

STATUTORY INSTRUMENT NO. OF 2020

**The Securities Act
(Act No. 41 of 2016)**

**The Securities (Capital Market Operators) (Licensing and Operations
Requirements) Rules, 2020**

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IN EXERCISE of the powers contained in Parts III, V and VI and section 221 of the Securities Act, 2016 the following Rules are hereby made:

PART I

PRELIMINARY PROVISIONS

- Title 1. These Rules may be cited as the Securities (Capital Market Operators) (Licensing and Operations Requirements) Rules, 2020.
- Interpretation 2. (1) In these Rules, unless the context otherwise requires –
- “adverse report” means a report which points to any conviction of a person for a crime, excluding a traffic offence, which the Commission is satisfied would have a detrimental effect on the capital markets or the public interest, if such person is allowed to carry on business as a capital markets operator or manage the affairs of a capital markets operator;
- “business hours” means the working times when the Commission is open to the public for business, from Monday to Friday, except public holidays;
- “business plan” means a plan developed by a capital market operator that summarises the operational and financial objectives of the business, containing the detailed plans and budgets, business goals, the methods on how the goals shall be attained and time frame within which the goals shall be achieved, and includes a description of the nature of the

business, background information on the organization, the capital market's financial projections, and the strategies the capital markets operator intends to implement to achieve the stated targets; or a plan demonstrating the feasibility of the prospective new business of the capital market operator and providing a roadmap for its first five years of operation;

“Chinese wall” means a virtual information barrier erected, within a capital markets operator’s firm, between those who have material and non-public information and those who do not, in order to restrict the passage of information so as to prevent conflicts of interest;

“expert” means any professional and independent person with requisite skills and knowledge and who is recognized by a capital markets operator or participant, and includes an auditor;

“for-cause inspection” means an inspection conducted by the Commission or a self-regulatory organisation to investigate a matter of concern that may adversely affect the capital markets;

“minimum capital requirements” means the minimum paid up capital or capital adequacy requirements prescribed by the Commission;

“participant” means a capital markets operator that conducts securities business on a central securities depository;

“plan” includes all contracts, authorisations or

arrangements, whether or not set out in the business plan;

“retail portfolio manager” means a capital markets operator that manages portfolios for retail investors;

and

“transfer agent” means a capital markets operator that records all matters connected with the issue, transfer, cancellation and redemption of securities to reflect changes in ownership, and includes a company’s paying agent who pays out interest, cash and stock dividends or other distributions to stock and bondholders.

(2) A word or term defined in the Act, the Companies Act, the Banking and Financial Services Act and the other Rules and Regulations and used in these Rules, but not defined, shall have the same meaning assigned to the word or term in those Acts and other Rules and Regulations, unless the context otherwise requires.

Act No. 10
of 2017

Act No. 7
of 2017

Application

3. These Rules shall apply to the following capital markets operators licences, as the case may be:

- (a) securities exchange;
- (b) clearing and settlement agencies;
- (c) dealers;
- (d) investment advisers;
- (e) underwriters;
- (f) share transfer agents;
- (g) representatives;
- (h) managers, custodians and trustees of a collective investment scheme;
- (i) credit rating agencies; and

- (j) any other capital markets operator as prescribed in rules issued by the Commission.

PART II

MATTERS INCIDENTAL TO LICENCING AND OPERATIONS

Compliance
officer

3. (1) A compliance officer designated by a capital markets operator, in accordance with section 206 of the Act, shall possess requisite knowledge of relevant capital market Rules and Regulations for effective performance of the functions outlined in that section.

(2) A compliance officer shall immediately and independently report to the Commission any non-compliance by the capital market operator in the performance of its functions.

(3) A compliance officer shall be responsible for educating and guiding other members of staff on compliance related issues.

(4) A capital markets operator shall, for the effective operations of the compliance officer and compliance unit –

- (a) provide adequate resources to the compliance officer and compliance unit;
- (b) provide access to all records, reports and financial statements to the compliance officer;
- (c) establish and ensure compliance with the code of conduct; and
- (d) implement and cause to be implemented measures and recommendations made on compliance matters.

Inspection by self-regulatory organisations

4. (1) Subject to these Rules, a capital market operator shall permit a duly authorised officer of a self-regulatory organization, to which the capital market operator is a member, to examine the affairs, records and reports of the capital markets operator, to ensure compliance with the Act, and Rules and Regulations.

(2) A self-regulatory organization shall submit a copy of the inspection report to the Commission not later than thirty days after the quarter in which such inspections were carried out.

