

REPUBLIC OF SOUTH AFRICA

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**STANDING COMMITTEE AMENDMENTS  
TO  
FINANCIAL MARKETS BILL**

**[B 12—2012]**

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*(As agreed to by the Standing Committee on Finance (National Assembly))*

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**[B 12A—2012]**

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## AMENDMENTS AGREED TO

### FINANCIAL MARKETS BILL

[B 12—2012]

#### CLAUSE I

1. On page 6, in line 12, after “securities” to omit “and” and to insert a semi-colon and a line break, and align the indentation of line 13 with the indentation of the “(c)” in line 12.
2. On page 7, in line 23, after “(Act No. 94 of 1990)” to omit “and”.
3. On page 7, in line 24, after “(Act No. 124 of 1993),” to insert “or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007)”.
4. On page 7, in line 27, to omit “and” and to substitute “or”.
5. On page 7, from line 45, after “seller;” to insert “and”.
6. On page 7, in line 52, to insert a line break after “settlement,”.
7. On page 7, in line 61, after “exchange” to insert “with which it is associated“
8. On page 8, in line 25, after “and” to omit:
 

“that derives its value from the price or value, or the value of which may vary depending in a change in the price or value, of some other particular product or thing”

 and to substitute:
 

“whose value depends on or is derived from the value of one or more underlying asset, rate or index, on a measure of economic value or on a default event”.
9. On page 8, in line 28, to omit “5(4)” and to substitute “6(4)”.
10. On page 8, in line 29, to omit “87” and to substitute “85”.
11. On page 8, after line 29 to insert:
 

‘ “**document**” includes a book, record, security or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, electro-mechanically or optically or in any other form;’.
12. On page 8, in line 35, after “cession” to omit “to secure a debt” and to substitute with “*in securitatem debiti*”.
13. On page 8, in line 46, after “a” to insert “foreign” and after “person” to omit “authorised by this Act and”.
14. On page 8, in line 53, after “a” to insert “foreign” and after “person” to omit “authorised by this Act and”.
15. On page 8, in line 61, after “a” to insert “foreign” and after “person” to omit “authorised by this Act and ”.

16. On page 8, in line 62, after “authorised to” to insert “perform a” and after “function” to omit “as” and to insert “or functions similar to one or more of the functions of”.
17. On page 9, in line 4, after “a” to insert “foreign” and after “person” to omit “authorised by this Act and”.
18. On page 9, in line 11, after “a” to insert “foreign” and after “person” to omit “authorised by this Act and”.
19. On page 9, in line 18, after “a” to insert “foreign” and after “person” to omit “authorised as a participant by this Act”.
20. On page 9, in line 19, to omit “function or functions” and to substitute “service or “services”.
21. On page 9, in line 20, to omit “functions” and to substitute “services”.
22. On page 9, after line 25, to insert:

‘ **“external trade repository”** means a foreign person who is authorised by a supervisory authority to perform a duty or duties similar to one or more of the duties of a trade repository as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws—

  - (a) establish a regulatory framework equivalent to that established by this Act; and
  - (b) are supervised by a supervisory authority;’.
23. On page 10, after line 16, to insert:

‘ **“inter-dealer broker”** means a person who acts as an intermediary between two authorised users or between an authorised user and another person in relation to the purchase and sale of securities;’.
24. On page 10, after line 18, to insert:

‘ **“juristic person”** means a person incorporated in terms of the Companies Act, a foreign company or another form of body corporate;’.
25. On page 10, in line 20, to omit “28” and to substitute “29”.
26. On page 10, in line 21, to omit “48” and to substitute “49”.
27. On page 10, in line 22, to omit “8” and to substitute “9”.
28. On page 10, after line 22, to insert:

‘ **“licensed trade repository”** means a trade repository licensed under section 56.’.
29. On page 10, in line 28, to omit “10” and to substitute “11”.
30. On page 10, after line 34, to insert:

‘ **“market infrastructure”** means each of the following—

  - (a) a licensed central securities depository;
  - (b) a licensed clearing house;
  - (c) a licensed exchange;
  - (d) a licensed trade repository;’.
31. On page 10, in line 53, to omit “78” and to substitute “76”.

32. On page 10, in line 60, after “regulation” to insert “in the *Gazette*”.
33. On page 10, in line 63, to omit “5” and to substitute “6”.
34. On page 11, from line 1, to omit the definition of “Registrar of Banks”.
35. On page 11, in line 7, after “a” to insert “licensed”.
36. On page 11, in line 11, to omit “or”.
37. On page 11, in line 12, to omit “sections 91 to 95 and sections 102 to 105, an issuer;” and to substitute  
“sections 74 and 75, sections 89 to 92, and sections 100 to 103, an issuer; or”.
38. On page 11, after line 13, to add:  
“(j) any other person prescribed by the Minister in terms of section 5”;
39. On page 11, in line 14, to omit “109” and to substitute “5 or 107”.
40. On page 11, from line 24, to omit:  
“(i) shares depository receipts and debentures in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);  
(ii) notes;  
(iii) derivative instruments;  
(iv) bonds issued by public companies, public state-owned enterprises, and the Government of the Republic of South Africa;”  
and to substitute:  
(i) shares, depository receipts and other equivalent equities in public companies, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);  
(ii) debentures, and bonds issued by public companies, public state-owned enterprises, the South African Reserve Bank and the Government of the Republic of South Africa;  
(iii) derivative instruments;  
(iv) notes;”.
41. On page 11, in line 35, after “Act” to insert “and”.
42. On page 11, in line 46, after “Chapter IV” to omit “and”, and to insert “or if prescribed by the registrar as contemplated in paragraph (d)”.
43. On page 11, in line 47, to insert a new subparagraph (ii), and the existing subparagraph (ii) to become subparagraph (iii):  
“(ii) the share capital of the South African Reserve Bank referred to in section 21 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);”.
44. On page 12, from line 8, to delete the definition of “self-regulatory organisation”.
45. On page 12, in line 12, to omit “institution” and to substitute “entity”.
46. On page 12, in line 51, after “disruption of the” to insert “whole or a significant or substantial part of”.

47. On page 12, in line 52, to omit “as a whole”.
48. On page 12, after line 52, to insert:
 

‘ “**this Act**” includes the regulations, rules, and any notices or directives issued, exemption granted, determinations made, requirements determined or conditions imposed by the registrar, that have general application;’.
49. On page 12, from line 54 up to line 55, to omit “and is licensed as a trade repository under section 56”.
50. On page 13, from line 21, to omit paragraph (b) and to substitute
 

“(b) in relation to a judicial proceeding, other than a judicial proceeding under paragraph (a), on the filing at court of an application for an insolvency proceeding; and”

#### CLAUSE 2

1. On page 13, in line 43, after “promote the” to insert “international and domestic”.

#### CLAUSE 3

1. On page 13, from line 46, to omit subsection (1) and to substitute:
 

“(1) Sections 100 to 103 do not apply in relation to the South African Reserve Bank or a bank.”.
2. On page 13, in line 57, after “relating to” to insert “insolvency proceedings and”.
3. On page 13, in line 58, to omit “and insolvency proceedings,”.
4. On page 14, from line 1, to omit “other than section 8 of the National Payment System Act,”.

#### CLAUSE 4

1. On page 14, in line 17, to omit “23” and to substitute “24”.
2. On page 14, in line 19, to omit “77” and to substitute “6(7)”.
3. On page 14, in line 21, to omit “30” and to substitute “31”.
4. On page 14, in line 24, to omit “78” and to substitute “76”.

#### NEW CLAUSE

1. That the following be the new clause:

##### **“Powers of the Minister**

5. (1) The Minister may prescribe, in accordance with section 107(2),—
  - (a) requirements for the regulation of unlisted securities;
  - (b) a category of regulated person, other than those specifically regulated under this Act, if the securities services, whether in

relation to listed or unlisted securities, provided by persons in such category are not already regulated under this Act, and if, in the opinion of the Minister, it would further the objects of the Act in section 2 to regulate persons in such categories;

- (c) the securities services that may be provided and the functions and duties that may be exercised by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external clearing member or external trade repository, as the case may be.

(2) An external authorised user, external exchange, external participant, external central securities depository, external clearing house, external clearing member or external trade repository may only provide those securities services or exercise functions or duties, as the case may be, prescribed by the Minister in terms of subsection (1)(c).

(3) In performing the Minister's functions, the Minister must take into account the objects of the Act and the principle that competition between regulated persons should not be impeded or distorted.”.

#### CLAUSE 5

1. On page 15, in line 3, to omit “Minister,”.
2. On page 15, in line 4, to omit “5” and to substitute “6”.
3. On page 15, in line 24, to omit “with” and to substitute “in relation to” and after “or” to insert “with”.
4. On page 15, in line 56, to omit “and”.
5. On page 15, in line 57, after “Governor” to omit “of the Reserve Bank” and in line 59, after “markets” to insert “;and”.
6. On page 15, after line 59, to insert:
 

“(o) must make adequate arrangements for effective co-operation with the Governor in respect of the monitoring and mitigation of systemic risk.”.
7. On page 16, from line 17, to omit paragraph (e).
8. On page 16, after line 16, to insert:
 

“(5) The registrar must, where an exemption or a directive applies to all persons, regulated persons or securities services generally, publish the directive in the *Gazette* and on the official website, and a copy of the published exemption or directive must be tabled in Parliament.”
9. On page 16, in line 19, to omit “(5)” to substitute “(6)”.
10. On page 16, in line 24, after “company” to insert “including, but not limited to, circumstances which may indicate systemic risk”.
11. On page 16, in line 40, after “company” to insert “including, but not limited to, circumstances which may indicate systemic risk”.
12. On page 16, in line 46, after “company” to insert “including, but not limited to, circumstances which may indicate systemic risk”.
13. On page 16, in line 51, after “company” to insert “including, but not limited to circumstances which may indicate systemic risk”.

14. On page 16, from line 53, to omit sub-section (6).
15. On page 16, after line 52, to insert:
  - “(7) The registrar may, in accordance with the requirements prescribed by the Minister under section 5(1)(a),—
    - (a) prescribe criteria for the authorisation of persons providing securities services in respect of unlisted securities;
    - (b) prescribe conditions and requirements for the provision of securities services in respect of unlisted securities, including, but not limited to, prescribing a code of conduct and imposing reporting requirements;
    - (c) prescribe standards in accordance with which securities services in respect of unlisted securities must be carried on;
    - (d) prescribe conditions and requirements in terms of which securities services in respect of specified types of unlisted securities may be provided, including, but not limited to, the manner in which clearing and settlement of such securities must take place;
    - (e) prescribe criteria for the authorisation of issuers of unlisted securities; and
    - (f) prohibit a person from providing any securities services in respect of unlisted securities if that person provides securities services in a manner which defeats one or more of the objects of this Act referred to in section 2.
  - (8) In relation to the persons in the category prescribed by the Minister under section 5(1)(b), the registrar may—
    - (a) prescribe criteria for the authorisation of such persons;
    - (b) prescribe conditions and requirements for the provision of securities services by such persons including, but not limited to, prescribing a code of conduct and imposing reporting requirements;
    - (c) prescribe standards in accordance with which securities services by such persons must be carried on; and
    - (d) prohibit such persons from providing securities services or undertaking any activities which may frustrate the objects of the Act.”

