidental to the functions of the Committee and may submit to the Committee information that is in the Registrar's possession, or that the Registrar may obtain, and that is relevant to matter investigated by the Committee.

#### **Term of office of Committee members**

11. (1) A member of the Committee shall hold office for a period not exceeding two years and shall be eligible for reappointment.

(2) A member appointed under regulation 9(1) shall cease to hold office as a member of the Committee if -

- (a) the member delivers to the Registrar a written resignation of his appointment;
- (b) on the advice of the Committee, and subject to an independent professional assessment, the Registrar removes the member from office on the grounds that the member is unable or unfit to discharge the functions of a member or is unable to continue as a member;
- (c) the member has been absent for three consecutive meetings of the Committee without leave or good cause;
- (d) the member is insolvent or makes or offers any arrangement with any of that member's creditors;
- (e) the member is sentenced by a court to imprisonment without the option of a fine; or
- (f) the member is convicted of an offence involving dishonesty.

(3) The Registrar shall not take action under subregulation (2)(b) unless the Registrar has given the member a hearing.

(4) A member appointed under regulation 9(1)(b) or (c) shall cease to hold office if the member is removed in writing, by notice to the Registrar, or by the organisation which that member represents.

### **Allowances**

12. A member of the Capital Markets Technical Committee shall be paid such allowances as the Registrar may approve.

## **PART IV - INTERIM SECURITIES TRADING FACILITY**

### **Interim securities trading facility**

13. (1) Pending the establishment of a securities exchange, the Registrar may permit a person or company licensed under these regulations to establish and maintain interim securities trading facility by means of which a licensed person or company may operate subject to rules as the Registrar may prescribe from time to time.

(2) The Registrar may, subject to ratification by the Capital Markets Technical Committee, temporarily take over the function of an interim security trading facility referred to in subregulation (1).

(3) The provisions of these regulations, shall apply, with necessary modifications in relation to an interim securities trading facility with such modifications as may from time to time be prescribed.

(4) Subject to subsection (2), the Registrar may make such rules as may be required for the purpose of ensuring orderly and fair trading in securities on the interim securities trading facility and the protection of investors in connection with such trading, and in particular, rules to regulate -

- (a) the listing of securities on the facility;
- (b) the obligations of issuers of listed securities;
- (c) the trading and settlement rules of that facility;
- (d) the brokers or dealers who, and the conditions on which, those dealers may deal in securities on the facility;

- (e) the transitional arrangements for the assumption of the operations of the facility by an approved securities exchange;
- (f) other matters relating to the operation of the facility including the establishment and management of the Compensation Fund as the authority may consider necessary.

(5) Where an approved securities exchange is established under Part V, the management and operation of the interim securities trading facility shall be assumed by the approved securities exchange in accordance with the rules made under subsection (3).

## PART V - LICENSING OF SECURITIES EXCHANGE

### **Restriction on the right to carry on business of a securities exchange**

14. (1) Subject to these regulations, a person shall not carry on, establish or assist in establishing or maintaining, or hold himself or herself out as carrying on, providing or maintaining the business of a securities exchange except under an exchange licence.

(2) A person who contravenes subregulation (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand Maloti or to imprisonment for a term not exceeding ten years, or to both fine and imprisonment.

### **Application for an exchange licence**

15. (1) A public company may apply for an exchange licence in respect of one or more types of securities.

- (2) An application for an exchange licence shall -
  - (a) be made to the Registrar in the manner and form prescribed by the Registrar;
  - (b) be accompanied by fees prescribed by the Registrar;

- (c) show that the applicant complies with the requirements referred to in regulation 17;
- (d) be accompanied by a copy of the proposed exchange rules and the listing requirements;
- (e) be accompanied by the applicant's relevant documents of incorporation;
- (f) be accompanied by such additional information as the Registrar may require.

(3) The Registrar shall give notice of an application for an exchange licence in a national newspaper of general circulation in Lesotho at the expense of the applicant, which Notice shall state the -

- (a) name of the applicant;
- (b) place at which the exchange rules may be inspected by members of the public; and
- (c) period within which objections to the licensing may be lodged with the Registrar, not being less than fourteen days from the date of the publication of the advertisement.

#### **Requirements to be met by applicants for an exchange licence**

16. (1) An applicant for an exchange licence shall satisfy the Registrar that he or she -

- (a) has financial resources sufficient for the proper performance of functions;
- (b) has sufficient arrangements to provide and maintain, to the satisfaction of the Registrar, adequate and properly equipped premises and systems for the conduct of the business of a securities exchange;
- (c) has made such arrangements as the Registrar considers

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appropriate for:

- (i) listing securities for trading on its platform;
  - (ii) orderly execution of trades;
  - (iii) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions;
  - (iv) surveillance capability which monitors positions, prices and volumes in real time so as to ensure market integrity;
  - (v) necessary capability to have a nationwide network of trading members and has adequate facility to admit and regulate its members;
  - (vi) facilities to disseminate information about trades, quantities and quotes in real time;
  - (vii) the effective monitoring and enforcement of compliance with its rules and these regulations and, investigating complaints in respect of business transacted by any of its members;
  - (viii) adequate mechanisms for addressing investor grievances;
  - (ix) adequate system's capacity supported by a business continuity plan including disaster recovery;
- (d) has made provision for establishment of an investor protection fund;
  - (e) employs persons with skills and competencies to manage and perform the functions of a securities exchange;
  - (f) an approved business plan;



- (g) provides for a fair representation of persons in the appointment of its market committee members and in the administration of its affairs;
- (h) ownership and Governance structure;
- (i) directors and major shareholders are fit and proper persons in accordance with regulation 31.

### **Grant of an exchange licence**

17. (1) The Registrar in consultation with the Capital Markets Technical Committee may, after consideration of an application lodged with the Registrar, grant or renew to a public company a licence to carry on the business of a securities exchange if the Registrar is satisfied that -

- (a) the interests of the public will be served by the issue of the licence;
  - (b) the conditions as stipulated by the Registrar have been met;
  - (c) the applicant has sufficient financial resources for the proper exercise or carrying out the powers and duties conferred upon or assigned to a securities exchange by or under this regulations; and
  - (d) the license fee prescribed by the Registrar has been paid.
- (2) A securities exchange licence shall specify -
- (a) the place or places at which the business of the securities exchange may be carried on;
  - (b) the trading method or facility by means of which the business of the securities exchange may be carried on;
  - (c) that business shall not be carried on in other manner otherwise than as stipulated in the licence without the written permission of the Registrar; and



- (d) the period of its validity.

(4) The Registrar shall inform the applicants of the decision of the Registrar on the application not later than three months after the date on which the application was received or, if within that period the Registrar has required the applicants to furnish further information in connection with the application, from the date on which that information is furnished.

