

Ref.: 15/8

JOINT STANDARD 1 OF 2021

FINANCIAL SECTOR REGULATION ACT, 2017

FINANCIAL MARKETS ACT, 2012

REQUIREMENTS RELATING TO CENTRAL COUNTERPARTY LICENCE APPLICATIONS

The Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA), under section 107 of the Financial Sector Regulation Act No. 9 of 2017 and sections 47(3)(a) and 47(3)(c)(ii) of the Financial Markets Act No. 19 of 2012, hereby make Joint Standard 1 of 2021 - Requirements relating to Central Counterparty Licence Applications, as per the Schedule below.



O.B. MAKHUBELA
FINANCIAL SECTOR CONDUCT AUTHORITY



KUBEN NAIDOO
PRUDENTIAL AUTHORITY

Date of publication: 31 March 2021

SCHEDULE

1. Definition

In this Joint Standard “**the Act**” means the Financial Markets Act No. 19 of 2012, and “**the Regulations**” means the Regulations published by the Minister of Finance under the Act on 9 February 2018 in *Government Gazette* No. 41433, and any word or expression to which a meaning has been assigned in the Act or the Regulations bears the meaning so assigned to it unless the context indicates otherwise, and -

“**Authorities**” mean the Authority and the Prudential Authority; and

“**durable medium**” means an instrument which enables an applicant for a central counterparty licence to store information in a way that is accessible for future reference for a period of at least 5 years, and which allows the unchanged reproduction of the information stored.

2. Application for a licence

2.1 A person who applies for a central counterparty licence in terms section 47(2) of the Act must submit to the Authority a written application contained in Form CCP 1 attached to this Joint Standard, and the application must be accompanied by the information -

- (a) specified in Annexure 1 to Form CCP 1;
- (b) required in respect of members of the controlling body of the applicant specified in Annexure 2 to Form CCP 1; and
- (c) required to evidence compliance with the Regulations specified in Annexure 3 to Form CCP1.

2.2 The Authorities may by notice on the website of the Authority or Prudential Authority, determine the form and manner in which an application referred to in subparagraph 2.1 and the information referred to in Annexures 1 to 3 of Form CCP1, must be submitted.

3. Short title and commencement

This Joint Standard 1 of 2021 is called Requirements relating to Central Counterparty Licence Applications and comes into operation on the date of publication.

FORM CCP 1

FINANCIAL MARKETS ACT NO. 19 OF 2012

Application under sections 47(2) and 47(3) of the Financial Markets Act No. 19 of 2012 (the Act) for a central counterparty licence.

To the Authority

1. I _____, the chief executive officer of the _____ (hereunder) referred to as the applicant), being specifically authorised thereto by the controlling body of the applicant, to apply on behalf of the applicant for a central counterparty licence under section 47 of the Act.

2. The prescribed application fee of _____ is enclosed.

3. The place at which the business of the applicant will be carried on is _____

Signed at _____ on this _____ day of _____ 20_____.

Chief Executive Officer

Witnesses:

1. _____

2. _____

ANNEXURE 1 TO FORM CCP 1

The information, if applicable to the applicant in question, which must be contained in an application for a central counterparty licence is set out below.

1. The following administrative information must be provided:
 - (a) The postal, physical and electronic mail addresses of the applicant's registered address or head office at which it will receive all documents for the purpose of this application.
 - (b) The telephone numbers and email address of the applicant and the chief executive officer.
 - (c) A list which reflects the full names, addresses, electronic email addresses and telephone numbers of persons, if any, who alone or with associates will exercise control over the applicant contemplated in section 67(2) of the Act.
 - (d) A list which reflects the full names of the members of the controlling body of the applicant, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body.
 - (e) A list which reflects the names, physical and postal addresses, telephone numbers, email addresses of:
 - i. the bank;
 - ii. the auditor; and
 - iii. the attorney,
of the applicant.

2. A copy of the founding documents of the applicant which regulates at least the following:
 - (a) the structure of the applicant;
 - (b) the objects of the applicant;
 - (c) the legal powers of the applicant as well as the powers of the members of the controlling body;
 - (d) the composition and functions of the controlling body;
 - (e) the procedures for election or appointment of members of the controlling body, their terms of office, and when membership may be terminated;
 - (f) the procedures for the calling of meetings of people who hold ownership interests in the applicant;
 - (g) the voting powers of people who hold ownership interests in the applicant;
 - (h) the appointment of auditors; and