#### CLAUSE 6

1. On page 17, in line 5, to omit “6” and to substitute “7”, and to omit “8” and to substitute “9”.
2. On page 17, in line 7, to omit “referred to in the definition of “securities” in section 1”.
3. On page 17, in line 10, to omit “7” and to substitute “8”.
4. On page 17, in line 12, to omit “16” and to substitute “17”.
5. On page 17, in line 14, to omit “10” and to substitute “11”.
6. On page 17, in line 15, before the first “the” to insert “a copy of”.

#### CLAUSE 7

1. On page 17, in line 30, to omit “7” and to substitute “8”.
2. On page 17, from line 32, to omit paragraph (a) and to substitute:
 

“subject to the requirements prescribed by the Minister have assets

and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”.

3. On page 17, from line 34, to omit paragraph (b) and to substitute:
 

“have governance arrangements that are clear and transparent, promote the safety and efficiency of the exchange, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;”.
4. On page 17, in line 47, to omit “listings” and to substitute “listing”.
5. On page 18, from line 6, to omit subsection (2).
6. On page 18, in line 9, to omit “(3)” to substitute with “(2)”.

#### CLAUSE 8

1. On page 18, in line 21, to omit “8” to substitute “9”.
2. On page 18, in line 22, to omit “6” and to substitute “7”.
3. On page 18, in line 24, to omit “9” and to substitute “10”.
4. On page 18, in line 28, to omit “The” and to substitute “An”, and to omit “exchange” after “the”.
5. On page 18, in line 34, to omit “and” and to substitute “or”
6. On page 18, in line 36, to omit “and” and to substitute “or”.
7. On page 18, from line 43, to omit subsection (5).

#### CLAUSE 9

1. On page 18, in line 44, after “of” to insert “licensed”.
2. On page 18, in line 47, to omit “9” and to substitute “10”.
3. On page 18, from line 47, omit subsection (1) and to substitute:
 

(1) A licensed exchange must conduct its business in a fair and transparent manner with due regard to the rights of authorised users and their clients.”
4. On page 18, after subsection (1), to insert
 

“(2) A licensed exchange—

  - (a) must provide an infrastructure for the trading of securities listed on that exchange;
  - (b) must issue exchange rules in accordance with section 17;
  - (c) must supervise compliance by its authorised users with the exchange rules and exchange directives;
  - (d) must supervise compliance with this Act by its authorised users and issuers of securities listed on that exchange, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
  - (e) must enforce the exchange rules, listing requirements and exchange directives;

- (f) must, as soon as it becomes aware thereof inform the registrar of any matter that may pose systemic risk to the financial markets;
- (g) may issue exchange directives;
- (h) may amend or suspend the exchange rules in terms of section 71, and may amend its listing requirements in terms of section 11(6)(a);
- (i)
  - (i) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;
  - (ii) may appoint an associated or independent clearing house licensed under Chapter V to clear or settle transactions or both clear and settle transactions on behalf of the exchange;
  - (iii) must consult with an appointed associated clearing house when making or amending the exchange rules in accordance with which the associated clearing house will clear or settle transactions on behalf of the exchange;
- (j) must, if it has not appointed a clearing house to clear transactions on behalf of the exchange,—
  - (i) establish and maintain an infrastructure for the clearing of transactions effected through the exchange; and
  - (ii) manage the clearing of transactions effected through the exchange, in relation to those transactions which the exchange rules determine will be cleared;
- (k) must supervise compliance by issuers of securities listed on that exchange with that exchange’s listing requirements;
- (l) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received a notification regarding insolvency proceedings against authorised users
- (m) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Act;”.

5. On page 19, in line 20, to omit “(2)” and to substitute “(3)”, and after “of the” to insert “regulatory or supervisory”.
6. On page 19, in line 21, to omit “(1)” and to substitute “(2),”.
7. On page 19, in line 23, after “responsibility” to insert “for a function”.

#### CLAUSE 10

1. On page 19, in line 30, to omit “10” and to substitute “11”.
2. On page 19, in line 50, to omit “R5 million” and to substitute “R7.5 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa”.
3. On page 20, in line 3, to omit “97” and to substitute “95”.
4. On page 20, in line 3, to omit “86” and to substitute “84”, and in line 4, to omit “87” and to substitute “85”.
5. On page 20, in line 5, to omit “or compensation”.
6. On page 20, in line 7, to omit “or compensation payable”.

CLAUSE 11

1. On page 21, in line 26, to omit “11” and to substitute “12”.
2. On page 21, in line 37, to omit “10” and to substitute “11”.
3. On page 21, in line 54, to omit “10” and to substitute “11”.
4. On page 22, in line 3, to omit “107” and to substitute “105”.

CLAUSE 12

1. On page 22, in line 7, to omit “12” and to substitute “13”.

CLAUSE 13

1. On page 22, in line 20, to omit “13” and to substitute “14”.

CLAUSE 14

1. On page 22, in line 34, to omit “14” and to substitute “15(1)”.
2. On page 22, after line 37, to add:

“(2) Any funds received or held by an exchange for purpose of maintaining the insurance, guarantee or compensation fund or other warranty contemplated in section 8(1)(h), are for all intents and purposes considered to be “trust property” as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.”

3. On page 22, in line 37, to omit “7” and to substitute “8”.

CLAUSE 15

1. On page 22, in line 39, to omit “15” and to substitute “16”.
2. On page 22, in line 39, to omit “and their clients”.

CLAUSE 16

1. On page 22, in line 44, to omit “16” and to substitute “17”.
2. On page 23, from line 28, to omit paragraph (f) and to substitute:

“(f) if the exchange has not appointed a clearing house for the clearing of transactions effected through the exchange,—

  - (i) for the determination as to which transactions will be cleared by the exchange;
  - (ii) for the circumstances in which the exchange may refuse to clear a transaction in securities which would otherwise be cleared in terms of the rules in subparagraph (i);
  - (iii) for the monitoring of settlement obligations of authorised users

and their clients;”
3. On page 23, in line 35, to omit “37” and to substitute “38”, and to omit “40” and to substitute “41”.

4. On page 23, in line 40, to omit “78” and to substitute “76”.
5. On page 23, in line 58, to omit “20” and to substitute “21”.
6. On page 23, in line 59, to omit “21” and to substitute “22”.
7. On page 24, from line 5, to omit paragraph *(s)* and to substitute:
 

“(s) for a process whereby complaints by authorised users against the exchange in respect of the exercise of functions by the exchange may be made, considered and responded to;”
8. On page 24, in line 21, to omit “(t) and (u)” and to substitute “(u)”.
9. On page 24, in line 27, to omit “7(1)(g)” and to substitute “8(1)(h)”.
10. On page 24, in line 35, after “warranty;” to insert “and”.
11. On page 24, in line 38, after “services” to insert:
 

“, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation”.
12. On page 24, in line 43, to omit “9(1)(b), (c) and (d)” and to substitute “10(2)(c), (d) and (e)”.
13. On page 24, from line 56, to add:
 

“(dd) for the manner in which an authorised user who is acting as an inter-dealer broker is required to conduct its inter-dealer broking services, including the manner in which the inter-dealer broker broadcasts bids and offers that it receives, if applicable;  
 (ee) for the circumstances in which an authorised user may or may not transact in listed securities using the services of an inter-dealer broker who is not an authorised user;  
 (ff) that authorised users must notify the exchange as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it;”
14. On page 24, in line 57, to omit “(dd)”, and to substitute “(gg)”.
15. On page 24, in line 59, to omit “section”, and to substitute “subsection”.
16. On page 24, in line 59, to omit “or 2(bb)”, and to “substitute”, 2(bb) or 2(cc)”.
17. On page 24, in line 59, after “(3)” to insert “(a)”.
18. On page 24, from line 60, to add paragraph *(b)*:
 

“(b) Any rules made in terms of subsection (2)(bb) and (cc) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.”
19. On page 24, in line 61, to omit “5(6)” and to substitute “5(1)(c) and (2) and the requirements prescribed by the registrar”.
20. On page 25, from line 13, to omit subsection (7) and to substitute:
 

“(7) An exchange rule made under this section is binding—  
 (i) the exchange;  
 (ii) the authorised users of the exchange;”

- (iii) issuers of securities listed on that exchange;
- (iv) the officers and employees of the exchange, its authorised users and issuers; and
- (v) clients of its authorised users.”

CLAUSE 17

On page 25, in line 19, to omit “17” and to substitute “18”.

CLAUSE 18

On page 25, in line 54, to omit “18” and to substitute “19”.

CLAUSE 19

On page 25, in line 32, to omit “19” and to substitute “20”.

CLAUSE 20

On page 25, in line 36, to omit “20” and to substitute “21”.

CLAUSE 21

1. On page 26, in line 32, to omit “21” and to substitute “22”.
2. On page 26, from line 37, to omit subsection (2)(a) and to substitute

“(2) (a) Every authorised user must balance and reconcile the aggregate number of each security reflected in securities accounts maintained by the authorised user, and held by a participant, another third party, or a licensed central securities depository if so authorised by the registrar, on behalf of the authorised user and its clients, with the number of securities held by the participant, other third party or licensed central securities depository, whichever may be applicable, on a daily basis unless otherwise provided for in the exchange rules.”

CLAUSE 22

On page 26, in line 51, to omit “22” and to substitute “23”.

CLAUSE 23

1. On page 27, in line 6, to omit “23” and to substitute “24”.
2. On page 27, in line 13, to omit “24” and to substitute “25”.

CLAUSE 24

1. On page 27, in line 22, to omit “24” and to substitute “25”.
2. On page 27, in line 24, to omit “23” and to substitute “24”.
3. On page 27, in line 25, to omit “23” and to substitute “24”.

## CLAUSE 25

1. On page 27, in line 41, to omit “Definitions” and to substitute “Definition”.
2. On page 27, in line 42, to omit “25” and to substitute “26”.

## CLAUSE 26

1. On page 27, in line 46, to omit “26” and to substitute “27”, and to omit “28” and to substitute “29”.
2. On page 27, in line 49, to omit “Such an application” and to substitute “An application for a central securities depository licence”.
3. On page 27, in line 52, to omit “27” to substitute “28”.
4. On page 28, in line 3, to omit “34” to substitute “35”.
5. On page 28, in line 4, to insert “a copy of” in front of the sentence.
6. On page 28, in line 17, after “within,” to insert “and the process by”.