(3) The Commission may require a self-regulatory organization to furnish copies of working papers for the inspection undertaken pursuant to this Rule.

(4) Where a self-regulatory organization undertakes a for-cause inspection, the self-regulatory organisation shall forthwith submit the inspection report to the Commission.

PART II NOTICE REQUIREMENTS

Notification, approval and management of branches of capital markets operator

5. (1) Every capital markets operator shall notify the Commission before establishing a new branch or office.

(2) Where a capital markets operator intends to close any of its branches or offices, it shall give the Commission not less than thirty days' notice of its intention to do so, giving reasons for the closure.

(3)

Notification of change in business name, address or organisation structure, etc

6. A capital markets operator shall not make any changes to the following, unless it gives, to the

Commission, thirty days written notification of its intention to change:

- (a) the registered name of the company;
- (b) the address of the principal office or, if different, the address of the place for service of notices or documents;
- (c) its organisation structure, processes, procedures or size of business;
- (d) anything related to its business that may have a material impact on the capital market operator's business, risk profile or resources; or
- (e) any information supplied with the application for a licence.

Material event or change in status

7. A capital markets operator shall notify the Commission within twenty-four hours of-

- (a) any material event or change in its business or operations;
- (b) any development pertaining to the insolvency, business rescue or liquidation of any related company or a member in their financial group;
- (c) the formation, acquisition, disposal or dissolution of a related company specifying the related company's name and its principal business;
- (d) the imposition on the capital markets operator of disciplinary measures or disciplinary sanctions by any regulatory authority;
- (e) the conviction of the capital markets operator for any offence under a law

relating to banking or other financial services, companies, insolvency, or for any offence involving fraud or act pertaining to lack of integrity or dishonesty, or the imposition of any penalty for tax evasion;

- (f) the withdrawal or refusal of an application for, or revocation of, membership of an exchange, clearing and settlement agency or self-regulatory organization;
- (g) an investigation of the affairs of the capital markets operator by a law enforcement agency or regulatory authority;
- (h) an act of market misconduct;
- (i) any material changes to the information previously provided in the complete application;
- (j) any significant failure in the capital markets operator's systems or controls; and
- (k) any event that results in a material change in its minimum capital requirements.

Resignation, dismissal or appointment of directors and senior management

8. (1) A capital markets operator shall notify the Commission, within one month of the occurrence, of the resignation, dismissal or appointment of any of the following persons:

- (a) chief executive officer;
- (b) director;
- (c) senior management officer;

- (d) compliance officer; or
- (e) officer reporting money laundering activities.

(2) If any of the persons, referred to in sub-rule (1), is dismissed, the capital market operator shall provide details of the reasons for the dismissal.

Change in control of capital market operator

9. A capital markets operator shall obtain the prior approval of the Commission for any arrangement or agreement that may lead to a change in the controlling interest of the capital markets operator.

Notice on cease of business

10. (1) A capital markets operator shall, in writing notify the Commission, thirty days in advance, of its intention to cease to carry on business as a capital markets operator.

(2) The Commission

34. Where a licensee decides to withdraw from securities business he shall-

(a) forthwith notify the Commission and each of his customers of such decision; and

(b) ensure to the satisfaction of the Commission that any such business which is outstanding is properly completed or transferred to another licensee. Cessation of business

PART III

RECORDS, REPORTS, RETURNS, INSPECTIONS AND EXAMINATION

Maintenance of adequate records of affairs and transactions

11. (1) A capital markets operator shall maintain correct and adequate records of its affairs and all transactions it is involved in as required by the Act, these Rules and other Rules and Regulations, including the following:

- (a) “know your client” documentation;
- (b) clients’ suitability analysis;
- (c) clients’ terms of business (services agreement);
- (d) recommendations to clients;
- (e) clients’ orders;
- (f) register of clients’ orders with time stamp;
- (g) clients’ contract notes (when the capital market operator is acting as a dealer);
- (h) clients’ trades;
- (i) clients’ accounts (cash and securities);
- (j) clients’ receipts and payments (money and securities);
- (k) clients’ statement and other communications (in writing and phone calls recordings) with clients;
- (l) clients’ complaints and remedial actions taken;
- (m) commercial communications with recommendations (circulars, advertisements, bulletins, etc.);
- (n) trading book;
- (o) trades executed and settled;
- (p) records on commissions earned;
- (q) contract books;
- (r) accounting records; and
- (s) bank statements and bank reconciliation accounts.

(2) The Commission may issue directions as to the nature, form and content of the transactions and records to be kept, as specified in sub-rule (1), and a capital markets operator shall comply with such directions.