### **Circumstances under which an exchange license may be withdrawn**

18. (1) The Registrar may cancel an exchange licence if the Registrar is satisfied that -

- (a) the securities exchange fails to commence operations within a period of one year following the grant of the licence;
- (b) the securities exchange is in continuous breach of its obligations under these regulations;
- (c) there was no compliance with the provisions of these regulations;
- (d) there was no compliance with a written directive, request, condition of requirement made by the Registrar;
- (e) the securities exchange ceases to carry on the business for which it is licensed; or
- (f) the exchange rules are not properly enforced.

(2) The Registrar shall give thirty days written notice to a licensed securities exchange of the intention of the Registrar to cancel a licence under this regulation.

(3) The securities exchange concerned shall make representations to the Registrar within the period prescribed in subregulation (2) giving reasons as to why such licence should not be cancelled.

(4) If the Registrar has revoked a licence, the Registrar shall, as soon

as possible, publish a notice of such revocation in the Government Gazette and take other means calculated to inform the public of such revocation, including, where possible, publication of the Notice in a newspaper of general circulation in Lesotho.

(5) The Registrar shall not refuse to renew a securities exchange licence on any ground, unless the Registrar has, by notice in writing, furnished the applicant with reasons for his or her proposed refusal and the applicant has had the opportunity to show cause within a period specified in the notice why such renewal should not be refused.

### **Contents of exchange rules**

19. (1) The rules of a securities exchange shall be so designed as to ensure, to the satisfaction of the Registrar that -

- (a) a person is not admitted or allowed to continue as a member of the exchange unless -
  - (i) the person complies with the prescribed minimum requirements in regard to experience and educational qualifications and is a fit and proper person to be so admitted;
  - (ii) the directors are fit and proper persons and at least thirty five percent of the other directors are Basotho citizens;
  - (iii) a person, or in the case of a corporate body, its managing director, is a stock-broker and complies with standards of training and experience and other qualifications as may be required by the rules;
  - (iv) a person holds and maintains while being a member, such amount of capital or equivalent bank guarantees as shall be prescribed by the rules;
- (b) the capital or guarantee requirements of members are

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reviewed when appropriate to ensure that risk exposures of a member are adequately covered;

- (c) adequate steps are taken against a member who contravenes or fails to comply with the provisions of these regulations, or of such rules;
- (d) a member may not resign where the securities exchange intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or take other disciplinary action against that member;
- (e) trading in securities shall be efficient, honest, fair, competitive and informed and that the business of the securities exchange is carried on with due regard to the public interest;
- (f) the conditions governing dealings in securities by members of the securities exchange, and the class or classes of securities that may be dealt in by members;
- (g) there shall be established requirements and conditions for the listing, suspension and de-listing of securities and that issuers of securities listed on the securities exchange comply with its ongoing disclosure requirements so as to afford to investors proper and timely information for determining their current value;
- (h) a member who is a dealer and knowingly buys securities from a client of that member's or sells securities to such client on that member's own account and through another dealer, notifies the client concerned in writing that those securities were bought or sold by the member on that member's own account;
- (i) a qualifying right to be held by a person in order to be admitted as a member, if any, is available for acquisition by an applicant for admission, at not more than the price stated in the exchange rules;

- (j) every member who is a dealer provides, if required, sureties or security to the satisfaction of the capital market committee in an amount of not less than an amount as prescribed from time to time in the Gazette by the Registrar, for the discharge, during the first three years in which the member is entitled to carry on the business as a dealer, after the member has been excused, of the member's liabilities arising out of transactions entered into by the member in respect of securities;
- (k) members submit to the market committee audited annual financial statements within ninety days after the end of each financial year;
- (l) every member who is a stock-broker contributes to the fund referred to in regulation 24;
- (m) a member who is a dealer submits a weekly report in writing to the market committee in which -
  - (i) particulars are furnished of securities which the member is required to buy or sell for the account of a person who failed to pay for securities purchased or to deliver securities sold, within the prescribed period, but which the member has not yet purchased or sold; and
  - (ii) reasons are furnished for that member's failure to complete a purchase or sale contemplated in subparagraph (i);
- (n) the market committee monitors the operations of the securities exchange and submits -
  - (i) a yearly report to the Registrar within three months after the end of their year on the activities of the securities exchange during the previous year;
  - (ii) audited financial statements to the Registrar

within three months after the end of their financial year;

- (iii) a report to the Registrar on any other matters of importance pertaining to the functioning of the securities exchange; and
- (o) all requirements pertaining to the prohibition of insider trading, money laundering and other improper conduct are enforced.

(3) The Registrar shall within thirty days, after the Registrar has granted an exchange licence cause the exchange rules to be published in the Gazette at the expense of that securities exchange.

(4) Additions or alterations of the exchange rules shall not be valid unless they have, on application by the securities exchange and on payment of the fee prescribed by the Registrar, been approved by the Registrar, and if the Registrar approves thereof, such amendment shall come into operation on a date mentioned in the approval.

(5) Upon receipt of an application for the approval of the Registrar under subregulation (4), the Registrar shall cause to be published, at the expense of the applicant, a notice in the Gazette setting forth the proposed additions or alterations of the exchange rules.

(6) The notice referred to in subregulation (5) shall call upon all interested persons, other than members of the securities exchange concerned, who have any objections to the proposed additions or alterations to lodge their objections to the proposed additions or alterations with the Registrar within a period of thirty days from date of publication in the Government Gazette.

(7) Additions or alterations approved by the Registrar in terms of subregulation (4), (5), and (6) shall come into operation on a date mentioned in the approval.

(8) Exchange rules shall operate as a binding contract between -

- (a) the securities exchange and each exchange member; and

- (b) a member and any other member,

in terms of which each of the parties agrees to observe and perform the provisions of the exchange rules.

### **Functions of a securities exchange**

20. (1) A securities exchange shall not carry on any other business other than the business of a securities exchange.

(2) A securities exchange -

- (a) shall enforce the exchange rules in accordance with the provisions of these regulations;
- (b) shall ensure that its members, their officer and employees comply with the provisions of these regulations and the exchange rules;
- (c) may issue directives to govern the internal affairs of the securities exchange;
- (d) shall make listing requirements, after consultation with the Registrar which prescribe -
  - (i) the manner in which securities may be listed, removed or suspended from the list;
  - (ii) the requirements with which issuers of listed securities and of securities which are intended to be listed shall comply;
  - (iii) the conduct expected of issuers of listed securities and of directors, officers and agents of such issuers;
  - (iv) the standards of disclosure and corporate governance expected of issuers of listed securities;
  - (v) trading procedures, delivery and settlement of

trades; and

(vi) the conduct of brokerage business.

(e) shall supervise compliance by issuers of listed securities with the listing requirements, the exchange rules and these regulations; and

(f) may do all other things necessary, incidental or conducive to the proper operation of a securities exchange and which are not inconsistent with these regulations.