## CLAUSE 27

1. On page 28, in line 21, to omit “27” and to substitute “28”.
2. On page 28, from line 23, to omit paragraph (a) and to substitute:

“(a) subject to the requirements prescribed by the Minister have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”.
3. On page 28, from line 25, to omit paragraph (b) and to substitute:

“(b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the central securities depository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of the relevant stakeholders;”.

## CLAUSE 28

1. On page 28, in line 54, to omit “28” and to substitute “29”.
2. On page 28, in line 55, to omit “26” and to substitute “27”.
3. On page 28, in line 57, to omit “29” and to substitute “30”.
4. On page 29, from line 19, omit subsection (5).

## CLAUSE 29

1. On page 29, in line 24, to omit “29” and to substitute “30”.
2. On page 29, from line 24, to omit subsections (1) and (2) and to substitute:

“(1) A licensed central securities depository must conduct its

business in a fair and transparent manner with due regard to the rights of participants and their clients, and issuers.”

(2) A licensed central securities depository—

- (a) must constitute, maintain and provide an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities;
- (b) must constitute, maintain and provide an infrastructure, which infrastructure will include a securities settlement system;
- (c) must perform custody and administration in respect of a central securities account;
- (d) must issue depository rules in accordance with section 35;
- (e) must supervise compliance by participants with the depository rules and depository directives;
- (f) must supervise compliance with this Act by its participants, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
- (g) must enforce the depository rules and depository directives;
- (h) must as soon as it becomes aware thereof, inform the registrar of any matter that it reasonably believes may pose systemic risk to the financial markets;
- (i) may issue depository directives;
- (j) may amend or suspend the depository rules in terms of section 71;
- (k) must maintain a central securities account with due regard to the interests of the participant and its clients;
- (l) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities account;
- (m) must notify a participant in writing or as otherwise agreed of an entry made in the central securities account of the relevant person;
- (n) must balance and reconcile the total number and where applicable, the nominal value of each kind of uncertificated securities held on its uncertificated securities register with the records of the relevant issuer—
  - (i) in respect of certificated securities of the same kind reflected in the central securities account, not less than once every six months;
  - (ii) in respect of uncertificated securities of the same kind—
    - (aa) if that aggregate has not changed, not less than once every month;
    - (bb) if that aggregate has changed, on the business day after such change;
- (o) must administer and maintain a record of uncertificated securities deposited with it;
- (p) is entitled to access to the records of uncertificated securities administered and maintained by its participants to perform the functions for which it is licensed;
- (q) may, if the central securities depository is licensed as a clearing house under Chapter V, clear transactions in securities in accordance with its clearing house licence;
- (r) must disclose to persons for whom central securities accounts are kept, participants and issuers the fees and charges required by it for its services, and which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) must on request disclose to—
  - (i) the registrar information about the securities held in a central securities account;

- (ii) an issuer information about the securities issued by that issuer and held in central securities accounts;
  - (t) must notify the registrar as soon as it becomes aware that a participant will cease or has ceased to be a participant;
  - (u) subject to sections 5(1)(c) and (2) and 35(4), may enter into an agreement with an external central securities depository for the provision of securities services in the Republic by that external central securities depository;
  - (v) must establish and maintain effective, efficient and sustainable infrastructure to perform the functions for which it is licensed;
  - (w) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and
  - (x) may do all other things that are necessary for, incidental or conducive to the proper operation of a central securities depository and that are not inconsistent with this Act.”
3. On page 30, in line 20, to omit “(2)” and to substitute “(3)”, and after “more of the” to insert “regulatory or supervisory”.
  4. On page 30, in line 21, to omit “(1)” and to substitute “(2)”.

#### CLAUSE 30

On page 30, in line 34, to omit “30” and to substitute “31”.

#### CLAUSE 31

1. On page 30, in line 38, to omit “31” and to substitute “32”.
2. On page 30, from line 38, to insert subsection (1), the existing subsection becomes subsection (2):
 

“(1) A participant must conduct its business in a fair and transparent manner with due regard to the rights of its clients.”
3. On page 30, in line 50 after “services” to insert “which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation”.
4. On page 31, from line 13, to insert paragraph (l):
 

“(l) must correct discrepancies which are revealed in the reconciliation of the aggregate of its securities accounts with the central securities depository, and the participant must make good or provide any reconciled shortfall for which there are reasonable grounds for concluding that the participant is responsible;”
5. On page 31, in line 13, to omit “(l)” and to substitute “(m)”.
6. On page 31, in line 17, to omit “(m)” and to substitute “(n)”.
7. On page 31, in line 18, after “balance” to omit “and”.
8. On page 31, from line 18, to insert:
 

“(o) may not alienate, invest, pledge, hypothecate, encumber or otherwise make use of securities held for or on behalf of its clients, except with the client’s express consent;

- (p) must make adequate arrangements for the safeguarding of clients' ownership rights, including, but not limited to insolvency proceedings;
  - (q) must notify the registrar and central securities depository as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and".
9. On page 31, in line 19, to omit "(n)" and to substitute "(r)".
  10. On page 31, in line 20, to omit "functions" and to substitute "duties".

#### CLAUSE 32

On page 31, in line 23, to omit "32" to substitute "33".

#### CLAUSE 33

1. On page 31, in line 42, to omit "33" and to substitute "34".
2. On page 31, in line 48, to omit "35" and to substitute "36".
3. On page 31, in line 51, after "number" to insert "and, where applicable, the nominal value of each kind".
4. On page 31, in line 52, after "securities" to omit "of each kind referred to in paragraph (a)" and to substitute "issued by it".

#### CLAUSE 34

1. On page 32, in line 3, to omit "34" to substitute "35".
2. On page 32, from line 4, to omit subsection (2) and to substitute:
  - "(2) The depository rules—
  - (a) must provide for the manner in which transactions in securities settled through the central securities depository must be settled;
  - (b) must provide for equitable criteria for authorisation and exclusion of participants and, in particular, that no person may be admitted as a participant or allowed to continue such person's business as a participant unless the person—
    - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
    - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the depository rules;
  - (c) must provide for an orderly process by which a participant ceases to be a participant;
  - (d) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
  - (e) must provide for the steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate, and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the depository rules, the interim depository rules

- or the depository directives and must require a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;
- (f) must provide for the manner in which a participant who is believed to—
- (i) be able to furnish any information on the subject of any investigation; or
  - (ii) have in that participant's possession or under that participant's control any document, which has bearing upon that subject,
- may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (g) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of—
- (i) the participant's actual and potential liabilities;
  - (ii) conditional and contingent liabilities to the central securities depository; and
  - (iii) liabilities which existed before or accrue after a person has ceased to be a participant;
- (h) must provide for requirements in respect of corporate actions, including, but not limited to, that—
- (i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to the central securities depository, participants or clients and, if applicable, by the central securities depository to participants, and by participants to clients;
  - (ii) notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to the central securities depository, participants or clients; and if applicable, that effect is given to the lawful instructions of clients with regard to voting rights and other matters, and
  - (iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities account or securities account as the case may be;
- (i) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities account or central securities account, deliver a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities account or central securities account, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned;
- (j) must provide for requirements in respect of same day debit balances and prohibit debit balances at the end of a day in a securities account or a central securities account;
- (k) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
- (l) must provide for—
- (i) the duty of persons for whom securities accounts or central securities accounts are kept to disclose to a participant or central securities depository, as the case may be, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities depos-

- ited with the participant or central securities depository, as the case may be; and
- (ii) the manner, form and frequency of such disclosure;
  - (m) must provide for the manner in which a central securities depository or a participant must keep records of clients, or owners or beneficial owners of securities and limited or other interests in securities;
  - (n) must provide for the manner in which participants must give instructions to a central securities depository;
  - (o) if the central securities depository is appointed as a clearing house by an exchange, may regulate, in a manner consistent with the exchange rules, the clearing and settlement functions to be performed by participants in the clearing and settlement process;
  - (p) must provide for the purposes for which, and the process by which, a central securities depository may issue depository directives;
  - (q) must provide for the manner in which a participant must hold and administer securities;
  - (r) must provide for the approval by the central securities depository of a nominee of a participant;
  - (s) must provide that no participant may open a securities account or a central securities account for a person whom the participant believes or suspects requires approval as a nominee under section 76 without having taken reasonable measures to ascertain that such person has the necessary approval;
  - (t) must provide for supervisory measures that enable the central securities depository to comply with section 30(2)(e), (f) and (g);
  - (u) must provide for the manner in which complaints against a participant or officer or employee of a participant must be addressed ;
  - (v) must provide for a process whereby complaints by participants against the central securities depository in respect of the exercise of functions by the central securities depository may be made, considered and responded to;
  - (w) must provide for the authority of, and the manner in and circumstances under which—
    - (i) a central securities depository may limit the revocation of any settlement instruction given by a participant or its client;
    - (ii) a participant or client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the depository rules, but prior to settlement; or
    - (iii) a central depository or a participant may terminate transactions on the commencement of insolvency proceedings;
  - (x) must provide for—
    - (i) arrangements in relation to the administration of securities held for own account or on behalf of a client by a participant, including the settlement of unsettled transactions;
    - (ii) arrangements in relation to the administration of dividends and other payments made by issuers for the benefit of participants or clients; and
    - (iii) the manner in which a shortfall in securities in the securities account or central securities account must be apportioned amongst the persons whose securities are held in such account;
 under insolvency proceedings in respect of that participant;

- (y) must provide for netting arrangements if transactions in one or more categories of securities settled through the central securities depository settle on a net basis;
  - (z) must provide for the manner in which a participant is required to conduct the securities services for which it is authorised;
  - (aa) must provide for the manner in which the central securities depository monitors compliance by its participants with this Act, the depository rules and the depository directives.”
3. On page 33, in line 62, after “(3)” to insert “(a)”.
  4. On page 33, in line 62, to omit “(2)(u)” and to substitute “(2)(w)” .
  5. On page 33, after line 63, to add:
 

“(b) Any rules made in terms of subsection (2)(w), (x) and (y) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.”
  6. On page 34, in line 1, to omit “5(6)” and to substitute “5(1)(c) and (2) and requirements prescribed by the registrar”.
  7. On page 34, in line 3, after “must” to omit “”, in accordance with subsection (2)(a)(i),”.
  8. On page 34, from line 18, to omit subsection (6) to substitute:
 

“(6) A depository rule made under this section is binding on—

    - (i) the central securities depository;
    - (ii) participants of the central securities depository;
    - (iii) issuers of securities deposited with that central securities depository;
    - (iv) any other person that has a central securities account with the central securities depository;
    - (v) the officers and employees of the central securities depository, its participants, issuers, and of other persons that have a central securities account with the central securities depository; and
    - (vi) clients of participants.”