- (i) the procedures for the dissolution of the applicant.
3. Additional information which must be contained in an application for a central counterparty licence are as follows:
- (a) A copy of the proposed rules, policies, procedures and contracts of the applicant, as approved by the controlling body of the applicant and consistent with section 53 of the Act;
 - (b) The range and type of functions to be provided by the central counterparty;
 - (c) The range and type of securities in respect of which those functions are to be provided by the central counterparty and details of the CCP model in respect of the specific securities;
 - (d) A list of clearing members of the applicant, where applicable;
 - (e) The arrangements in place to ensure integrity of the market and its clearing members;
 - (f) The benefits to clients of clearing members of using the central counterparty;
 - (g) The arrangements in place to ensure compliance with the requirements prescribed in joint standards for clearing or settlement of transactions in securities or both, where applicable;
 - (h) The arrangements in place for an effective and reliable infrastructure to facilitate the clearing of securities cleared by the applicant;
 - (i) The arrangements in place to manage the material risks associated with the operation of the applicant;
 - (j) The arrangements in place for the efficient and effective monitoring of all transactions cleared through the applicant and for the supervision of clearing members so as to ensure compliance with the clearing house rules, and the Act, and the resources of the applicant available to perform this function;
 - (k) The governance arrangements in place that are clear and transparent, promote the safety and efficiency of the central counterparty, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;
 - (l) The arrangements in place for security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the central counterparty and the maintenance of records;
 - (m) The margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio and market it serves;
 - (n) The arrangements in place for the establishment and maintenance of a default fund to mitigate the risk should there be a default of a clearing member and to ensure, where possible, the obligations of that clearing member continue to be fulfilled;

- (o) The arrangements in place to maintain initial capital as prescribed, including an appropriate buffer;
 - (p) The arrangements in place to collect and manage collateral held for the performance of the obligations of the clearing members or clients of clearing members;
 - (q) A clearly defined default waterfall where the obligations of the defaulting clearing member, other clearing members and the central counterparty are legally and clearly managed;
 - (r) An appropriate segregation and portability regime to protect the positions of clients of a defaulting clearing member; and
 - (s) The necessary infrastructure, resources and governance to facilitate its post trade management functions and, in the event of default of one or more of the clearing members-
 - (i) ensure that sufficient risk policies, procedures and processes are in place; and
 - (ii) have sound internal controls for robust transaction processing and management.
4. Details of arrangements to be implemented in order to comply with section 62 of the Act, read with Board Notice 1 of 2015 and any other requirements as may be prescribed by the Authorities.
5. A statement by the chief executive officer of the applicant confirming that:
- (a) all clearing members of the applicant have been evaluated and, on the information available, are found to be of good character and integrity; and
 - (b) on the information available, all clearing members of the applicant comply with the minimum capital adequacy requirements determined by the applicant in its rules.
6. Details of any unregulated business that will be carried on by the applicant.
7. A report from the auditor of the applicant or an independent third party as agreed to by the Authorities confirming that:
- (a) adequate systems and procedures are in operation relating to risk reduction, particularly by means of processing, physical, logical security, back-up and contingency controls; and
 - (b) the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to the provision of relevant functions and the affairs of clearing members against any unauthorised access, alteration, destruction or dissemination.

8. A report by an independent party, including an external auditor, agreed to by the Authorities, confirming that the applicant has appropriate information technology in place to report to the Authorities and to effectively handle the electronic clearing and settlement services and communication including:
 - (a) a secure electronic messaging system;
 - (b) interface specifications;
 - (c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the central counterparty commences operations;
 - (d) adequate disaster recovery hardware and related facilities located off-site; and
 - (e) security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the clearing house or central counterparty.

9. Details of compensation fund(s); insurance, guarantee or other warranty of the applicant:
 - (a) The applicant must submit a report of an independent assessment, including the findings of the independent assessment, that was undertaken to determine whether the applicant, in terms of its risk profile or business model, should have insurance, a guarantee, compensation fund or other warranty in place to provide compensation to clients of clearing members;
 - (b) Where the findings of the independent assessment referred to in subparagraph (a) determine that the applicant should have insurance, a guarantee, a compensation fund or any other warranty in place, or if the Authorities, due to the risk profile or business model of the applicant are of the opinion that the applicant needs insurance, a guarantee, a compensation fund or any other type of warranty to be in place in order to provide compensation to clients of clearing members, the applicant must provide:
 - (i) Details of any insurance, guarantee, compensation fund or other warranty that the applicant proposes to put in place to provide compensation to clients of clearing members of the applicant; and
 - (ii) In respect of compensation fund(s), a copy of the pro forma policy document, the manner of funding, and the rules of the fund (where applicable).

10. Compliance with the Regulations:
 - (a) The applicant for a central counterparty licence must demonstrate to the satisfaction of the Authorities and the South African Reserve Bank, compliance with the Regulations;

- (b) The information provided evidencing compliance with the Regulations must be provided in a durable medium; and
 - (c) An applicant for a central counterparty licence must give a unique reference number to each document it submits and must ensure that the information submitted clearly identifies which specific requirement of the Regulations it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annexure 3 to Form CCP1.
11. The applicant for a central counterparty licence must supply any other information, which the Authorities and the South African Reserve Bank may reasonably require.

ANNEXURE 2 TO FORM CCP 1

The information required in respect of members of controlling body of the applicant is set out below.

1. An application for a licence must be accompanied by the following information in respect of members of the controlling body of the applicant:
 - (a) a curriculum vitae in respect of each member of the controlling body indicating the nature and extent of the member's qualifications and experience in the business operated by the applicant and the details of three referees;
 - (b) the information required in terms of the Determination of Fit and Proper Requirements for Market Infrastructures;
 - (c) an indication if proceedings referred to in paragraphs (3)(a) to (t) and paragraph 5 of the Determination of Fit and Proper Requirements for Market Infrastructures are pending; and
 - (d) full details of any fact which may have an impact on the evaluation by the Authorities of the good character and integrity of a member of the controlling body.