(3) The Registrar may, subject to ratification by the Capital Markets Technical Committee, temporarily take over one or more of the functions referred to in subregulation (2).

(4) Despite the provisions of any other law, a securities exchange may enter into an agreement with other exchange or organisation of securities exchange supervisors, whether domestic or foreign, to see information relating to a security, a person whose securities are listed on a securities exchange, a particular transaction, a member of the securities exchange, an officer or employee of such member, if such information is of importance to such exchange or organisation, and the disclosure is not against public interest.

### **Listing of securities**

21. (1) A securities exchange -

(a) shall keep a list of the securities that may be dealt in on the securities exchange;

(b) shall receive and consider, and may grant, defer or refuse, subject to conditions that it may determine, applications for the issue of securities to be included in the list;

(c) may include securities issued by it in its own list subject to the approval of and on the conditions prescribed by the Registrar;



- (d) may charge the fees provided for in the listing requirements or the exchange rules;
- (e) shall revise the list at least once during every year and submit to the Registrar in each year, a certificate that the list has been revised during that year, and may, despite any arrangement entered into before or after the commencement of this regulations under which the securities may be dealt in on the securities exchange, charge fees in respect of the revision as may be prescribed in the rules of the securities exchange.

(2) A securities exchange shall, before refusing an application to include securities in the list -

- (a) inform the issuer of its intention to refuse the application;
- (b) give the issuer the reasons for the intended refusal; and
- (c) call upon the issuer to show cause within a period specified by the securities exchange why the application should not be refused.

(3) Listing requirements are binding on issuers, their officers, employees and agents, and investor using the facilities of a securities exchange.

(4) Fees charged to issuers for the listing of securities shall, notwithstanding any other law, rank in *pari passu* with preferred creditors on the winding up of the issuer.

#### **Removal or suspension of listing, and omission of securities from price list**

22. (1) A securities exchange may, subject to these regulations, exchange rules and the listing requirements, and if it is in the public interest -

- (a) remove securities from the list or suspend the inclusion of securities in the list;
- (b) omit from a list of quotations of prices if securities



issued for publication on the securities exchange, the prices of any securities previously quoted in the list;

Provided that a transfer of the price of securities from one section of the list to another section of that list shall not be regarded as an omission as contemplated in this paragraph.

(2) A securities exchange shall, subject to subsection (3) and before a removal or suspension referred to in subregulation (1) -

- (a) inform the issuer of the securities of its intention to remove or suspend;
- (b) give the issuer the reasons for the intended removal or suspension; and
- (c) call upon the issuer to show cause, within a period specified by the securities exchange, why the removal or suspension should not be effected.

(3) If it is in the public interest, or if the listing requirements or the conditions determined by a securities exchange in respect of the listing of securities are not complied with, a securities exchange may order an immediate suspension, for a period not exceeding thirty days, which period may be extended for further period of thirty days.

(4) If the inclusion of securities in the list has been suspended in terms of this regulation, a securities exchange may, despite subregulations (1) and (3), permit members to settle transaction in respect of those securities for the sole purpose of fulfilling their obligations entered into in relation to those securities before the suspension.

(5) If an issuer requests a securities exchange to remove its securities from the list, but the securities exchange considers the securities to be eligible for continued inclusion in the list, the removal shall only be effective after the approval by the shareholders of the issuer in a manner specified by the securities exchange.

(6) If a securities exchange refuses an application for the inclusion of securities in the list as contemplated in regulation 21(1)(b), or under subreg-

ulation (1) removes securities from or suspends the inclusion of securities in the list, the issuer concerned shall notify every other exchange on which such securities are listed of the date of the refusal, removal or suspension.

(7) A licensed securities exchange may not, within a period of six months from the date referred to in subregulation (6), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such securities, unless the refusal, removal or suspension has been set aside on appeal by the Registrar.

(8) If a securities exchange withdraws a refusal, removal or suspension before the expiry of the period of six months, the issuer concerned shall notify every other exchange on which the securities are listed accordingly, and the prohibition contemplated in subregulation (6) lapses from the date of such withdrawal.

(9) A securities exchange referred to in sub-regulation (6) and (7) shall, if it is aware of the listing of the same securities on other exchanges, also notify those exchanges of the refusal, removal, suspension or withdrawal, as the case may be.

#### **Disclosure of information by issuers of listed securities**

23. (1) A securities exchange may, by notice in writing, require an issuer whose securities are included in the list to disclose to it, within a period specified in the notice, any information as the issuer's disposal about such securities, or about the affairs of that issuer, that is in the public interest.

(2) A securities exchange may, after giving the issuer an opportunity of making representations to it, require the issuer to disclose that information to the registered holders of the securities within a further period specified by the securities exchange.

(3) Where an issuer has an objection to the disclosure of the information to the securities exchange or the registered holders of the securities, or to both, the securities exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend such securities from its list until such time as the required disclosure has been made to the satisfaction of the securities exchange.

(4) Where an issuer discloses information in terms of this regulation to the registered holders of securities that may influence the price of those securities, the issuer shall, at the same time, cause the information to be published in the Gazette and newspaper of wide circulation.

#### **Establishment and maintenance of an investor protection fund**

24. (1) A securities exchange shall establish and maintain an investor protection fund or similar fund for the protection of investors, which shall be administered by the market committee on behalf of the securities exchange.

(2) The contributions to, and payments out of, the fund referred to in subregulation (1) shall be made in accordance with the rules of a securities exchange or rules prescribed by the Registrar.

(3) The assets of the fund referred to in subregulation (1) shall be the property of the securities exchange but shall be kept separate from all other property and shall be kept in trust for the purposes set out in these regulations.

(4) The Registrar may make rules as to -

- (a) moneys constituting the fund;
- (b) accounts to be maintained by the fund;
- (c) administration of the fund and powers of the market committee administering the fund;
- (d) minimum amount to be kept in the fund and provisions if the fund is reduced below the minimum amount;
- (e) levies that may be imposed to meet liabilities of the fund;
- (f) the power of a securities exchange to make advances to the fund;
- (g) investment of moneys of the fund;
- (h) manner of lodging claims against the fund;

- (i) power of the market committee to settle claims;
- (j) power of the market committee to enter into contracts of insurance for purposes of the fund; or
- (k) other matter incidental to the establishment and maintenance of the fund.

(5) Where the registrar is satisfied that adequate arrangements other than those required under subregulation (1) for the protection of investors exist, the Registrar may exempt securities exchange from the requirements of that subregulation.