#### CLAUSE 35

1. On page 34, in line 24, to omit “and status”.
2. On page 34, in line 25, to omit “35” and to substitute “36”.
3. On page 34, in line 26, after “depository” to insert “in its central securities account”.
4. On page 34, from line 43, to omit subsection (3).

#### CLAUSE 36

1. On page 34, in line 48, to omit “36” and to substitute “37”.
2. On page 35, in line 14, after “must be” to insert “segregated and”.

#### CLAUSE 37

1. On page 35, in line 18, to omit “37” and to substitute “38”.

2. On page 35, after line 27, to add:

“(c) Nothing in this section prejudices any power of a participant or central securities depository, as the case may be, to effect a transfer to a person to whom the right to any uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) has been transmitted by operation of law.”.

#### CLAUSE 38

1. On page 35, in line 34, to omit “to secure a debt” and to substitute “*in securitatem debiti*”.
2. On page 35, in line 35, to omit “38” and to substitute “39”.
3. On page 35, in line 35, to omit “to secure a debt” and to substitute “*in securitatem debiti*”.
4. On page 35, in line 41, to omit “class”.
5. On page 35, in line 41, to omit “and” and to substitute “or”.
6. On page 35, in line 44, to omit “class”.
7. On page 35, in line 44, to omit “and” and to substitute “or”.
8. On page 35, in line 54, to omit “to secure a debt” and to substitute “*in securitatem debiti*”.
9. On page 35, in line 57, to omit “to secure a debt” and to substitute “*in securitatem debiti*”.
10. On page 36, in line 2, to omit “37” and to substitute “38”.
11. On page 36, after line 2, to add:

“(3) An interest in respect of uncertificated securities may be granted under this section, where applicable, and in the manner provided for in the depository rules, and is effective against third parties, in relation to a securities account, where such an interest extends to all uncertificated securities standing to the credit of the relevant securities account at the time the pledge is effected.”.

#### CLAUSE 39

1. On page 36, in line 4, to omit “39” and to substitute “40”.

#### CLAUSE 40

1. On page 36, in line 12, to omit “40” and to substitute “41”, to omit “37” and to substitute “38”, and to omit “38” and to substitute “39”.
2. On page 36, in line 16, to omit “39” and to substitute “40”.
3. On page 36, in line 17, to omit “apply” and to substitute “applies”.

#### CLAUSE 41

- On page 36, in line 20, to omit “41” and to substitute “42”.

## CLAUSE 42

On page 36, in line 25, to omit “42” and to substitute “43”.

## CLAUSE 43

On page 36, in line 30, to omit “43” and to substitute “44”.

## CLAUSE 44

On page 36, in line 43, to omit “44” and to substitute “45”.

## CLAUSE 45

1. On page 37, in line 5, to omit “45” and to substitute “46”.
2. On page 37, from line 5, to omit “to secure a debt” and to substitute “*in securitatem debiti*”.

## CLAUSE 46

1. On page 37, in line 13, to omit “46” and to substitute “47”, and to omit “48” and to substitute “49”.
2. On page 37, from line 14, to omit “an associated clearing house licence or an independent” and to substitute “a”.
3. On page 37, in line 16, after “a” to insert “clearing house”.
4. On page 37, in line 18, to omit “47” and to substitute “48”.
5. On page 37, in line 20, before the first “the” to insert “a copy of”.
6. On page 37, in line 28, to omit “52” and to substitute “53”.
7. On page 37, from line 36, to insert:
  - “(ii) in relation to an independent clearing house, where the clearing house rules may be inspected by members of the public; and“
8. On page 37, in line 36, to omit “(ii)” and to substitute “(iii)”.
9. On page 37, in line 36, after “within” to insert “,and the process by”.

## CLAUSE 47

1. On page 37, in line 40, to omit “47” and to substitute “48”.
2. On page 37, from line 41, to omit paragraph (a) and to substitute:
  - “(a) subject to the requirements prescribed by the Minister, have sufficient assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”
3. On page 37, from line 43, to omit paragraph (b) and to substitute:
  - “(b) governance arrangements that are clear and transparent, promote

the safety and efficiency of the clearing house, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;”.

4. On page 38, in line 7, after “made” to insert “arrangements for the”.
5. On page 38, from line 8, to omit “arrangements for the monitoring of all transactions cleared through the clearing house and for the”.

#### CLAUSE 48

1. On page 38, in line 23, to omit “48” and to substitute “49”, and to omit “in consultation with the Governor,”.
2. On page 38, in line 24, to omit “46” and to substitute “47”.
3. On page 38, in line 26, to omit “49” and to substitute “50”.
4. On page 38, in line 34, to omit “in the Republic”.
5. On page 38, from line 51, to omit subsections (5) and (6).

#### CLAUSE 49

1. On page 39, in line 1, after “of” to insert “licensed”.
2. On page 39, in line 4, to omit “49” and to substitute “50”.
3. On page 39, from line 4, to add subsection (1):
 

“(1) A licensed clearing house must conduct its business in a fair and transparent manner with due regard to the rights of clearing members and their clients.”
4. On page 39, in line 4, to omit “(1)” to substitute “(2)”.
5. On page 39, in line 4, after “A”, to insert “licensed”.
6. On page 39, in line 5, after “securities” to omit “cleared”.
7. On page 39, from line 14, to omit paragraph (e) and to substitute:
 

“(e) must have appropriate arrangements in place to—

  - (i) ensure that it has efficient and timely access to funds and assets held as collateral for the due performance of the obligations of clearing members, and
  - (ii) protect the funds and collateral of clearing members in the event of a default of a clearing member;”
8. On page 39, in line 19, to omit “(2)” and to substitute “(3)”.
9. On page 39, in line 19, to omit “An” and to substitute “A”.
10. On page 39, in line 19, before “independent” to insert “licensed”.
11. On page 39, in line 20, omit “(1)” and to substitute “(2)”.
12. On page 39, from line 21, to omit paragraphs (a) to (i) and to substitute:
 

“(a) must issue clearing house rules;

- (b) must enforce the clearing house rules;
  - (c) must supervise compliance by its clearing members with the clearing house rules and clearing house directives;
  - (d) must supervise compliance with this Act by its clearing members, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
  - (e) may issue clearing house directives;
  - (f) may amend or suspend the clearing house rules in terms of section 71;
  - (g) may make different rules for clearing and settlement of different securities and different clearing members;
  - (h) must consult relevant regulated persons when making or amending clearing house rules pertaining to clearing and settlement;
  - (i) must disclose to clearing members the fees and charges required by it for its services;, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
  - (j) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received notification regarding insolvency proceedings against clearing members; and
  - (k) must notify the registrar as soon as it becomes aware that a clearing member will cease to be a clearing member.”
13. On page 39, in line 36, to omit “(3)” and to substitute “(4)”, and after “more of the” to insert “regulatory and supervisory”.
  14. On page 39, in line 37, to omit “(1) and (2)” and to substitute “(2) and (3)”.

#### CLAUSE 50

1. On page 39, in line 46, to omit “50” and to substitute “51”, and to omit “48” and to substitute “49”.
2. On page 39, in line 46, to insert “(1)” before “An”.
3. On page 39, in line 47, to insert “a” before “compensation fund”.
4. On page 39, after line 50, to insert subsection (2):
 

“(2) Any funds received or held by an independent clearing house for the purpose of maintaining the insurance, guarantee, compensation fund or other warranty contemplated in section 49(2)(b), are for all intents and purposes considered to be “trust property” as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.”

#### CLAUSE 51

On page 39, in line 52, to omit “51” and to substitute “52”, and to omit “and their clients”.

#### CLAUSE 52

1. On page 40, in line 3, to omit “52” and to substitute “53”.
2. On page 40, from line 5, to omit paragraphs (a) to (x) and to substitute:

- “(a) for the manner in which and the terms and conditions subject to which transactions in listed and unlisted securities must be cleared or settled or cleared and settled through the clearing house;
- (b) for equitable criteria for authorisation and exclusion of clearing members and, in particular, that no person may be admitted as a clearing member or allowed to continue such person’s business as a clearing member unless the person—
  - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
  - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the clearing house rules;
- (c) must provide for an orderly process by which a clearing member ceases to be a clearing member;
- (d) for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that a clearing member may provide and the type of securities for which a clearing member may provide clearing services or settlement services or both, and if there are different categories of —
  - (i) clearing members, for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that each category of clearing member may provide;
  - (ii) securities, for the authorisation and criteria for authorisation of the categories in respect of which a clearing member may provide one or more clearing services or settlement services or both clearing services and settlement services;
- (e)
  - (i) for the capital adequacy, guarantee and risk management requirements with which a clearing member must comply;
  - (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of clearing members or different activities of a clearing member’s business;
- (f) if there are different categories of clearing members, for the restriction of the activities of such categories subject to different conditions;
- (g) for the monitoring of settlement obligations of clearing members and their clients;
- (h) for the circumstances in which the clearing house may refuse to settle or clear a transaction in securities;
- (i) for the manner in which the clearing house monitors compliance by its clearing members with this Act, the clearing house rules and the clearing house directives;
- (j) for the manner in which a clearing member is required to conduct its business generally;
- (k) for the—
  - (i) recording of transactions cleared or settled by the clearing house; and
  - (ii) monitoring of compliance by clearing members with this Act, and the clearing house rules and clearing house directives;
- (l) for the manner in which complaints against a clearing member or officer or employee of a clearing member must be investigated;
- (m) for the equitable and expeditious resolution of disputes between clearing members and between clearing members and their clients in respect of the clearing or settlement of transactions in listed and unlisted securities,

- (n) for a process whereby complaints by clearing members against the clearing house in respect of the exercise of functions by the clearing house may be made, considered and responded to;
- (o) for the steps to be taken by the clearing house, or a person to whom the clearing house has delegated its investigative and disciplinary functions, to investigate and discipline a clearing member or officer or employee of a clearing member who contravenes or fails to comply with the clearing house rules, the interim clearing house rules or the clearing house directives and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;
- (p) for the manner in which a clearing member, officer or employee of a clearing member who is believed to—
  - (i) be able to furnish any information on the subject of any investigation referred to in this subsection; or
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject,
 may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (q) where appropriate, in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 51, for—
  - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
  - (ii) the amount of the fee imposed by the clearing house for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;
- (r) that clearing members must disclose to clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) for the purposes for which, and the process by which, a clearing house may issue clearing house directives;
- (t) for supervisory measures that enable the clearing house to comply with section 50(3)(b), (c) and (d);
- (u) for the administration of securities held for own account or on behalf of a client by a clearing member, including the settlement of unsettled transactions, under insolvency proceedings in respect of that clearing member; and
- (v) for the authority of, and the manner in, and circumstances under which—
  - (i) a clearing house may limit the revocation of any settlement instruction given by a clearing member or client;
  - (ii) a clearing member or its client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the clearing house rules, but prior to settlement;
  - (iii) a clearing house or a clearing member may terminate transactions on the commencement of insolvency proceedings;

- (w) for the recording by a clearing member of transactions or positions cleared by that clearing member through the clearing house;
  - (x) circumstances and manner in which a clearing member may advertise or canvass for business;
  - (y) refusal by a clearing house to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
  - (z) for the segregation and portability of funds and securities held as collateral and
  - (aa) that clearing members must notify the clearing house as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it.”
3. On page 41, in line 49, after “(a)“” to insert, “Subject to section 5(1)(c) and (2) and the requirements prescribed by the registrar,”, and to omit “The” and to substitute “the”.
  4. On page 41, in line 50, to omit “subject to section 5(6)”.
  5. On page 41, from line 60, to omit subsection (6) and to substitute:
    - “(6) (a) Any rules made in terms of subsection (2)(a), (2)(u) or 2(v) must have due regard for, and not be in conflict with, any applicable depository rules.
    - (b) Any rules made in terms of subsection (2)(v) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.”
  6. On page 41, after line 62, to add:
    - “(7) A clearing house rule made under this section is binding on—
    - (i) the clearing house,
    - (ii) the clearing members of the clearing house,
    - (iii) the officers and employees of the clearing house and its clearing members, and
    - (iv) clients of the clearing members.”