(3) A capital markets operator who fails to comply with a directive of the Commission shall be liable to an administrative penalty imposed by the Commission.

Accessibility of records and reports, etc

12. A capital markets operator shall preserve and maintain its records, books, financial statements and reports in a readily accessible place, which shall be available to the Commission without notice.

Retention period for records and reports, etc

13. (1) A capital markets operator shall retain its records, books, financial statements and reports for a period of ten years from the end of the year during which the last entry was made on or in such records, books, financial statements and reports.

Accessibility of records and reports, etc

14. A capital markets operator shall, upon request from a client or a former client, make available within a reasonable period, any records, books, financial statements and reports kept during the ten year retention period, which may include the following:

- (a) any written material or records which relate to that client and which the capital markets operator has sent or is required to send; and
- (b) copies of any correspondence received from or sent to the client relating to securities business.

Periodic information requirements

15. (1) A capital markets operator, except a dealer's representative or an investment adviser's representative, shall file, monthly, with the Commission, within fifteen days of the end of each calendar month –

- (a) its balance sheet;
- (b) income and expenditure statement;
- (c) capital adequacy return, where applicable; and
- (d) any other return as the Commission may specify.

Quarterly
reports by
capital
markets
operators

16. (1) A capital markets operator shall file, not later than thirty days from the end of each quarter, with the Commission in accordance with the standards issued by Zambia Institute of Chartered Accountants, a quarterly financial report which shall contain the following, by way of notes, with regards to the services provided by it, as the case may be:

- (a) accounting policy changes;
- (b) seasonality or cyclicity of operations;
- (c) unusual items or significant events occurring during the quarter;
- (d) changes in estimates;
- (e) issuance, repurchase, and repayment of debts and equity securities;
- (f) dividends accruing or paid;
- (g) items of segment information (where applicable);
- (h) long term investments;
- (i) restructuring and reversals of restructuring provisions;
- (j) discontinuing operations;
- (k) write-down of inventory to net realizable value;
- (l) impairment losses of property, plant, equipment, intangible or other assets,

and reversal of such impairment losses;

- (m) litigation and litigation settlements;
- (n) debt default or any breach of a debt covenant that has not been corrected subsequently;
- (o) related party transactions;
- (p) acquisitions and disposals of property, plant and equipment; and
- (q) commitments to purchase, or purchase of, property, plant and equipment.

(2) The chief executive officer and chief financial officer shall, in filing the quarterly report, attach a duly signed letter certifying that to the best of their knowledge and belief, the information submitted is true and correct.

(3) A capital markets operator shall publish its quarterly balance sheet, income and expenditure statement and cash flow statements in at least one national daily newspaper with wide circulation, except that the accounting policies, notes and other relevant information shall be posted on the capital markets operator's website which address shall be disclosed in the newspaper publication.

(4) Any capital markets operator which fails to file a quarterly report with the Commission shall be liable to an administrative penalty imposed by the Commission for every day that the default continues.

17. (1) A capital markets operator shall file, within ninety days of the date of the its financial year, with the Commission and simultaneously with the relevant securities exchange, in accordance with the

standards issued by Zambia Institute of Chartered Accountants, an annual report which shall include, with regards to the services provided by it, as the case may be:

- (a) a balance sheet;
- (b) income and expenditure statement;
- (c) changes in equity;
- (d) cash flow statement;
- (e) comparative financial statements that cover the two most recent financial years;
- (f) audited consolidated financial statements, where the company is a related or a group company; and
- (g) its corporate governance policy.

(2) The chief executive officer and chief financial officer shall, in filing the annual report, attach a duly signed certification letter attesting the inclusion of the matters specified in sub-rule (1).

(3) An auditor of a capital market operator shall, in the annual report, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the capital markets operator.

(4) The annual report shall state the level of compliance of the capital markets operator with the corporate governance requirements specified in Part XI of these Rules.

(5) A capital markets operator who fails to file its annual report with the Commission shall be liable to an administrative penalty imposed by the Commission for every day the default continues.

Returns of issuer

18. An issuer shall, within such periods as the Commission may determine, make the following returns to the Commission:

- (a) allotment proposal;
- (b) statement of account as at the date of allotment;
- (c) evidence of transfer of the proceeds of the issue to the issuer;
- (d) certified copies of returns filed with PACRA;
- (e) semi-annual statement of activities in the capital markets including staff movement; and
- (f) evidence of publication of results of allotment in at least two newspapers of wide circulation.