(6) On payment out of the fund referred to in subregulation (1) of any moneys in respect of any claim under this regulation, the securities exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

#### PART VI - LICENSING OF BROKER-DEALERS, STOCK BROKERS, DEALERS, INVESTMENT ADVISERS AND THEIR REPRESENTATIVES

##### **Stock Broker's or Broker-Dealer's or Dealer's licence**

25. (1) A person shall not carry on a business of stock broking or dealing in securities or hold himself out as carrying on such a business unless the person is the holder of a stock broker's, broker-dealer's or dealer's licence issued under this Part.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand Maloti or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

##### **Stock Broker's or Broker-Dealer's or Dealer's representative licence**

26. (1) A person shall not act as a stock broker's, broker-dealer's or dealer's representative or hold himself or herself as such unless that person is the holder of a representative's licence issued under this Part.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand Maloti or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

### **Investment adviser's licence**

27. (1) A person shall not act as an investment adviser or hold himself out to be an investment adviser unless that person is the holder of an investment adviser's licence under this Part.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand Maloti or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

### **Investment adviser's representative licence**

28. (1) A person shall not act as an investment adviser's representative or hold himself or herself out to be an investment adviser's representative unless that person is the holder of an investment adviser's representative's licence issued under this Part.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand Maloti or to imprisonment for a term not exceeding one year or to both fine and imprisonment.

### **Application for a licence or renewal of a licence**

29. (1) An application for the renewal of a licence shall be made to the Registrar in the prescribed form and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, such application shall be made not later than one month before the expiry of the licence.

(2) The applicant may be required to supply the Registrar with such further information, in relation to the application, as the Registrar considers necessary.

(3) The Registrar shall not refuse to grant or renew a licence with-

out first giving the applicant or the holder of a licence, an opportunity of being heard.

**Grant of stock broker's, broker-dealer, dealer's licence or investment adviser's licence**

30. (1) A stock broker, broker-dealer or dealer's licence shall only be granted to a company incorporated under the Companies Act of 2011.

(2) An investment advisor's licence may be granted to an individual taking into account -

- (a) the educational and other experience of the person;
- (b) ability of the person to provide investment advice honestly and fairly;
- (c) reputation, character, financial integrity and reliability of the person.

(3) Where an application is made for the grant or renewal of a stock broker's, broker-dealer's, dealer's licence or investment adviser's licence, the Registrar shall, subject to regulation 29(3) refuse the application if -

- (a) in the case of an investment advisor who is a natural person, the -
  - (i) applicant has been declared insolvent whether in Lesotho or elsewhere;
  - (ii) applicant is not ordinarily resident in Lesotho;
  - (iii) applicant has been convicted, either in Lesotho or elsewhere, within a period of ten years immediately preceding the date on which the application was made, of an offence involving fraud or dishonesty;
  - (iv) Registrar is not satisfied as to the educational qualification or experience of the applicant



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having regard to the nature of the duties of a holder of an investment adviser's licence;

- (v) Registrar has reason to believe that the applicant is not a fit and proper person; or,
  - (vi) Registrar has reason to believe that the applicant will not perform the duties of a holder of an investment adviser's licence efficiently, honestly and fairly; or
- (b) in the case of an applicant that is a company the -
- (i) company is in the course of being wound-up under the Companies Act of 2011;
  - (ii) company has, whether in Lesotho or outside Lesotho, entered into a compromise or scheme of arrangement with its creditors, being a compromise, scheme or arrangement that is still in operation; or
  - (iii) Registrar has reasonable cause to believe that the officers of the applicant who are to perform duties in connection with the holding of the stock broker's, broker-dealer's, dealer's or investment adviser's licence, as the case may be, are not fit and proper persons.

### **Criteria for determining fit and proper persons**

31. (1) For the purposes of these regulations, in considering whether a person is a fit and proper person, the Registrar shall have regard to the -

- (a) financial status of the person;
- (b) educational or other qualifications or experience of the person having regard to the nature of the application;
- (c) ability to perform his proposed function efficiently, hon-

estly and fairly; and,

- (d) reputation, character, financial integrity and reliability of the person.

(2) For the purposes of these regulations, the Registrar may have regard to information in possession of the Registrar, whether furnished by the applicant or not.

(3) For the purposes of subregulation (1), the Registrar may take into account any matter relating to -

- (a) a person who is or is to be employed by, or associated with, the applicant for the purposes of the proposed business to which the application relates;
- (b) a person who will be acting as a representative in relation to such business; or
- (c) where the applicant is a company, a substantial shareholder, director or officer of the company, other company in the same group of companies or to director or officer of such company.

(4) In subregulation (3), a "substantial shareholder" means, in relation to a company, a person who has an interest in shares in the company -

- (a) the nominal value of which is equal to or more than twenty five percent or such other percentage as the Registrar may, by notice in the Gazette determine, of the issued share capital of the company; or
- (b) which entitle the person to exercise or control the exercise of twenty-five percent or such other percentage as the Registrar may, by notice in the Gazette determine, or more of the voting power at a general meeting of the company.



### **Grant of representative's licence**

32. Subject to regulation 29(3), the Registrar shall only grant or renew a stock broker's, broker-dealer's, investment adviser's or dealer's representative's, if, after consideration of the application, the Registrar does not have reason to believe that the applicant will not perform the duties of the holder of a dealer's representative's or an investment adviser's representative's licence, as the case may be, efficiently, honestly and fairly.

### **Power of Registrar to impose conditions or restrictions**

33. (1) The Registrar may grant or renew a licence under this Part subject to such conditions or restrictions as the Registrar thinks fit and the Registrar may, at any time by written notice to a licence holder, vary any condition or restriction or impose further conditions or restrictions.

(2) Without limiting the generality of sub-regulation (1), the Registrar may, in granting or renewing an investment adviser's licence, impose such conditions or restrictions as the Registrar thinks fit as to the class or classes of business that a dealer may carry on.

(3) Without limiting the generality of sub-regulation (1), the Registrar may, in granting or renewing an investment adviser's licence, impose such conditions or restrictions as to the class or classes of business that an investment adviser may carry on, including a condition or restriction that the investment adviser shall -

- (a) only carry on the class of business of advising others concerning securities;
- (b) only carry on the class of business of issuing or promulgating analysis or reports concerning securities;
- (c) subject to the execution of a mandate in the form prescribed by the Registrar, only carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes; or
- (d) only carry on any of the classes of business in paragraphs (a), (b) and (c) in combination with each other.

(4) A person who contravenes or fails to comply with any condition of, or restriction in, a licence granted to that person commits an offence and is liable on conviction to a fine not exceeding one hundred and fifty thousand Maloti and, in the case of a continuing offence, to a further fine of ten thousand Maloti for every day or part thereof during which the offence continues.

#### **Power of the Registrar to issue written notices**

34. (1) Where it appears to be necessary or expedient in the public interest or in the interest of the securities industry, the Registrar may, by notice in writing, direct any holder or class of holders of a stock broker's, broker-dealer, dealer's licence, an investment adviser's licence or a representative's licence to comply with such requirements as the Registrar may specify in the notice.

(2) Without prejudice to the generality of subregulation (1), any requirement specified in a notice issued by the Registrar under that subregulation may relate to -

- (a) the standards to be maintained by the person concerned in the conduct of that person's business; and
- (b) the type and frequency of financial returns and other information to be submitted to the Registrar.