#### CLAUSE 53

Clause rejected.

#### CLAUSE 54

1. On page 42, in line 9, after “(1)” to insert “Subject to the regulations prescribed by the Minister,”, and to omit “A” and to substitute “a”.
2. On page 42, in line 10, to omit “company incorporated in terms of the Companies Act” and to substitute “juristic person”.
3. On page 42, from line 11, to omit “referred to in the definition of securities”.
4. On page 42, in line 13, to omit “Such an” and to substitute “An”, and after “application” to insert “for a trade repository licence”.
5. On page 42, in line 17, before the first “the” to insert “a copy of”.
6. On page 42, in line 28, after “within” to insert “,and the process by”.

## CLAUSE 55

1. On page 42, in line 30, after “licence” to insert “and licensed trade repository”.
2. On page 42, in line 31, after “licence” to insert “and licensed trade repository”.
3. On page 42, from line 32, to omit paragraph (a) and to substitute:
 

“(a) subject to the requirements prescribed by the Minister, have assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its duties as set out in this Act;”
4. On page 42, from line 35, to omit paragraph (b) and to substitute:
 

“(b) have governance arrangements, that are clear and transparent, promote the safety and efficiency of the trade repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;”
5. On page 42, from line 37, to omit paragraph (c) and to substitute:
 

“(c) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;”.
6. On page 42, in line 51, after “those risks,” to insert “and”.
7. On page 43, in line 3, to omit “and”.

## CLAUSE 56

1. On page 43, from line 10 up to line 11, to omit “governing trade repositories”.
2. On page 43, in line 11, to omit “”, in consultation with the Governor,”.
3. On page 43, in line 23, to omit “in the Republic”.
4. On page 43, from line 25 up to line 26, to omit “and the Governor” .
5. On page 43, in line 27, to omit “or Governor”.
6. On page 43, from line 40, to omit subsection (7).

## CLAUSE 57

Clause rejected.

1. That the following be the new clause:

**“Duties of licensed trade repository**

**57.** (1) A licensed trade repository must conduct its business in a fair and transparent manner.

(2) A licensed trade repository must—

- (a) employ timely, efficient and accurate record keeping procedures;

- (b) make the information prescribed by the registrar available to the registrar, other relevant supervisory authorities and other persons, subject to the requirements prescribed by the registrar under section 58 regarding the manner, form, and frequency of disclosure;
  - (c) monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies;
  - (d) publicly disclose the prices and fees associated with services provided, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
  - (e) ensure the confidentiality, integrity and protection of the information received;
  - (f) provide the registrar with any information requested to monitor and mitigate systemic risk; and
  - (g) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it.
- (3) The registrar may prescribe additional duties to those referred to in subsection (2) in greater detail.”

#### CLAUSE 58

1. On page 44, in line 2, to omit “governing trade repositories”.
2. On page 44, in line 3, to omit “in consultation with the Governor,”.

#### CHAPTER VII

On page 44, from line 11 up to 12, to omit “SELF-REGULATORY ORGANISATIONS” and to substitute “MARKET INFRASTRUCTURES”.

#### CLAUSE 59

Clause rejected.

1. That the following be the new clause:

**“Annual assessment**

**59.** The registrar must annually assess, whether a licensed market infrastructure—

- (a) complies with this Act and the rules of the market infrastructure;
- (b) where applicable, complies with directives, requests, conditions or requirements of the registrar in terms of this Act; or
- (c) where applicable, gives effect to decisions of the appeal board in terms of section 105.”

#### CLAUSE 60

Clause rejected.

#### CLAUSE 61

1. On page 44, in line 41, to omit “61” and to substitute “60”.

2. On page 44, in line 42, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
3. On page 44, in line 43, to omit “the rules of the self-regulatory organisation” and to substitute “its rules”.
4. On page 44, in line 46, to omit “107” and to substitute “105”.
5. On page 44, in line 47, to omit “97” and to substitute “95”, and to omit “self-regulatory organisation” and to substitute “market infrastructure”.
6. On page 44, in line 51, after “participants” to insert “or users or members of the market infrastructure”.
7. On page 45, in line 1, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
8. On page 45, in line 6, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
9. On page 45, in line 8, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
10. On page 45, in line 10, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
11. On page 45, from line 12, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
12. On page 45, from line 13, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
13. On page 45, in line 18, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
14. On page 45, in line 19, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
15. On page 45, in line 20, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
16. On page 45, in line 20, to omit “102” and to substitute “100”.

#### CLAUSE 62

1. On page 45, in line 22, to omit “62” and to substitute “61”.
2. On page 45, from line 22, to omit subsection (1) and to substitute:
 

“(1) A market infrastructure may not conduct any additional business which may introduce systemic risk.”
3. On page 45, from line 29, to omit subsection (2) and to substitute:
 

“(2) A market infrastructure must consult the registrar prior to conducting any business, function or service not provided for under section 10, 30 or 50, that may—

  - (i) adversely impact on the market infrastructure’s ability to meet or perform its regulated obligations or functions; or
  - (ii) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be.”.

4. On page 45, from line 38, to omit subsection (3) and to substitute:
  - “(3) The registrar may, if the registrar is of the opinion that the business, function or service referred to in subsection (1) may—
    - (i) impact on the regulated obligations or functions of a market infrastructure; or
    - (ii) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be, prohibit or lay down requirements in respect of the carrying on of such business, function or service.”
5. On page 45, from line 42, to insert subsection (4):
  - “(4) Where the registrar has prohibited or laid down requirements in respect of such business, function or service as referred to in subsection (3), the registrar must give reasons for the prohibition or requirements to the market infrastructure in writing within 14 days of the prohibition or requirements being made.”

#### CLAUSE 63

1. On page 45, in line 43, to omit “63” and to substitute “62”, and to omit “self-regulatory organisation “ and to substitute “market infrastructure”.
2. On page 45, in line 43, after “must” to insert “where applicable”.
3. On page 45, in line 44, to omit “or” and to substitute “and”.
4. On page 45, in line 46, after “must” to insert “comply with the requirements prescribed by the registrar,”.
5. On page 45, in line 48, to omit “self-assessment” and to substitute “assessment, in the manner prescribed by the registrar,”.

#### CLAUSE 64

1. On page 45, in line 50, in the heading to omit “self-regulatory organisation” and to substitute “an exchange, central securities depository, or independent clearing house”.
2. On page 45, in line 51, to omit “64” and to substitute “63”, and to omit “A self-regulatory organisation” and to substitute “An exchange, central securities depository, or independent clearing house”.
3. On page 46, in line 1, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
4. On page 46, in line 3, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house in question”.
5. On page 46, in line 6, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
6. On page 46, in line 7, to omit “self-regulatory organisation” and to substitute “entity in question”.

7. On page 46, in line 9, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
8. On page 46, in line 11, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
9. On page 46, in line 12, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
10. On page 46, in line 14, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
11. On page 46, in line 16, to omit “organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
12. On page 46, in line 21, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
13. On page 46, in line 24, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
14. On page 46, in line 29, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
15. On page 46, in line 34, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
16. On page 46, in line 34, to omit “organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
17. On page 46, in line 38, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
18. On page 46, in line 40, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.
19. On page 46, in line 42, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.

#### CLAUSE 65

1. On page 46, in line 44, to omit “65” and to substitute “64”.
2. On page 46, in lines 46, 49 and 50, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
3. On page 46, in line 59, after “subsection” to insert “and the conditions prescribed by the registrar”.
4. On page 47, in lines 2, 6, 7, 50 and 52, to omit “self-regulatory organisation” and to substitute “market infrastructure”.

5. On page 47, in lines 14, 27, 30, 38, 45 and 46, to omit “organisations” and to substitute “entities”.
6. On page 47, in lines 15, 20, 23, 24, 27, 31, 35, 39, 42, and 47, to omit “organisation” and to substitute “entity”.

#### CLAUSE 66

1. On page 47, in line 53, to omit “of self-regulatory organisation”.
2. On page 47, in line 54, to omit “66” and to substitute “65”.
3. On page 47, in lines 55, 57, 58 and 59, to omit “self-regulatory organisation” and to substitute “market infrastructure”.

#### CLAUSE 67

1. On page 48, in line 1, to omit “of self-regulatory organisation”.
2. On page 48, in line 2, to omit “67” and to substitute “66”.
3. On page 48, in lines 3, 7, 13, 17, 20, 23, 25, 27, 29, 30, 33, 34, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
4. On page 48, in line 20, to omit “(8)” and to substitute “(6)”.
5. On page 48, from line 35, after “R5 000” to insert “, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa,”
6. On page 48, in line 37, to omit “99” and to substitute “97”.

#### CLAUSE 68

1. On page 48, in line 39, to omit “certain”.
2. On page 48, in line 40, to omit “self-regulatory organisations” and to substitute “market infrastructures”.
3. On page 48, in line 41, to omit “68” and to substitute “67”.
4. On page 48, in line 56, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
5. On page 49, in lines 20, 22, 40, 42, 44, 47, and 58, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
6. On page 50, in lines 1, 3, 5, 8, and 11, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
7. On page 50, after line 12, to add:

“(8) An application referred to in subsections (3), (4) or (5) must be made in the manner and form prescribed by the registrar.”

#### CLAUSE 69

1. On page 50, in line 14, to omit “69” and to substitute “68”.

2. On page 50, in lines 14, 16, 17, 20, and 23, to omit “self-regulatory organisation” and to substitute “market infrastructure”.