Report on unclaimed dividends

19. All listed companies shall file with the Commission in the prescribed form a report of unclaimed dividends on a half-yearly basis.

Records to be maintained by members of securities exchange, self-regulatory organisation or association of capital markets operators

20. (1) Every member of a securities exchange, a self-regulatory organisation or association of capital markets operators who transacts business or securities directly with the public or other members of an exchange or a capital markets operator who transacts business in securities through the medium of any member, and every dealer shall make and keep current the following books and records, manually or electronically, relating to that member's business:

- (a) records of original entry containing itemized daily records of –
 - (i) all purchases and sales of securities;

(ii) all receipt and deliveries of securities, including certificate numbers;

(iii) all receipts and disbursements of cash and all other debits and credits;

and such records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any, the trade date and name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) ledger or other records reflecting all assets and liabilities, income and expenditure and capital accounts;

(c) ledger accounts or other records itemizing separately the account of every customer and each member, dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account, and all other debits and credits to such accounts and such ledgers or other records shall reflect the following:

(i) securities in the transfer process;

(ii) dividends and interest received;

(iii) monies borrowed and loaned, together with a record of the collateral and any substitution in the collateral; and

- (iv) securities not received and delivered;
- (d) a memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities whether executed or not executed and such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation, and orders entered pursuant to the exercise of discretionary power by the member, dealer or any employee thereof shall be so designated;
- (e) a memorandum of each purchase and sale of securities for the account of a member or dealer showing the price and to the extent feasible, the date of execution, and whether the purchase or sale is with a customer other than a dealer;
- (f) a memorandum of each order received showing the date and time of receipt, the terms and conditions of the order and the account in which it was entered;
- (g) copies of confirmation of all purchases and sales of securities, and copies of notices of all other debits and credits

for securities, cash and other items for the account of customers and partners of the member or dealer;

- (h) a record in respect of each cash account with the member or dealer containing the name and address of the beneficial owner of the account, provided that, in the case of a joint account or the account of a company, the records required shall be those in respect of the person or persons authorized to transact business for the account;
- (i) a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date; provided that the trial balance and computation shall be prepared concurrently at least once a month;
- (j) a questionnaire or application for employment executed by each member or dealer which questionnaire or application shall be approved in writing by an authorized representative of the member or dealer and shall contain at least the following information in respect of that person:
 - (i) name, address and the date of first appointment or other

association with the member or dealer;

- (ii) date of birth;
- (iii) the educational institutions attended and qualifications obtained;
- (iv) a complete consecutive statement of all previous employment for at least the preceding ten years, including the reasons for leaving each prior employment and whether the employment was part-time or full-time;
- (v) a record of any refusal of membership or registration and of any disciplinary action taken or sanctions imposed by any government agency, the securities exchange, any self-regulatory organisation or association of capital market operators, or violation of any written law or foreign law;
- (vi) a record of any permanent or temporary injunction entered against such person or any member or dealer with whom the person has associated in any capacity at the time the injunction was entered;
- (vii) a record of arrest, indictments or convictions for any felony or

misdemeanour, except traffic offences; and

- (viii) a record of any other name or names by which the person has been known or which the person has used.

(2) For the purpose of this rule, the word “instruction” shall include instructions between partners and employees of a member or dealer who transmits an order or instruction for execution, or if it is not so transmitted, the time when it is received.

(3) Every member of a securities exchange and a dealer shall preserve for a period of not less than ten years, all the records required to be made pursuant to this rule.

Records to be maintained by participants

21. (1) A participant shall maintain the following records and documents:

- (a) records of all the transactions entered into with a depository and with a client;
- (b) details of securities dematerialized or rematerialized on behalf of clients with whom it has entered into an agreement;
- (c) records of instructions received from clients and statements of account provided to clients; and
- (d) records of approval, notice, entry and cancellation of pledges.

(2) A participant shall make available for the inspection of the depository in which it is a participant, all the records referred to in sub-rule (1).

(3) For the effective exercise of inspections, a participant shall allow persons authorized by the depository in which it is a participant, to enter its premises during normal office hours and inspect its records.

(4) A participant shall notify the Commission of the place where the records and documents are maintained.

(5) A participant shall retain the records and documents for a minimum period of ten years from the date of last entry in the records or date the document was made.

(6) A participant who enters into an agreement with more than one depository shall maintain the records mentioned in sub-rule (1) with respect of each depository.