(3) A holder of a stock broker's, broker-dealer's, dealer's licence, an investment adviser's licence or a representative's licence who contravenes or fails to comply with any of the requirements specified in a notice issued under subregulation (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand Maloti, and in the case of a continuing offence, to a further fine of five thousand Maloti for every day or part thereof during which the offence continues.

#### **Revocation and suspension of licences**

35. (1) A licence under this Part shall be taken to be revoked, in the case of -

- (a) a natural person, if that person dies; or
- (b) a company, if the company has been wound-up.

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- (2) The Registrar may revoke a licence -
- (a) in the case of a natural person if -
- (i) a writ of execution in respect of the person has not been satisfied;
  - (ii) a person ceases to carry on the business for which the person was licensed;
  - (iii) a person has been declared insolvent in Lesotho or elsewhere;
  - (iv) in the case of a representative, the licence of the investment adviser in relation to whom the licence was granted, is revoked; or
  - (vi) a person is convicted or fails to comply with any condition or restriction applicable in respect of the licence or any other provision in these regulations; or
- (b) in the case of a company if -
- (i) it is being or will be wound-up;
  - (ii) a writ of execution in respect of it has not been satisfied;
  - (iii) a liquidator has been appointed whether by the court or creditors in respect of the company's property;
  - (iv) it has entered into any composition or arrangement with its creditors;
  - (v) it ceases to carry on the business for which it was licensed;
  - (vi) the Registrar has reason to believe that the com-

pany or its directors or employee has not performed his duties efficiently, honestly or fairly; or

- (vii) the company contravenes or fails to comply with conditions or restrictions applicable in respect of the licence or other provisions in these regulations.

(3) In a case to which subregulation (2) applies, the Registrar may, instead of revoking a licence, suspend the licence for a specific period.

(4) The Registrar shall not revoke or suspend a licence under subregulation (2) or (3) without first giving the person an opportunity to be heard.

(5) A person whose licence is revoked or suspended under this regulation shall, for the purpose of this Part, be taken not to be licensed as from the date that the Registrar revokes or suspends the licence, as the case may be.

(6) A revocation or suspension of a licence shall not operate so as to -

- (a) avoid or affect an agreement, transaction or arrangement relating to the trading in securities entered into by a person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence;
- (b) affect a right, obligation or liability arising under an agreement, transaction or arrangement.

### **Membership of a securities exchange**

36. (1) A person who holds a stock broker's, broker-dealer or dealer's licence shall be eligible for membership of a securities exchange.

(2) A natural person who is not ordinarily operating his business in Lesotho shall not become a member of a licensed securities exchange.

(3) A person shall not be admitted or allowed to continue as a member of a licensed securities exchange unless, at the time of a person's admission

and thereafter while that person is authorised under the rules of that exchange to carry on the business of stock-broker, that person has in Lesotho, assets which exceed that person's liabilities by at least the amount determined by the Registrar and if the provisions of regulation 38(1) apply to that person, the amount referred to therein.

## PART VII - CONDUCT OF BUSINESS

### Power of Registrar to prescribe rules of conduct

37. (1) The Registrar may prescribe rules of conduct in respect of the conduct of business by a licensed person.

(2) Without affecting the generality of subregulation (1), rules made under these regulations may provide for -

- (a) standards of conduct;
- (b) communication with clients;
- (c) capital adequacy requirements;
- (d) charges, fees and penalties;
- (e) managing conflicts of interest;
- (f) transactions (client agreements, contract notes, execution of orders, segregation of funds, and property etc);
- (g) confidentiality;
- (h) prohibited activities (e.g churning, front running, insider trading, money laundering);
- (i) business continuity or disaster recovery measures; and
- (j) other matters.

(3) Rules made under these regulations may provide that a customer contract entered into by a licensed person with its customer otherwise than in

compliance with any specified rules, despite anything in the contract, is unenforceable at the option of the customer.

- (4) Rules made under these regulations may provide -
- (a) that a contravention of any specified provision thereof shall be an offence; and
  - (b) may attract penalties not exceeding a fine of one hundred thousand Maloti or imprisonment for a term not exceeding 12 months or both fine and imprisonment.

(5) In these regulations, "customer contract" means a contract or arrangement between a licensed person and a customer of the licensed person which contains terms on which the licensed person is to provide services to or effect transactions for, the customer.

(6) Where a customer contract is entered into in contravention of the rules of business conduct prescribed under these regulations, the contravention is actionable at the suit of a person who suffers a loss as a result of the contravention.

### **Capital adequacy standards**

38. (1) A stock broker, broker-dealer, dealer or investment adviser shall at all times maintain such capital adequacy standards in relation to the business to which they are licensed as may be prescribed by the Registrar by Notice published in the Gazette.

- (2) The capital adequacy standards prescribed by the Registrar under subregulation (1) may -
- (a) impose standards which are absolute or which are to vary from time to time by reference to factors which are either specified in, or are to be determined in accordance with the notice;
  - (b) impose standards which take account of any business carried on by the person concerned in conjunction with, or in addition to, the business in relation to which the

person is licensed; and

- (c) make provisions as to the assets, liabilities and other matters to be taken into account in determining a person's capital adequacy standards for the purposes of the notice and the extent to which, and the manner in which, they are to be taken into account for that purpose.

(3) The Registrar may, if the Registrar thinks it consistent with the public interest, exempt an investment adviser from having to comply wholly or partly with this requirement.

### **Fidelity insurance and professional indemnity**

39. (1) A stock broker or investment adviser shall -

- (a) insure itself against a loss resulting from the negligence or dishonesty of any of its officers and other personnel to an amount which the Registrar deems adequate with a person approved by the Registrar and carrying on insurance business in Lesotho or the business of guaranteeing against any such loss; and
- (b) indemnify itself against legal liability to pay compensatory damages, including claimants and defence costs, as a result of any negligent act, negligent error or negligent omission in the conduct or execution of its professional activities and duties to an amount that the Registrar deems adequate.

### **Appointment of compliance officer**

40. A stock broker, broker-dealer, dealer or investment adviser or manager shall designate one of its officers as a compliance officer for the purpose of ensuring compliance with these regulations, such other rules and directives as may be issued by the Registrar from time to time.



**PART VIII - ACCOUNTING, AUDIT, RECORDS KEEPING  
AND CLIENT ACCOUNTS OF STOCK BROKERS,  
BROKER-DEALER, DEALERS AND INVESTMENT ADVISERS**

**Application of this Part**

41. (1) This Part shall apply to and in relation with -
- (a) the business of a stock broker, broker-dealer or a dealer within the meaning of these regulations, whether that business is carried on in Lesotho or elsewhere; and
  - (b) an investment adviser.
- (2) The Registrar may, if the Registrar thinks it consistent with the public interest, exempt an investment adviser from having to comply wholly or partly with this Part.

