



Financial Sector
Conduct Authority

FSCA COMMUNICATION 19 OF 2024 (FM)

The operations of Multilateral Trading Facilities and Exchanges in South Africa in terms of the Financial Markets Act, 2012

1. PURPOSE

- 1.1 The purpose of this Communication is to inform stakeholders of the Financial Sector Conduct Authority's (FSCA) view regarding the permissibility of Multilateral Trading Facilities (MTFs) in respect of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) and the operation of MTFs in the South African financial markets.
- 1.2 The FSCA has been informed that the market is under the impression that the FSCA approved a licensed exchange to operate an MTF model. An MTF is understood to be a trading venue that serves as an alternative to a traditional trading exchange and does not require the listing of a security or the enforcement of listing requirements by the platform before the security can be traded on the trading platform. Such a platform, would not, as an example, require an application from a potential or existing issuer to list on its platform.
- 1.3 The FSCA has not enabled or issued any such MTF dispensation or approval, and it does not have the power in terms of the existing legal framework to approve the operating model of an MTF, as the current legal framework does not make provision for licensing of an MTF. The FSCA continuously evaluates its regulatory scope in line with changing market conditions and it is with this in mind that it has become necessary to provide the FSCA's view in this regard.

2. LEGAL FRAMEWORK

- 2.1 The legal framework that governs the regulation of financial markets and provides the powers to the FSCA to license exchanges and other market infrastructures is the FMA. An **exchange** is defined in the FMA to mean:
 - "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."*
- 2.2 An MTF is not permitted in terms of the FMA or any other domestic legal framework. There are no licensing requirements or ongoing obligations provided for in the FMA for an MTF model. There are, however, such requirements for exchanges. The licensing requirements in the FMA are intended to ensure that certain basic safeguards for investors, who trade on an exchange, are in place. If the exchange operates a model that is contrary to the existing legal framework, such as an MTF, investors might not be protected in that market because the FMA doesn't apply and there won't be a level playing field for exchanges that do operate within the ambit of the FMA.

3. CONCLUSION AND ENQUIRIES

- 3.1 It is important to reiterate that the current legal framework does not permit or provide for an MTF, it only recognises and allows for exchanges as defined in the FMA. Investors therefore might not have the critical protection afforded by the FMA when operating on these facilities. All entities who believe that they may be operating an MTF should consider obtaining legal advice to ensure that their conduct is legal and in terms of the FMA.
- 3.2 For more information regarding this communication, please contact Mr. Shreelin Naicker, Departmental Head for Markets, Issuers and Intermediaries, under the Market Integrity and Decision Sciences Division, at shreelin.naicker@fsca.co.za.



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