Safety of records of participants

22. Where records are kept electronically by a participant, it shall ensure that the integrity of the data processing systems is maintained at all times and take all precautions necessary to ensure that the records are not lost, destroyed or tampered with and shall ensure that sufficient back up of records is available at all times, off site from the participant's office.

Reconciliation of participant's records

23. A participant shall reconcile its records with every depository in which it is a participant on a daily basis.

Participants' returns

24. A participant shall submit quarterly returns to the Commission and every depository in which it is a participant in the format specified by the Commission and the rules of the depository.

Extension of
time for filing
records and
reports

25. (1) If a capital markets operator fails to file any financial statement, record or report for any year within the time prescribed in the Act or Rules and Regulations, the capital markets operator may file, with the Commission, an application for an extension of time to a specified date which shall not be more than thirty days after the date as at which the financial statement, record or report was due to be filed.

(2) An application for extension of time to file any financial statement, record or report shall state the reasons for the requested extension and shall also include an agreement to file the financial statement, record or report on or before the date specified by the Commission.

(3) An application filed, as provided sub-rules (1) and (2), shall be deemed granted, unless the Commission within seven days after receipt thereof, sends an order, to the applicant, denying the request for extension of time.

Expert's
reports

26. (1) An expert's report shall be duly signed and dated by the expert making the report.

(2) Where the report is by an auditor, it shall contain amongst other things –

- (a) a reasonably comprehensive statement as to whether the auditor reviewed the internal control systems with respect to safeguarding the securities of customers;
- (b) a statement whether the audit was conducted in accordance with generally accepted auditing standards applicable in the circumstances; and

(c) a statement whether the audit made, omitted any procedure deemed necessary by the auditor under the circumstances of the particular case, and detailing such procedures.

(3) An expert's report by an auditor shall state clearly the auditor's opinion with respect to the financial statements covered by the report and the accounting principles and practices reflected therein.

(4) Any matter to which an auditor takes exception shall be clearly identified and the exception thereto clearly and specifically stated to the extent practicable and the effect of each of the exceptions on the related item of the report shall be given.

(5) Nothing in this rule shall be construed to imply authority for the omission of any procedure, which an auditor would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by these Rules.

Examination of affairs and records etc, required to be maintained

27. (1) The Commission may, during business hours, examine the records and affairs of, or call for information from, any capital market operator or participant.

(2) A capital markets operator or participant whose records or affairs are being examined and every director, senior manager and employee, shall produce to an authorised officer such books, securities, accounts, records and other documents in its custody or control and furnish the officer with such statements and information relating to its activities as the officer may require, within the period specified by the officer.

(3) A capital markets operator or participant whose records or affairs are being examined shall allow an authorised officer access to the capital markets operator's or participant's premises, related premises and computer data and provide copies or transcripts of books, securities, accounts, records and other documents that are relevant to the examination.

(4) An authorised officer may examine and record the statements of any director, chief executive officer, senior manager or other employee of the capital markets operator or participant.

(5) Every director, senior manager or other employee of the capital markets operator or participant shall give the authorised officer examining the records and affairs of the capital markets operator or participant all the assistance required during the examination.

(6) Where the Commission considers it necessary to do so, after an examination performed under this rule, it may appoint an auditor or other investigator in accordance with section 161 of the Act, to further inspect or investigate the books, securities, accounts, records and other documents or affairs of the capital markets operator or participant.

(7) The Commission shall recover from the capital markets operator or the participant such expenses, including the fees of the auditor or other professional as may be incurred by it for the purposes of the examination, audit or investigation.

(8) Any capital markets operator or participant who fails or neglects to comply with any request or requirement specified in this rule, commits an offence and shall be liable, on conviction to the general penalty under the Act or the Commission may impose the

administrative penalty on the capital markets operator or participant, in addition to taking any disciplinary measure against the capital markets operator or participant.

Power of Commission to inspect records, documents and reports

28. (1) The Commission may, pursuant to section 163 of the Act, at any time it deems fit, inspect the records, documents, reports and affairs of or call for information from any capital markets operator or participant.

(2) A capital market, operator or participant who is being inspected and every director, chief executive officer, senior manager, officer and employee of the capital markets operator or participant shall produce to the inspector such books, securities, accounts, records and other documents in its custody or control and furnish any inspector, or person appointed by the Commission to undertake an inspection, with such statements and information relating to its activities as may be required, within such period as the inspector, or other person appointed by the Commission to undertake an inspection, may specify.

(3) A capital markets operator or participant shall comply with section 163 of the Act and also extend such facilities as are suitable for examining any books, records, documents and computer data in the possession of the capital markets operator or participant.