**Accounts required to be kept**

42. (1) A stock broker, broker-dealer, investment adviser or dealer shall keep or cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.
- (2) Without affecting the generality of subregulation (1), a stock broker, broker-dealer or dealer shall maintain such books and records and file the reports in a form and manner as may be prescribed by the Registrar.
- (3) A stock broker, broker-dealer, investment adviser or dealer who contravenes or fails to comply with the provisions of these regulations commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti and, in the case of a continuing offence, to a further fine of ten thousand Maloti for every day or part thereof during which the offence continues.
- (4) A stock broker, broker-dealer, investment adviser or dealer shall -
- (a) keep its accounting records in accordance with the In-



ternational Financial Reporting Standards;

- (b) preserve the accounting records required to be kept under these regulations for seven years from the date on which they are made;
- (c) submit to the Registrar of Capital Markets within three months after the end of each financial year, its auditor's report together with -
  - (i) its annual financial statements;
  - (ii) written confirmation that it has complied with these regulations and other additional requirements.

#### **Appointment of external auditor**

43. (1) A stock broker, broker-dealer, dealer or investment advisor shall appoint an external auditor and issue him with an engagement letter, that sets out his powers and duties, and is signed by both the stock broker, broker-dealer, dealer or investment advisor and the external auditor.

(2) A stock broker, broker-dealer, dealer or investment advisor shall not appoint or remove an auditor except with prior approval of the Registrar at least one month prior to such appointment or removal.

(3) An external auditor shall in addition to his opinion, state whether the annual financial statements of the market intermediary have been audited in accordance with the International Standards on Auditing.

#### **Categories of moneys or property received by stock broker to be paid into trust account**

44. (1) A stock broker and broker-dealer shall establish and maintain with a bank or banks licensed under the Financial Institutions Act of 2012, one or more trust accounts in Lesotho for its clients.

(2) A stock broker and broker-dealer shall pay or deposit moneys held by that stock broker or broker-dealer on trust for client into a trust account

not later than the next business day following the day on which the stock broker or broker-dealer has received the moneys properly.

(3) A stock broker or broker-dealer who contravenes or fails to comply with subregulation (2) commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti and, in the case of a continuing offence, to a further fine of ten thousand Maloti for every day or part thereof during which the offence continues.

(4) Without limiting the generality of sub-regulation (2), a stock broker or broker-dealer shall pay into a trust account within the time specified in that subregulation -

- (a) the moneys, less brokerage or other proper charges, that are received -
  - (i) from or on account of the client for the purchase of securities and that are not attributable to securities delivered to the stock broker or broker-dealer;
  - (ii) for or on account of the client from the sale of securities and that are paid to the client or paid as the client directs; and
- (b) other moneys received from or on account of the client that are to be paid to the person entitled to the payment or paid as the clients direct.

(5) For the purpose of these regulations, "client", in relation to a stock broker, or broker-dealer means a person on whose behalf a stock broker or broker-dealer holds moneys but does not include a dealer.

(6) A stock broker or broker-dealer who withdraws any money from a trust account except for the purpose of making a payment -

- (a) to the person entitled thereto;
- (b) defraying brokerage and other proper charges; or

(c) that is otherwise authorised by law,

commits an offence and is liable on conviction to a fine prescribed by the Registrar in the Schedules.

(7) A stock broker or broker-dealer who, with intent to defraud, withdraws money from a trust account commits an offence and is liable on conviction to a fine prescribed by the Registrar in the Schedules.

### **Moneys held in trust account**

45. Except as otherwise provided in this Part, moneys held in a trust account shall not be available for payment of the debts of a stock broker or broker-dealer be liable to be paid or taken in execution under an order or process of any court.

### **Rights to copies and inspection of book entries of transactions and contract notes related thereto**

46. (1) A stock broker and a broker-dealer shall supply, on demand, to any client or to any person authorised by the client, copies of all entries in the books of the stock broker or broker-dealer relating to any transaction carried out on behalf of that client, and the stock broker or broker-dealer shall be entitled to levy a reasonable charge thereof.

(2) A client or a person authorised by the client shall be entitled at a time, free to charge, to inspect a contract notes and vouchers relating to a transaction in respect of that client.

### **Duty to furnish Registrar with returns and information as Registrar requires**

47. A stock broker, broker-dealer and an investment adviser shall furnish returns and provide information relating to his business as the Registrar may require.

### **Claims and liens**

48. Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which a person has against or upon money held in trust ac-

count or against or upon money received for the purpose or from the sale of securities before such money is paid or deposited into the trust account.

#### **Application to a competent court by the Registrar**

49. Upon application made by the Registrar, and upon good cause shown, a court may prohibit a dealer or investment adviser from operating in a way a trust account of the investment adviser or of a dealer and may appoint a *curator bonis* to control and administer the trust account with such rights, duties and powers, in relation thereto, as the court may think fit.

### **PART IX - PUBLIC OFFERS OF SECURITIES**

#### **Exemptions from this Part**

50. (1) Nothing in this part shall apply in respect of securities the issuer of which is -

- (a) Government of Lesotho; or
- (b) Central Bank.

(2) This Part shall not apply to an offer of units or shares in a collective investment scheme licensed under regulations made by the Registrar in consultation with the Minister.

#### **Advertisements offering securities**

51. (1) For the purposes of this Part, an advertisement offers securities if it -

- (a) invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
- (b) contains information calculated to lead directly or indirectly to a person entering into such an agreement.

(2) A person other than a stock-broker, broker-dealer, dealer or an officer or employee of a member of a securities exchange or a securities trading

facility who is so permitted in terms of these regulations, or a securities exchange, or a securities trading facility shall not, either for himself, herself or itself or for other person, directly or indirectly advertise or canvass a business relating to the buying and selling of securities.

(3) A person other than an issuer of shares, stock-broker, broker-dealer, dealer or their employees, shall not either for himself, herself or itself or for other person, directly or indirectly advertise or canvass a business relating to the buying and selling of securities.

(4) The securities exchange or a securities trading facility may in consultation with the Registrar prescribe the conditions on which advertising or canvassing may be undertaken and may take such action as it considers necessary, against a person authorised to advertise or canvass by or under subregulation (2), in the event of contravention of such conditions.

(5) Despite anything to the contrary contained in any law, the Registrar may, if he or she is of the opinion that an advertisement, brochure or other similar document relating to the business of buying and selling of securities, either published or not, is misleading or for any reason objectionable, direct such person -

- (a) not to publish the advertisement, brochure or document;
- (b) to cease the publication of the advertisement, brochure or document; or
- (c) to effect such adjustments as the Registrar may think fit.