## CLAUSE 70

1. On page 50, in line 26, to omit “by self-regulatory organisation”.
2. On page 50, in line 27, to omit “70” and to substitute “69”.
3. On page 50, in lines 27, 28, and 30, to omit “self-regulatory organisation” and to substitute “market infrastructure”.

## CLAUSE 71

1. On page 50, in line 32, to omit “71” and to substitute “70”.
2. On page 50, in lines 33, 35, and 37, to omit “self-regulatory organisation” and to substitute “market infrastructure”.

## CLAUSE 72

1. On page 50, in line 39, to omit “self-regulatory organisation” and to substitute “certain market infrastructure”.
2. On page 50, in line 41, to omit “72” and to substitute “71”.
3. On page 50, in line 42, to omit “self-regulatory organisation” and to substitute “market infrastructure that is required to issue rules.”
4. On page 50, in line 42, to omit “organisation” and to substitute “entity”.
5. On page 50, in line 43, to omit “organisation” and to substitute “entity”.
6. On page 50, in line 44, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
7. On page 51, in lines 10, 18, 21, 24, 25, 31, 39, 40, 60 and 61, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
8. On page 51, in line 40, after “may” to insert “, where appropriate,”.
9. On page 51, in line 45, to omit “R5 million” and to substitute “R7.5 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa”.
10. On page 52, in lines 4, 7, 12, and 16, omit “self-regulatory organisation” and to substitute “market infrastructure”.
11. On page 52, in line 6, to omit “97” and to substitute “95”.

## CLAUSE 73

1. On page 52, in line 24, to omit “73” and to substitute “72”.
2. On page 52, in lines 24 and 30, to omit “self-regulatory organisation, trade repository” and to substitute “market infrastructure”.
3. On page 52, in line 25, to omit “self-regulatory organisation or trade repository” and to substitute “market infrastructure”.

4. On page 52, in line 25, after “officer” to insert “director, official”.
5. On page 52, in line 27, to omit “self-regulatory organisation, or director or official of a trade repository” and to substitute “market infrastructure”.
6. On page 52, from line 31, to omit “or negligent (excluding grossly negligent)”.
7. On page 52, in line 33, to omit “or the rules”.
8. On page 52, in line 34, after “clearing house” to insert “rules or”.
9. On page 52, in line 37, to omit “16” and to substitute “17”.
10. On page 52, in line 38, to omit “34(2)(r)” and to substitute “35(2)(s)”.

#### CLAUSE 74

1. On page 52, in line 40, in the heading to omit “by self-regulatory organisation”.
2. On page 52, in line 41, to omit “74” and to substitute “73”.
3. On page 52, in lines 41, 42, 50, and 51, to omit “self-regulatory organisation” and to substitute “market infrastructure”.
4. On page 52, in line 51, to omit “other”.

#### CLAUSE 75

1. On page 53, from line 3, to omit “**authorised users, participants or clearing members of an independent clearing house**” and to substitute “**regulated persons**”.
2. On page 53, in line 5, to omit “75” and to substitute “74”.
3. On page 53, from line 5, to omit subsection (1) and to substitute:
 

“(1) The registrar may in an appropriate consultative manner prescribe a code of conduct for—

  - (i) authorised users, participants or clearing members of independent clearing houses;
  - (ii) any other regulated person, where the required standard of conduct is not prescribed in another law or code of conduct, and a code of conduct is necessary or expedient for the achievement of the objects of this Act.”.
4. On page 53, in line 9, after “clearing houses,” to insert “or any other regulated person in respect of whom the code of conduct was prescribed,”.

#### CLAUSE 76

1. On page 53, in line 12, to omit “76” and to substitute “75”.
2. On page 53, in line 12, after “conduct” to insert “for authorised users, participants or clearing members of independent clearing houses”.
3. On page 53, after line 24, to insert the following subsection:
 

“(2) A code of conduct for regulated persons, other than the

regulated persons mentioned in subsection (1), must be based on the principle that the regulated person must—

- (i) act honestly and fairly, with due skill, care and diligence and, where applicable, in the interests of a client or member; and
  - (ii) uphold the integrity of the financial markets.”
4. On page 53, in line 25, to omit “(2)” and to substitute “(3)”.

#### CHAPTER IX

On page 53, in line 36, to omit “UNLISTED SECURITIES AND”.

#### CLAUSE 77

Clause rejected.

#### CLAUSE 78

1. On page 54, in line 2, to omit “78” and to substitute “76”.
2. On page 54, in line 3, after “rules” to insert “and comply with the requirements set out in the rules.”.
3. On page 54, in line 5, after “rules” to insert “and comply with the requirements set out in the rules.”.
4. On page 54, from line 9, to omit paragraph (a) and to substitute:
  - “(a) The registrar may prescribe requirements for—
  - (i) the approval of a nominee that is not approved as a nominee in terms of subsection (1); and
  - (ii) approved nominees.”
5. On page 54, in line 12, to omit “subsection (1)” and to substitute “this section”.

#### CLAUSE 79

1. On page 54, in line 16, to omit “79” and to substitute “77”.
2. On page 54, in line 18, to omit “84(2), (3) and (4)” and to substitute “82(4), (5) and (6)”.
3. On page 54, from line 20, to omit the definition of “document”.
4. On page 54, in line 23, to omit “87” and to substitute “85”.
5. On page 54, in line 37, to omit “86” and to substitute “84”.

#### CLAUSE 80

On page 55, in line 3, to omit “80” and to substitute “78”.

#### CLAUSE 81

On page 55, in line 57, to omit “81” and to substitute “79”.

## CLAUSE 82

1. On page 56, in line 12, to omit “82” and to substitute “80”.
2. On page 56, in line 13, after “person,” to insert “knowingly”.
3. On page 56, in line 14, to omit “knowingly” and “the use of”.
4. On page 56, in line 15, to omit “manipulative, false or deceptive”.
5. On page 56, from line 15, to omit “of trading in a security listed on a regulated market, which practice may, if executed, create” and to substitute “which created or is likely to have the effect of creating”.
6. On page 56, in line 17, after “the” to insert “demand for, supply of, or”.
7. On page 56, in line 21, to omit “has reason to suspect” and to substitute “ought reasonably to have known”.
8. On page 56, in line 24, to omit “deemed to be manipulative, false or deceptive trading practices” and to substitute “contraventions of subsection (1)”.
9. On page 56, from line 28, to omit “including where a person or a connected party had a direct or indirect beneficial interest in the securities and continues to have such an interest in the securities after the transaction” to substitute:

“with the intention of creating—  
    (i) a false or deceptive appearance of the trading activity in; or  
    (ii) an artificial market price for  
        that security;”.
10. On page 56, in line 35, to omit “active public trading in connection with” and to substitute “the trading activity in”.
11. On page 56, in line 50, after “appearance of” to insert “the”.
12. On page 56, in line 54, to omit “for dealing in securities” and to substitute “of a security”.
13. On page 56, in line 55, to omit “;” and to substitute “.”.
14. On page 56, from line 56, to omit paragraphs (h) and (i).
15. On page 57, from line 1, to omit “Provided that” and to substitute:

“(4) For the purpose of subsection (1),”.
16. On page 57, from line 3, to omit “manipulative, improper, false or deceptive trading practice for the purposes of this section” and to substitute “practice which creates an artificial price for securities which are subject to such price-stabilising mechanisms.”.
17. On page 57, after line 4, to insert:

“(5) For the purposes of subsection 3(a), a purchase or sale of listed securities does not involve a change in 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, has an interest in the securities after the purchase or sale.”.

## CLAUSE 83

1. On page 57, in line 6, to omit “83” and to substitute “81”.
2. On page 57, in line 23, in the heading to omit “sanctions” and to substitute “sanction”.

## CLAUSE 84

Clause rejected.

1. That the following be the new clause:

**“Liability resulting from insider trading**

**82.** (1) Subject to subsection (3), any person who contravenes section 78(1), (2) or (3) of this Act is liable to pay an administrative sanction not exceeding—

- (a) the equivalent of the profit that the person, such other person or such insider, as the case may be, made or would have made if he or she had sold the securities at any stage; or the loss avoided, through such dealing;
- (b) an amount of up to R1 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
- (c) interest; and
- (d) cost of suit, including investigation costs, on such scale as determined by the Enforcement Committee.”

(2) Subject to subsection (3), any person who contravenes section 78(4) or (5) of this Act is liable to pay an administrative sanction not exceeding—

- (a) the equivalent of the profit that such other person made or would have made if he or she had sold the securities at any stage, or the loss avoided, through such dealing, if the recipient of the information, or such other person, as the case may be, dealt directly or indirectly in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
- (b) an amount of up to R1 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
- (c) interest;
- (d) cost of suit, including investigation costs, on such scale as determined by the Enforcement Committee; and
- (e) the commission or consideration received for such disclosure, encouragement or discouragement.

(3) If the other person referred to in section 78(2), (3), (4) and (5) is liable as an insider in terms of section 78(1), the insider referred to in section 78(2), (3), (4) and (5) is jointly and severally liable together with that other person to pay the amounts set out in subsections (1)(a), (c), (d) and (2)(a), (c) and (d), as the case may be.

(4) Any amount recovered by the board as a result of the proceedings contemplated in this section must be deposited by the board directly into a specially designated trust account and—

- (a) the board is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (5);
- (b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (5) in accordance with subsection (6);

- (c) any amount not paid out in terms of paragraph (b) accrues to the board.
- (5) The balance referred to in subsection (4)(b) must be distributed to all claimants who—
  - (a) submit claims to the directorate within 90 days from the date of publication of a notice in one national newspaper or on the official website inviting persons who are affected by the dealings referred to in section 78(1) to (5) to submit their claims; and
  - (b) prove to the reasonable satisfaction of the claims officer that—
    - (i) they were affected by the dealings referred to in section 78(1) to (5); and
    - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in section 78(1), (2) and (3), or the other person referred to in section 78(4) and (5) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or
    - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day as the insider or other person referred to in subparagraph (ii);
    - (iv) it would be equitable for their claim to be included in a distribution in terms of subsection (4)(b).
- (6) Subject to subsection (7), a claimant must receive an amount—
  - (a) equal to the difference between the price at which the claimant dealt and the price, determined by the Enforcement Committee, that the claimant would have dealt at if the inside information had been published at the time of dealing; or
  - (b) equal to the pro rata portion of the balance referred to in subsection (2)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (3) by claimants, whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.
- (7) An amount awarded in proceedings contemplated in section 87 must be deducted from any amount claimed in terms of this section.
- (8) The common law principles of vicarious liability apply to the liability established by this section.”.

#### CLAUSE 85

On page 58, in line 17, to omit “85” and to substitute “83”.