(4) An inspector, or a person appointed by the Commission to undertake an inspection, may record the statements of any director, chief executive officer senior manager, officer or employee of the capital markets operator or participant.

(5) The Commission shall recover from a capital markets operator or participant such expenses relating to the inspection, including fees paid to a person appointed by the Commission to undertake an inspection.

(6) Any capital markets operator or participant who fails or neglects to comply with this rule shall be liable to the penalty specified in section 163 of the Act.

Inspection of documents filed with Commission

29. (1) Subject to rule 36, every document filed or delivered for filing, with the Commission pursuant to the Act and the Rules and Regulations, shall be open to inspection by any person upon payment of a fee prescribed by the Commission.

(2) A person may obtain copies or certified true copies of any document filed or delivered for filing, pursuant to the Act and the Rules and Regulations, with the Commission, on payment of a fee prescribed, except that documents delivered to the Commission for filing in respect of licensing, shall only be available for inspection before the Commission makes a decision to grant the capital markets operator a license.

Time for inspections and copying of documents

30. (1) Documents, specified in rule 34 shall be available for inspection at the Commission's office during business hours between 11 hours and 14 hours.

(2) A person shall not be allowed to make more than one copy of any document and despite rule 34, the Commission reserves the right to classify certain documents in accordance with any written law and such classified documents shall be exempted from disclosure or inspection by the public.

PART V

PROVISION OF SECURITIES BUSINESS TO CLIENTS

Conduct of capital markets operator in capital market

31. A capital markets operator shall –
- (a) in undertaking its business, act honestly, fairly and professionally, in fulfilling the interests of its clients in the capital market;
 - (b) before conducting securities business with or for any client, comply with all anti-money laundering obligations;
 - (c) obtain information from the client concerning the client's financial situation, investment experience and investment objectives relevant to the services to be provided before the capital markets operator deals, advises, or manages for a client; and
 - (d) update any information, obtained from a client, on an annual basis.

Confidentiality of information

32. A capital markets operator shall keep information obtained from a client confidential, except where the disclosure of the information is required by the Act and other rules and Regulations or the disclosure is required through a court order.

Client suitability obligations

33. A capital markets operator shall not deal, advise or manage any business for a client, unless the advice or transaction is suitable for that client having regard to the facts disclosed by the client and other relevant facts about the client of which the capital markets operator should be aware, including –

- (a) the client's knowledge and understanding of the relevant securities and capital markets products, and the risks involved;

- (b) the client's financial standing (net worth or portfolio);
- (c) client's experience (length of time the client has been active, frequency of business); and
- (d) the client's investment objectives.

Agreement
with client

34. A capital markets operator shall agree on the terms of business with a client and sign a contract, detailing, as applicable –

- (a) the date of commencement of the securities services to be provided;
- (b) the name and addresses of the parties to the contract;
- (c) the securities services to be provided;
- (d) the investment objectives to be achieved;
- (e) restriction on the types of securities services to be provided;
- (f) payments for the securities services;
- (g) the handling of complaints and dispute resolution;
- (h) the terms relating to amendments, terminations and cancellations; and
- (i) such other covenants, warranties and assurances as may be necessary to ensure that the interests of the parties are served.

Risk
disclosure

35. A capital markets operator shall not deal, advise or manage any securities business for a client, unless the capital market operator has taken reasonable steps to explain to the client the nature of the risks involved in the transaction.

Fees and
commissions
disclosures

36. A capital markets operator shall inform a client of the method of calculating commissions and fees for all services to be provided and how these fees and commissions shall be paid, including any incentive bonus related to the profits achieved by the client.

Conflicts of
interest
relating to
clients
business

37. (1) Without prejudice to any code of ethics or conduct relating to capital markets operators, the following shall be considered as conflicts of interest in relation to a clients business:

- (a) making financial gain, or avoiding financial loss, at the expense of the client; and
- (b) carrying on the same business as the client or receiving from a person, other than the client, an inducement or amount in relation to a service provided to the client, other than defined fees, commissions and expenses related to the security service.

(2) A capital markets operator shall, while providing security services to a client, take all appropriate steps to limit cases of conflicts of interest that may occur between –

- (a) the client and the capital markets operator, including its chief executive officer, senior managers, employees, agents or any persons directly or indirectly linked to them by effective control; and
- (b) the client and another client of the capital markets operator.

(3) A capital markets operator shall take precautionary measures, such as setting Chinese walls within the organization, in order to limit situations of conflicts of interest or instances that may result in harming the interests of its clients.

