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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;