## **Prospectus**

52. (1) Despite anything to the contrary contained in any law, subject to subregulation (2), a person shall not issue or cause to be issued in Lesotho an advertisement offering securities to the public unless the issuer or offeror of such securities has submitted for approval to the Registrar, and the Registrar has approved, a prospectus which complies with the requirements of this Part.

(2) A reference in this Part to offering securities to the public shall be construed as including -

- (a) offering securities to any section of the public, however selected, whether selected as clients, employees, a purchaser of goods from the offeror, or a promoter of the securities, being the holder of securities previously issued by the issuer or promoter of the securities;
  - (b) offering the securities to individual members of the public selected at random;
  - (c) offering the securities to a person if the person became known to the offeror as a result of any advertisement made by or on behalf of the offeror or that was intended or likely to result in the public seeking further information or advice about an investment opportunity or services.
- (3) The following offers shall not constitute an offer to the public if -
- (a) an offer of securities which is restricted to persons who are directors or executive officers of the corporation making the offer or are close relatives of such a director or executive officer;
  - (b) an offer of securities which is restricted to persons who are close business associates of persons who are directors or executive officers of the corporation making the offer;
  - (c) an offer of securities which is restricted to persons as referred to in subregulation (2) and to a body corporate in which an executive officer or a close relative or business partner or associate of the kind referred to in subparagraph (c) together have a controlling interest;
  - (d) an offer of securities where no consideration is paid or provided in respect of the issue or allotment of the securities;
  - (e) an offer to enter into an underwriting agreement;

- (f) an issue or allotment of securities to not more than 50 persons who are professional investors where the securities are allotted as a result of an invitation or offer made personally to such person or persons;
- (g) an offer made to acquire all of the shares in a company which provides ownership of the whole of the assets and undertaking of a business enterprise or to acquire the whole of the undertaking and assets of a partnership or trust and which offer is capable of acceptance by and restricted to not more than 10 persons and each such person has reasonably available to him the financial and other information needed by that person to make a reasonably informed investment decision.

(4) Proof of an offer of securities to one person selected as a member of the public shall be *prima facie* evidence of an offer of securities to the public.

(5) An advertisement made pursuant to subregulation (1) shall not be issued except by or with the consent of the issuer of the securities.

### **Contents of prospectus**

53. (1) The Registrar shall not approve a prospectus unless -
- (a) it contains all the information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the -
    - (i) assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities;
    - (ii) rights attaching to those securities;
    - (iii) legal status of the issuer; and
    - (iv) risk factors;



- (b) it contains in addition, other information and particulars and complies with other requirements as may be prescribed by the Registrar.

(2) The requirements of subregulation (1) are additional to those in section 116 of the Companies Act of 2011 in relation to the contents of a prospectus.

### **Compensation for false or misleading particulars**

54. (1) The director of an issuer and other person who is responsible for the prospectus, shall be liable to pay compensation commensurate to the loss to a person who has acquired any of the securities in question and suffered loss in respect of them as a result of an untrue or misleading statement in the prospectus or the omission from the prospectus of a matter required to be included under regulation 53.

(2) For the purposes of subregulation (1), acquisition by a person of securities includes the contracting to acquire them or an interest in them.

### **Disclosure obligations**

55. (1) An issuer of securities which are the subject of a public offer, or which are publicly held, shall inform the Registrar, members of the issuer and other holders of its securities informed as soon as reasonably practicable of information relating to the issuer and its subsidiaries, if any, that -

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might reasonably be expected materially to affect market activity in the price of its securities.

(2) In addition to the requirements of subregulation (1), an issuer shall also comply with -

- (a) further obligations and requirements as may be directed



by the Registrar; or

- (b) the listing requirements of a securities exchange or facility where the securities are to be listed or traded.

(3) For the avoidance of doubt, this regulation applies to the issuer of securities publicly held prior to the coming into operation of these regulations.

## PART X - INSIDER TRADING

### Inside information

56. For the purposes of this Part -

- (a) “inside information” means information which -
  - (i) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally;
  - (ii) is specific or precise;
  - (iii) has not been made public; and
  - (iv) if it were made public would be likely to have a significant effect on the price of any securities;
- (b) securities are “price-affected securities” in relation to inside information, if and only if the information would, if made public, be likely to have a significant effect on the price including the value of the securities.

### Insider trading

57. (1) A person who has information as an insider commits the offence of insider trading if the person -

- (a) deals or trades in securities that are price-affected in relation to that information;

- (b) encourages another person to deal in securities that are, whether or not that other person knows, price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or
- (c) discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(2) A person who commits an offence under subregulation (1) shall be liable on conviction -

- (a) in the case of a person not being a company, to a fine not exceeding two hundred and five hundred thousand Maloti or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment; or
- (b) in the case of a company, to a fine not exceeding One Million Maloti.

(3) A court convicting a person under subregulation (2) may make an order imposing on the convicted person a penalty of an amount not exceeding five (5) times the amount of any profit gained or loss avoided by any person as a result of the insider trading and or dealing.

(4) A contract shall be void and unenforceable by reason of the commission of the offence of insider trading under this regulation.

### **Insiders**

58. (1) For the purposes of this Part, a person who has information is an insider if the person knows that the information is inside information, or that person knows that it is inside information from an inside source.

(2) For the purposes of subregulation (1), a person has information from an inside source if -

- (a) the person has obtained it through -

- (i) being a director, employee or shareholder of an issuer of securities; or
  - (ii) having access to the information by virtue of his or her employment, office or profession; or
- (b) the direct or indirect source of the information falls under a person referred in paragraph (a).

### **Public information**

59. (1) For the purposes of this regulation, "made public" in relation to information, shall be construed in accordance with the following provisions of this regulation, but these provisions are not exhaustive as to the meaning of that expression.

- (2) Information is made public if it -
- (a) is published in accordance with the rules of a securities exchange or a securities trading facility for the purpose of informing investors and their professional advisers;
  - (b) is contained in records which by virtue of an enactment are open to inspection by the public;
  - (c) may be readily acquired by those likely to deal in any securities -
    - (i) to which the information relates; or
    - (ii) of an issuer to which the information relates; or
  - (d) is derived from information which has been made public.
- (3) Information may be treated as made public even though it -
- (a) can be acquired only by persons exercising diligence or expertise;
  - (b) is communicated to a section of the public and not to the

public at large;

- (c) can be acquired only by observation;
- (d) is communicated only on payment of a fee; or
- (e) is published only outside Lesotho.

## PART XI - IMPROPER TRADING PRACTICES

### **False trading and manipulation of the Securities Exchange**

60. (1) A person shall not create or cause to be created, or do anything with the intention of creating a false or misleading appearance -

- (a) of the volume of trading in any securities on any securities exchange in Lesotho; or
- (b) with respect to the market for, or the price of securities.

(2) A person shall not by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of, any securities.

(3) A purchase or sale of securities does not, for the purposes of sub-regulation (2), involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with that person in relation to those securities, holds an interest in the securities after the purchase or sale.

