



GUIDANCE NOTICE NO.1 OF 2019

FINANCIAL MARKETS ACT, 2012 (NO. 19 OF 2012)

GUIDANCE NOTICE ON WHAT CONSTITUTES AN EXCHANGE AS CONTEMPLATED IN THE FINANCIAL MARKETS ACT, 2012

Authority and purpose of the guidance notice

1. This guidance notice is issued in terms of section 6(3)(k) of the Financial Markets Act, 2012 (No. 19 of 2012) ('the Act') and section 141 of the Financial Sector Regulation Act, 2017 (No. 9 of 2017).
2. The purpose of this guidance notice is to provide legal certainty in areas of the Act where there is legal uncertainty regarding the application of the Act.
3. This notice also serves to caution the public to refrain from purporting to be an exchange or referring to themselves as an exchange if they are not a licensed exchange in terms of the Act.

Background

4. The Financial Sector Conduct Authority (FSCA) has received numerous queries and complaints from the public in respect of institutions purporting to be exchanges or performing exchange activities while they are not licensed as exchanges in terms of the Act.

5. Section 4(2)(a) of the Act prohibits a person who is not a licensed exchange from purporting to be an exchange or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and an exchange.

Legal framework

6. The Act defines an **exchange** as “a person who constitutes, maintains and provides an infrastructure-
 - (a) for bringing together buyers and sellers of securities;
 - (b) for matching bids and offers for securities of multiple buyers and sellers; and
 - (c) whereby a matched bid and offer for securities constitutes a transaction”.
5. The definition of an “**exchange**” is independent of the categories of securities, volume of securities traded, market capitalisation, number of investors or the number of issuers whose securities trade on the infrastructure.
6. A person who maintains or provides an infrastructure which meets the three requirements set out in the definition, accordingly operates an exchange, regardless of whether the infrastructure is provided for transactions in only one security.

Licensing of exchanges

7. The Act clearly sets out the measures required to ensure fair, efficient and transparent financial markets. Non-compliance with any one of these requirements could have an adverse effect on investor protection and the stability of the financial markets.
8. Section 7(1) of the Act provides that all exchanges must be licensed under the Act. In terms of section 109(c) of the Act a person who acts as an exchange without being licensed as such commits an offence and is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

9. Sections 7 to 17 of the Act set out the main requirements that applicants for an exchange licence must meet.
10. Board Notice 104 of 2015 contains minimum information required by applications for an exchange licence. This document is available at www.fsca.co.za under the *Licensing and Registration* link.

Guidance

11. Any person wishing to operate an exchange must apply for an exchange licence in terms of section 7 of the Act.
12. Persons currently purporting to be an exchange or providing an exchange infrastructure without the requisite licence may be doing so in contravention of the Act and must as such take the necessary steps to ensure compliance with the provisions of the Act.

Commencement

13. This guidance notice comes in effect on the date of publication.