#### CLAUSE 86

1. On page 58, in line 22, to omit “86” and to substitute “84”.
2. On page 58, in line 24, to omit “87” and to substitute “85”.
3. On page 58, in line 25, after “offence” to insert “or contravention”, and after “sections” to insert “78,”, and to omit “82”.
4. On page 58, in line 26, to omit “83” and to substitute “81”.
5. On page 58, in line 36, to omit “84” and to substitute “82”.

6. On page 58, in line 47, to omit “84” and to substitute “82”.

CLAUSE 87

1. On page 60, in line 31, to omit “87” and to substitute “85”.
2. On page 60, in line 39, to omit “86” and to substitute “84”.
3. On page 60, in line 41, after “(iii)” to insert “to institute proceedings”, and to omit “86” and to substitute “84”.
4. On page 61, in line 7, to omit “the Share Holders’ Association of South Africa” and to substitute “any organisation that represents shareholders’ rights”.
5. On page 61, in line 10, to omit “SA” and to substitute “South African”.

CLAUSE 88

- On page 61, in line 38, to omit “88” and to substitute “86”.

CLAUSE 89

1. On page 61, in line 43, to omit “89” and to substitute “87”.
2. On page 61, in line 46, to omit “84” and to substitute “82”.

CLAUSE 90

1. On page 61, in line 48, to omit “90” and to substitute “88”.
2. On page 61, in line 52, to omit “all self-regulatory organisations” and to substitute “a licensed exchange, a licensed central securities depository, or a licensed independent clearing house”.

CLAUSE 91

1. On page 62, in line 4, to omit “91” and to substitute “89”.
2. On page 62, from line 10, to omit “self-regulatory organisation, trade repository and associated clearing house” and to substitute “market infrastructure”.

CLAUSE 92

1. On page 62, in line 14, to omit “92” and to substitute “90”.
2. On page 62, in line 20, to omit “91” and to substitute “89”.

CLAUSE 93

1. On page 62, in line 26, to omit “93” and to substitute “91”.
2. On page 62, from line 34, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository or independent clearing house in question,”.

3. On page 62, from line 51, to omit “self-regulatory organisation, trade repository or associated clearing house, or to the self-regulatory organisation” and to substitute “market infrastructure, or to the exchange, central securities depository, or independent clearing house”.
4. On page 63, from line 1, to omit “self-regulatory organisation, trade repository, or associated clearing house, or to the self-regulatory organisation” and to substitute “market infrastructure, or to the exchange, central securities depository or independent clearing house”.
5. On page 63, in line 10, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository or independent clearing house”.
6. On page 63, in line 11, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository or independent clearing house”.

CLAUSE 94

On page 63, in line 17, to omit “94” and to substitute “92”.

CLAUSE 95

On page 63, in line 21, to omit “95” and to substitute “93”.

CLAUSE 96

On page 63, in line 31, to omit “96” and to substitute “94”.

CLAUSE 97

On page 63, in line 46, to omit “97” and to substitute “95”.

CLAUSE 98

On page 64, in line 19, to omit “98” and to substitute “96”.

On page 64, in line 19, to omit “97” and to substitute “95”.

CLAUSE 99

1. On page 64, in line 49, to omit “99” and to substitute “97”.
2. On page 64, in line 52, to omit “not exceeding R1 000 or such other” and to substitute “of an”, and after “amount” to insert “to be”.
3. On page 65, in line 8, to omit “107” and to substitute “105”.

CLAUSE 100

1. On page 65, in line 17, to omit “100” and to substitute “98”.
2. On page 65, in line 33, to omit “self-regulatory organisation” and to substitute “exchange, central securities depository, or independent clearing house”.

3. On page 65, in line 34, to omit “a self-regulatory organisation” and to substitute “an exchange, central securities depository, or independent clearing house”.

## CLAUSE 101

1. On page 65, in line 38, to omit “101” and to substitute “99”.
2. On page 65, from line 39, to omit “the exchange, depository or clearing house” and to substitute “any”.

## CLAUSE 102

1. On page 65, in line 43, to omit “102” and to substitute “100”.
2. On page 65, in line 55, to omit “104” and to substitute “102”.
3. On page 66, in line 4, after “Act” to insert “in respect of a regulated person”.
4. On page 66, in line 7, after “application” to insert “in respect of a regulated person”.
5. On page 66, in line 10, after “Act” to insert “in respect of a regulated person”.
6. On page 66, in line 12, after “Act” to insert “in respect of a regulated person”.

## CLAUSE 103

1. On page 66, in line 25, to omit “103” and to substitute “101”.
2. On page 66, in line 26, after “persons” to insert “referred to in section 100(1),”.
3. On page 66, in line 27, to omit “104” and to substitute “102”.
4. On page 66, in line 28, to omit “102” and to substitute “100”.
5. On page 66, in line 30, to omit “Any” and to substitute “For the purpose of paragraph (a), any”, and omit “the section referred to in paragraph (a)” and to substitute “section 100(3), (4),(5) and (6)”.
6. On page 66, in line 34, to omit “102” and to substitute “103”.

## CLAUSE 104

1. On page 66, in line 37, to omit “104” and to substitute “102”.
2. On page 66, from line 39, to omit subsection (2).
3. On page 66, in line 42, to omit “(3)” and to substitute “(2)”.
4. On page 66, in line 44, to omit “(4)” and to substitute “(3)”.

## CLAUSE 105

On page 66, in line 50, to omit “105” and to substitute “103”.

## CLAUSE 106

On page 67, in line 5, to omit “106” and to substitute “104”.

## CLAUSE 107

1. On page 67, in line 8, to omit “107” and to substitute “105”.
2. On page 67, from line 38, to omit “self-regulatory organisation, if the self-regulatory organisation” and to substitute “market infrastructure, if the market infrastructure”.

## CLAUSE 108

1. On page 67, in line 42, to omit “108” and to substitute “106”.
2. On page 67, in line 46, to omit “a self-regulatory organisation” and to substitute “an exchange, central securities depository, or independent clearing house”.

## CLAUSE 109

1. On page 67, in line 50, to omit “109” and to substitute “107”, and after “107” to insert “(1)”.
2. On page 68, after line 4, to add:
  - “(2) (a) Before the Minister makes any regulation under this section or section 5, the Minister must—
    - (i) ensure consultation with recognised industry bodies;
    - (ii) consider any recommendations from the registrar prior to the publication of draft regulations;
    - (iii) publish a notice of the release of draft regulations in the Gazette, indicating that the draft regulations are available on the National Treasury official website, and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice;
    - (iv) in respect of draft regulations to be published in terms of section 5(1), publish on the National Treasury official website, along with the draft regulations, a policy document that informs the draft regulations, and a report on the expediency, effect and implication of the regulations;
    - (v) in respect of draft regulations to be published in terms of section 5(1)(b), publish a notice identifying persons who may be declared to be regulated persons and inviting comment from those persons in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
    - (vi) submit the draft regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before promulgation.
  - (b) After consideration of any comments received in response to the publication and tabling of the draft regulations in terms of paragraph (a)—
    - (i) the Minister may alter the draft regulations, and need not publish the alterations before promulgating the regulations; and

(ii) after promulgating the regulations, a copy of the promulgated regulations must be tabled in Parliament.

(c) The Minister must, within a reasonable period after prescribing regulations in terms of this section or section 5, publish on the official website of the National Treasury a document summarising the comments that were received in response to the published draft regulations, and providing a brief response to those comments that were not accommodated in the final regulations promulgated by the Minister.”.

#### CLAUSE 110

On page 68, in line 6, to omit “110” and to substitute “108”.

#### CLAUSE 111

1. On page 68, in line 13, to omit “111” and to substitute “109”.
2. On page 68, in line 14, after “section” to insert “78”, to omit “82 or 83” and to substitute “80 or 81”.
3. On page 68, in line 17, to omit “95” and to substitute “93”.
4. On page 68, from line 20, to omit “4, 6(1), 23, 24(1), 26(1), 46(1)” and to substitute “4, 7(1), 24, 25(1), 27(1), 47(1), 54(1)”.
5. On page 68, in line 21, before “prohibition” to insert “a”.
6. On page 68, in line 22, to omit “77(1)(c)” and to substitute “6(7)” .
7. On page 68, after line 24, to insert the following paragraph:
 

“(d) contravenes or fails to comply with the provisions of section 73(1) commits an offence and is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years or to both the fine and such imprisonment.”.

#### CLAUSE 112

1. On page 68, in line 26, to omit “112” and to substitute “110”.
2. On page 68, in line 33, to omit “self-regulatory organisation” and to substitute “an exchange or central securities depository”.
3. On page 68, in line 36, to omit “self-regulatory organisation” and to substitute “the exchange or central securities depository”.
4. On page 68, in line 41, to omit “86 and 87” and to substitute “84 and 85”.

#### CLAUSE 113

On page 68, in line 48, to omit “113” and to substitute “111”.

#### CLAUSE 114

On page 68, in 51, to omit “114” and to substitute “112”.

LONG TITLE

On page 2, in the third line, after “trading” to insert “clearing and settlement,”.

ARRANGEMENT OF SECTIONS

To omit the Arrangement of Sections and to substitute:

ARRANGEMENT OF SECTIONS

**CHAPTER I**

**PRELIMINARY PROVISIONS**

1. Definitions and interpretation
2. Objects of Act
3. Application of Act and rules
4. Prohibitions and adherence to authorisation by authorised users, participants and clearing members

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**REGULATION AND SUPERVISION OF FINANCIAL MARKETS**

5. Powers of the Minister
6. Registrar and Deputy Registrar of Securities Services

**CHAPTER III**

**EXCHANGES**

*Licensing of exchange*

7. Application for exchange licence
8. Requirements applicable to applicant for exchange licence and licensed exchange
9. Licensing of exchange

*Functions of licensed exchange*

10. Functions of licensed exchange and power of registrar to assume responsibility for functions
11. Listing of securities
12. Removal of listing and suspension of trading
13. Application of amended listing requirements to previously listed securities

14. Disclosure of information by issuers of listed securities
15. Maintenance of insurance, guarantee, compensation fund or other warranty
16. Funds of mutual exchange

*Exchange rules*

17. Requirements with which exchange rules must comply

*Authorised users*

18. Restriction on borrowing against and repledging of securities belonging to other persons
19. Marking of or recording details of securities
20. Restriction on alienation of securities
21. Segregation of funds
22. Segregation of securities

*General provisions in relation to listed securities*

23. Use of designation “stockbroker” and related designations
24. Buying and selling listed securities
25. Reporting of transactions in listed securities

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**CUSTODY AND ADMINISTRATION OF SECURITIES**

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*Licensing of central securities depository*

27. Application for central securities depository licence
28. Requirements applicable to applicant for central securities depository licence and licensed central securities depository
29. Licensing of central securities depository