### **Use of deceptive statements**

61. A person shall not induce or attempt to induce another person to deal in securities by -

- (a) making or publishing a statement, promise or forecast that the person knows to be misleading, false or deceptive;

- (b) the dishonest concealment of material facts; or
- (c) recklessly or dishonestly making or publishing any statement, promise forecast that is false or misleading.

### **Fraudulent transactions**

62. A person shall not, directly or indirectly, in connection with a transaction with other person involving the purchase, sale or exchange of securities -

- (a) employ a device, scheme or artifice to defraud that other person; or
- (b) engage in an act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

### **False or misleading statement in connection with sale of securities**

63. A person shall not, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of a company, make with respect to those securities, or with respect to the operations or the past or future performance of the company, make a statement which is -

- (a) at the time in light of the circumstances in which it is made, false or misleading with respect to a material fact and which that person knows or has reasonable grounds to believe to be false or misleading; or
- (b) by reason of the omission of a material fact, rendered false or misleading and which that person knows, or has reasonable grounds to believe, is rendered false or misleading by reason of omission of that fact.

### **Selling of securities limitations**

64. A person shall not sell securities which that person does not hold at, or through a securities exchange or a securities trading facility, unless at the time that person sells them -

- (a) that person has or, where that person is selling as agent, the principal has; or
- (b) that person reasonably and honestly believes that he or she has or, where that person is selling as agent, that the principal has, a presently exercisable and unconditional right to vest the securities in the purchaser of them.

### **Stock market manipulation**

65. (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer being transactions that have, or are likely to have, the effect of raising the price of securities of the issuer on a securities exchange in Lesotho, with intent to induce other persons to purchase or subscribe for securities of the issuer or of a related issuer.

(2) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have, or are likely to have, the effect of lowering the price of securities of the issuer on a securities exchange in Lesotho, with intent to induce other persons to sell securities of the issuer or of a related issuer.

(3) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have or are likely to have, the effect of maintaining or stabilizing the price of securities of the issuer on a securities exchange in Lesotho with intent to induce other persons to sell, purchase or subscribe for securities of the issuer or of a related issuer.

### **Offences and penalties**

66. A person who contravenes a provision of this Part commits an offence and is liable on conviction -

- (a) in the case of a person not being a company, to a fine not exceeding five hundred thousand Maloti or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and

- (b) in the case of a company, to a fine not exceeding one million Maloti.

### **Convicted person liable to pay damages**

67. (1) A person who is convicted of an offence under this Part, shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss occurred.

(2) Nothing in this regulation limits or diminishes any civil liability which any person may incur under any other law.

## **PART XII - TAKEOVERS**

### **Application**

68. This Part applies to issuers of shares.

### **Takeover offers**

69. (1) In this Part, a "takeover offer", which includes a merger, means an offer to acquire by or on behalf of a company -

- (a) all shares, or all the shares of any class, in another company, other than the shares which at the date of the offer are already held by the offeror; or
- (b) any shares in the offeree company which results in the offeror acquiring effective control of the offeree company.

(2) For the purposes of subregulation (1), "acquiring effective control" means the acquiring of shares in an offeree company which together with shares, if any, already held by the offeror or by any other company that is deemed by virtue of regulation 65 be related to the offeror, carry the right to exercise, or control the exercise of, not less than fifty percent of the rights attached to the voting shares of the offeree company.



**Related companies**

70. Where a company is -

- (a) the holding company of another company;
- (b) the subsidiary of another company; or
- (c) a subsidiary of the holding company of another company,

the first-mentioned company and the other company shall for the purposes of this Part be deemed to be related to each other.

**Conduct of takeovers**

71. (1) The conduct of takeover shall be in accordance with the Schedules made by the Registrar under these regulations.

(2) A person shall not make or pursue a takeover offer except under and in accordance with Schedules made by the Registrar under subregulation (1).

**PART XIII - MISCELLANEOUS PROVISIONS****Exemption from liability**

72. (1) A liability shall not attach to members of -

- (a) capital markets committee;
- (b) the committee of a securities exchange; or
- (c) a central securities depository,

for a loss or damage sustained by a person as a result of the bona fide exercise or performance by the Registrar, the Board, the committee or members of a central securities depository of a power or duty conferred or imposed by these regulations.



(2) Subregulation (1) shall not be construed so as to prevent a person from recovering, by action in a competent court, compensation for loss or damage sustained by that person, which was caused by negligence or breach of contract.

### **Prohibition of misleading names**

73. (1) A person who is not a licensed person, its agent, or representative shall not, without the consent of the Registrar, use the word “stock exchange”, “securities exchange”, “stockbroker”, “investment adviser”, or any of their derivatives in any language, or any other word indicating the transaction of securities business, in the name, description or title under which such person is transacting business in Lesotho, or make or continue to make any other representation to such effect in any bill-head, letter-paper, notice, advertisement or in any manner whatsoever for the purpose of transacting securities business in Lesotho.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine of hundred thousand Maloti or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

### **Restrictions on administration and custody of investments in listed securities on behalf of other persons**

74. (1) A person shall not, as a regular feature of his or her business, administer or hold in safe custody on behalf of other person investments in listed securities or any investments of which listed securities form part unless he is -

- (a) a stock-broker;
- (b) a banking institution registered under the Financial Institutions Act of 2012;
- (c) an attorney practicing as such on his own account or in partnership or as a member of a professional company;
- (d) an accountant or auditor registered with the Lesotho Institute of Accounts as an accountant and auditor and engaged in public practice as such, or

- (e) a person approved by the Registrar or a person who is a member of a category of persons approved by the Registrar.

(2) For the purposes of subregulation (1), it shall be deemed that the administration or safe custody of listed securities is not a regular feature of the business of any person -

- (a) unless he or she -
  - (i) either for himself or for any other person, directly or indirectly, canvasses or advertises or touts for any work being the administration or safe custody of such securities; or
  - (ii) receives any valuable consideration other than fees normally charged by an attorney or an accountant or auditor.

#### **Right of appeal to Financial Institutions Tribunal**

75. (1) A person aggrieved by a decision taken by the Registrar under these regulations, may, within 30 days from the date on which the decision is intimated to the person in writing, appeal against the decision by a petition, in writing to the Financial Institutions Tribunal established in terms of section 76 of the Financial Institutions Act of 2012, which may, subject to the limitations of this regulations, uphold, reverse, revoke or vary that decision.

(2) The decision taken under subsection (1) shall be final and shall within 30 days of its taking, be transmitted in writing to the applicant.

**RETŠELISITSOE MATLANYANE  
GOVERNOR - CENTRAL BANK OF LESOTHO**

**NOTE**

1. Act No. 2 of 2000
2. Act No. 18 of 2011
3. Act No. 21 of 2012
4. Act No. 12 of 2014