(4) If precautionary measures made by a capital markets operator are not sufficient to prevent harm to the interests of a client, the capital markets operator shall disclose, in writing, to the client the possibility of a conflict of interest, before undertaking any securities business for the client.

(5) Where a client approves a transaction, after the capital markets operator discloses all details related to a conflict of interest or possible conflict of interest, a capital markets operator may enter into a transaction with the client.

Handling
client's
complaints

38. (1) A capital markets operator shall promptly and fully investigate and resolve every complaint filed by clients and, for such purposes, appoint a person who is without any conflict of interest.

(2) A capital markets operator shall take such appropriate remedial action in the resolution of a complaint and shall keep the corresponding records.

Delegation
of ancillary
functions

39. A capital markets operator may, subject to the approval of the Commission, delegate ancillary functions to an external party, provided that the capital markets operator remains liable for any duties performed by the external party and appropriate safeguards are put in place, including the following:

(a) undertaking an assessment of whether the external party is suitable to carry out

the delegated function, taking into account the degree of responsibility involved;

- (b) clearly stating the extent and limits of the delegation and compliance obligations with any relevant business conduct requirements;
- (c) providing suitable arrangements to supervise the delegation and monitor the discharge of the external party's functions; and
- (d) stipulating appropriate remedial action if any concern arises relating to the performance of the external party's functions.

Records of transactions with clients

40. A capital markets operator shall maintain proper and adequate records of transactions for and on behalf of each client, including, as the case may be –

- (a) mandate forms;
- (b) contract notes;
- (c) clients' statement of accounts;
- (d) deposit receipts for purchase of shares;
- (e) scrip or receipt for certificate deposits;
- (f) exact price at which each quantity of shares were bought or sold;
- (g) full details of fees charged on secondary market transactions; and
- (h) duly completed and signed transfer forms of all initial purchases of a particular security, one of which shall

be forwarded to the Commission through the depository.

Periodic reports to clients

41. A capital markets operator, as the case may be, shall furnish its clients in any quarter in which there was a transaction, with at least –

- (a) a quarterly statement of account showing all purchase and sales transactions on behalf of the client; and
- (b) a quarterly report detailing the clients' shares portfolio, including the statement of share ownership from a clearing and settlement agency.

PART V

INVESTMENT ADVICE

Securities advertisements

42. (1) For the purpose of this rule and section 214 of the Act, "securities advertisement" includes any notice, circular, letter or other written or electronic medium of communication addressed to more than one person which offers –

- (a) any analysis, report or publication concerning securities or which is used to determine when to buy or sell any security or which security to buy or sell;
- (b) any graph, chart, formula or other device used to determine when to buy or sell any security or which security to buy or sell; or
- (c) any other investment advisory service regarding securities.

(2) It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business for any manager or investment adviser to directly or indirectly publish, circulate or distribute any securities advertisement which –

(a) refers directly or indirectly to a testimonial of any kind concerning any advice analysis report or other service rendered by the manager or investment adviser;

(b) refers directly or indirectly to any specific past recommendations of the manager or investment adviser which were or would have been profitable to any person, except that this shall not prohibit a securities advertisement which sets out or offers to furnish a list of all recommendations made by the manager or investment adviser within the immediate preceding period of not less than one year of the securities advertisement, and the list shall, if it is furnished separately –

(i) state the name of each security recommended, the date and nature of each such recommendation, that is whether to buy, sell or hold the market price at that time, price at which the recommendation was to be acted upon and the market price of each security as of the most recent practicable date; and

(ii) contain the following cautionary note on the first page thereof in bold type:

“past performance is not an indication of future performance”;

- (c) represents directly or indirectly that any graph, chart, formula or other device being offered can, in and of itself, be used to determine which securities to buy or sell or when to buy or sell them;
- (d) represents directly or indirectly, any graph, chart, formula or other device being offered which may assist any person in making a decision as to which securities to buy or sell or when to buy or sell them without prominently disclosing in the securities advertisement the limitations and the difficulties with respect to its use;
- (e) contains any statement to the effect that any report, analysis or other service will be furnished free or without charge unless the report, analysis or other service actually is or shall be furnished free and without any condition or obligation, directly or indirectly; or
- (f) contains any untrue statement of a material fact which is otherwise false or misleading.

Advance securities advertisements

43. (1) A securities advertisement that is prepared in advance and is communicated in writing, electronically or otherwise, to one or more persons shall be clear, fair and not misleading.

(2) If a securities advertisement relates to specific securities, it shall contain sufficient information to enable a person to make an informed assessment of the securities or securities activity to which it relates.