*Functions of licensed central securities depository*

30. Functions of licensed central securities depository and power of registrar to assume responsibility for functions

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***Duties of participant***

32. Duties of participant

***Uncertificated securities***

33. Uncertificated securities
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***Depository rules***

35. Requirements with which depository rules must comply

***General provisions relating to custody and administration of securities***

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38. Transfer of uncertificated securities or interest in uncertificated securities
39. Pledge or cession of securities *in securitatem debiti*
40. Ranking of interests in securities
41. Acquisition by bona fide transferee
42. Withdrawal and delivery of securities
43. Records
44. Warranty and indemnity
45. Attachment
46. Effectiveness in insolvency

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48. Requirements applicable to applicant for clearing house licence and licensed clearing house
49. Licensing of clearing house

***Functions of licensed clearing house***

50. Functions of licensed clearing house and power of registrar to assume responsibility for functions

51. Maintenance of insurance, guarantee, compensation fund or other warranty
52. Funds of mutual independent clearing house

*Clearing house rules*

53. Requirements with which clearing house rules must comply

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56. Licensing of trade repository
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58. Reporting obligations

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SCHEDULE

LAWS REPEALED OR AMENDED

To omit the Schedule of Laws Repealed or Amended, and to substitute:

**Schedule**  
**LAWS REPEALED OR AMENDED**  
*(Section 111)*

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of repeal or amendment</b>
Act No. 36 of 2004	Securities Services Act	The repeal of the whole Act.
Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2002	<p><b>1.</b> The substitution in section 45(1) for paragraph(a)(i) of the following paragraph:</p> <p>“(1) The provisions of this Act do not apply to the rendering of financial services by—</p> <p>(a) (i) any “authorised user”, “clearing member”, “licensed clearing house”, “licensed central securities depository” “licensed exchange” or “participant” as defined in section 1 of the [Securities Services Act, 2002, or exchange licensed under section 10 of that Act] <u>Financial Markets Act, 2012 that is authorised by that Act to render those financial services ;“.</u></p>
Act No. 45 of 2002	Collective Investment Schemes Control Act, 2002	<p>The substitution for section 5 of the following:</p> <p><b>“Requirement for the administration of collective investment schemes and application of Act</b></p> <p>(1) No person may perform any act or enter into any agreement or transaction for the purpose of administering a collective investment scheme, unless such person—</p> <p>(a) is registered as a manager by the registrar or is an authorised agent; or</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(b) is exempted from the provisions of this Act by the registrar by notice in the <i>Gazette</i>.</p> <p><u>(2) The provisions of this Act do not apply to the rendering of securities services by any “authorised user”, “clearing member”, “licensed central securities depository” “licensed clearing house”, “licensed exchange” or “participant” as defined in section 1 of the Financial Markets Act, 2012 to the extent that the rendering of those services are specifically supervised under that Act;”.</u></p>
Act No. 89 of 1998	Competition Act, 1998	<p><b>1.</b> The substitution for section 18(2) of the following:</p> <p>“(2) Despite anything to the contrary in this Act, the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b), and the Competition Tribunal may not make an order in terms of section 16(2), if the—</p> <p>(a) merger constitutes—</p> <p>(i) an acquisition of shares for which permission is required in terms of section 37 of the Banks Act, 1990 (Act No. 94 of 1990); <b>[or]</b></p> <p>(ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990)<b>],or section 29 of the Cooperative Bank Act, 2007; [and]</b></p> <p><u>(iii) an acquisition of shares for which approval is required in terms of section 67 of the Financial Markets Act, 2012; or</u></p> <p><u>(iv) a transaction for which approval is required in terms of section 64 of the Financial Markets Act, 2012; and</u></p> <p>(b) Minister of Finance has, in the <i>prescribed</i> manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that—</p> <p>(i) the merger is a merger contemplated in paragraph (a) <b>[(i) or (ii)]; and</b></p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990) or [section 29 of the Cooperative Banks Act, 2007] <u>the Financial Markets Act, 2012</u>, as the case may be, only.</p>
Act No. 28 of 2001	Financial Institutions (Protection of Funds) Act, 2001	<p><b>1.</b> The deletion of section 8.</p> <p><b>2.</b> The substitution for section 6A(2) of the following: “(2) The directorate may, after an investigation carried out by the directorate under [<b>Chapter VIII of the Securities Services Act, 2004</b>] <u>Chapter X of the Financial Markets Act, 2012</u>, refer an alleged contravention to the enforcement committee.”.</p> <p><b>3.</b> The substitution for section 6D(2)(a) of the following: “(a) Impose a penalty by ordering the respondent to pay a sum of money to the board; <u>and</u>”.</p> <p><b>4.</b> The substitution for section 6D(2)(b)(ii) of the following subparagraph: “(ii) if the respondent contravened section [<b>73, 75 or 76 of the Securities Services Act, 2004</b>]<u>78 of the Financial Markets Act, 2012</u>, order the respondent to pay to the board [<b>a compensatory</b>]<u>an</u> amount calculated in accordance with section [<b>77(1), (2), (3) or (4)</b>] <u>section 82</u> of that Act.”.</p> <p><b>5.</b> The substitution for section 6H of the following section: “<b>Utilisation of administrative sanction</b> (1) Any payment received by the board pursuant to an administrative sanction imposed under section 6D(2)(a) must, subject to [<b>subsection</b>] <u>subsections (2) and (3)</u>, be utilised for purposes of consumer education or the protection of the public.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(2) A compensatory amount received pursuant to an order under section 6D(2)(b)(ii) must be dealt with in accordance with section [77(7), (8) and (9) of the Securities Services Act, 2004] 82(4) to (7) of the Financial Markets Act, 2012.”.</p>
Act No. 71 of 2008	Companies Act, 2008	<p><b>1.</b> Section 1 of the Companies Act is hereby amended by—</p> <p>(i) the substitution for the definition of “central securities depository” of the following definition:  “<b>‘central securities depository’</b> has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012;</u>”;</p> <p>(ii) the substitution for the definition of “exchange” of the following definition:  “<b>‘exchange’</b> when used as a noun, has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012;</u>”;</p> <p>(iii) the substitution for the definition of “listed securities” of the following definition:  “<b>‘listed securities’</b> has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012;</u>”;</p> <p>(iv) the substitution for the definition of “nominee” of the following definition:  “<b>‘nominee’</b> [has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004)] <u>means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;</u>”;</p> <p>(v) the substitution for the definition of “participant” of the following definition:  “<b>‘participant’</b> has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012;</u>”;</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(vi) the substitution for the definition of “uncertificated securities” of the following definition:  “<b>‘uncertificated securities’</b> means any securities defined as such in section [29 of the <b>Securities Services Act, 2004 (Act No. 36 of 2004)</b>] <u>1 of the Financial Markets Act, 2012;</u>”.</p> <p><b>2.</b> The substitution in section 5(4)(b)(i) of the Act for item (ff) of the following:  “(ff) [<b>Securities Services Act, 2004 (Act 36 of 2004)</b>] <u>Financial Markets Act, 2012;</u>”.</p> <p><b>3.</b> The substitution in section 69(8)(b)(iv) of the Act for item (cc) of the following:  “(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the [<b>Securities Services Act, 2004 (Act 36 of 2004)</b>] <u>Financial Markets Act, 2012,</u> or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);”.</p> <p><b>4.</b> The substitution for section 116(4)(a)(iii) of the following:  “(iii) has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act or obtained the <u>approval of the Registrar of Securities Services in terms of section 64 of the Financial Markets Act, 2012,</u> if so required by that Act; and”.</p> <p><b>5.</b> The substitution for section 116(9) of the following:  “(9) If, with respect to a transaction involving a company that is regulated in terms of the Banks Act or the <u>Financial Markets Act, 2012,</u></p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>there is a conflict between a provision of subsection (7) and a provision of section 54 of <del>[that] the Banks Act or section 64 of the Financial Markets Act, 2012 Act</del>, as <del>the case may be</del>, the provisions of <del>[that Act]</del>those Acts prevail.”.</p>
Act No. 24 of 1936	Insolvency Act, 1936	<p><b>1.</b> The substitution for section 35A of the following:</p> <p><b>“35A. Transactions on exchange.—</b>  (1) In this section—  <b>“[exchange]” “market infrastructure”</b> means—  (a) an exchange as defined in section 1 and licensed under section [10]9 of the <del>[Securities Services Act, 2004 and for the purposes of this section includes] Financial Markets Act, 2012</del>; and  (b) a central securities depository as defined in section 1 and licensed under section 29 of that Act <del>[and which is also licensed as a clearing house under section 66 of that Act,];</del>  or</p>
		<p>(c) a clearing house as defined in section 1 of that Act and licensed under section 49 of that Act;  <b>“[exchange] rules”</b> means the exchange rules, <del>[and] depository rules or clearing house rules</del>, as defined in section 1 of the <del>[Securities Services Act, 2004]Financial Markets Act, 2012</del>;  <b>“market participant”</b> means an authorised user, a participant, a clearing member or a client <del>[or a settling party]</del>as defined in section 1 of the <del>[Securities Services Act, 2004]Financial Markets Act, 2012</del>, or any other party to a transaction;  <b>“transaction”</b> means any transaction to which the rules <del>[of an exchange]</del>apply.  (2) If upon the sequestration of the estate of a market participant the obligations of such market par-</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the <b>[exchange in question]</b> <u>market infrastructure</u> in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall in accordance with the <b>[rules of that exchange]</b> <u>rules</u> applicable to any such transaction be entitled to terminate <b>[all such]</b> <u>transactions or revoke settlement instructions</u> and the trustee of the insolvent estate of the market participant shall be bound by such termination <u>or revocation</u>.</p> <p>(3) No claim as a result of the termination <u>or revocation</u> of any transaction as contemplated in subsection (2) shall exceed the amount due upon termination <u>or revocation</u> in terms of the <b>[rules of an exchange]</b><u>rules in question</u>.</p>
		<p>(4) Any <b>[rules of an exchange]</b> <u>rules</u> and the practices thereunder which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position <u>or for the revocation of settlement instructions</u> shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to be settled on a date occurring after the sequestration, <b>[but which is, in terms of such rules and practices, to be settled on a date occurring after sequestration,]</b> or settlement of which was overdue on the date of sequestration.</p> <p>(5) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in accordance with the rules <b>[of an exchange]</b>.”</p>

No. and year of Act	Short title	Extent of repeal or amendment
Act 78 of 1998	National Payment System Act, 1998	<p>The substitution for section 8(1) of the following:</p> <p>“(1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Banks Act, the Co-operative Banks Act, the Postal Services Act, 1998 (Act 124 of 1998), [or] <u>the Mutual Banks Act or the Financial Markets Act, 2012.</u>”.</p>





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