(3) A direct securities advertisement addressed to specific clients shall have prior acceptance on behalf of the clients receiving such securities advertisements, which communication shall be clear, fair and not misleading and makes clear the purpose of the communication at the initial point and identify the person and the capital markets operator.

Prohibition on promising benefits or gains

44. A capital markets operator shall not, in any investment advice to a client, make any promise of, or promote any investment by promising, for the clients, a profit or gain from making an investment in an investment portfolio.

Confidentiality of information relating to corporate finance services and other securities services

45. A capital markets operator that provides corporate finance services and also provides dealing, advising or management services, shall put in place policies and procedures to secure confidential or inside information obtained in the course of carrying on securities business, ensuring that the information is known only to employees who are authorized to receive it and that the information is not disclosed to any other person.

PART VI

INVESTMENT PORTFOLIO MANAGEMENT

Investment portfolio management

46. (1) A capital markets operator shall, before managing an investment portfolio for a client, make an initial assessment of the client's investment needs and objectives according to information provided by the client.

(2) If an investment portfolio is managed by a client and an evaluation of the investor risk profile is not

consistent with the portfolio's objective and strategy pursued by the client, a capital markets operator may decide to provide or not to provide a securities service.

(3) A capital markets operator shall inform a client of the evaluation prior to the provision of an investor risk profile of the securities service and the capital markets operator shall define the responsibilities assumed in this regard.

Portfolio management agreement with client

47. A capital markets operator shall agree with a client –

(a) on the form and type of investment portfolio, objectives, risks, performance metrics and relevant controls;

(b) if the investment portfolio is managed by the capital markets operator and the client, the extent of the powers and authorities of the capital markets operator with regard to the investment portfolio, for custody purposes only; and

(c) if the investment portfolio is managed by the capital markets operator, the investment policy, the portfolio rebalancing policy, and risk management strategy including concentration limits.

Prohibition on use of investment portfolio for other purposes or own benefit

48. A capital markets operator shall not use the investment portfolio which the capital market operator manages for a client for another purpose or for the capital markets operator's own benefit.

Information about transactions and material events

49. (1) A capital markets operator shall inform a client of any completed transactions and of any other information requested by the client.

(2) A capital markets operator shall inform a client of any material events affecting the assets of the investment portfolio, including information on annual general meetings, dividend distributions, subscriptions, capital increases, mergers, acquisition offers, liquidation and other relevant matters.

Monthly information to clients

50. (1) A capital markets operator shall provide its clients with monthly reports with respect to the investment portfolio and its performance, asset composition, including cash, and valuation, fees, and transactions executed.

(2) A capital markets operator shall disclose the methodology used to value assets.

PART VII

COLLECTIVE INVESTMENT SCHEME MANAGEMENT

Management of collective investment scheme

51. An investment action shall be carried out for the sole benefit of the unit holders and in a manner that a capital markets operator managing a collective investment scheme reasonably believes to be in the best interest of the unit holders, given the facts and circumstances known or that ought reasonably to have been known to the manager.

Investment portfolio management obligations

52. A manager of a collective investment scheme shall –

- (a) analyze and identify investment opportunities and evaluate and monitor

the assets already owned by the collective investment scheme;

- (b) comply with all Rules and Regulations pertaining to collective investment schemes and prospectus obligations, such as investment policy, prudential limits, asset valuation, unit price determination, unit subscription and redemption, fees, and reports to unit holders and the Commission; and
- (c) where it uses advice from analysts or professionals, local or foreign, the manager shall remain liable for any decisions made.

Prohibition on purchase securities from fund manager or affiliates

53. In the course of an initial public offering underwritten by a capital markets operator or its financial group, a collective investment scheme managed by the capital markets operator shall not purchase securities in that offering from the manager or its affiliates.

Prohibition on acting on own account

54. A capital markets operator or the capital market operator's financial group shall not act as principal for their own account when dealing with a collective investment scheme managed by the capital markets operator.

Prohibition on serving as directors, etc

55. The personnel or officers of a manager of a collective investment scheme may not serve as directors or take up any position in a company whose securities form part of the assets of a collective investment scheme managed by the manager.

Prohibition on manager being custodian of collective investment scheme

56. A capital markets operator licensed as a manager of a collective investment scheme shall not be the custodian of the collective investment scheme it manages.

General offences and penalties

57. Where a capital markets operator contravenes any provision of this Part where no penalty is provided, that capital markets operator commits an offence and shall be liable, on conviction, to the penalty specified in the Act for the offence or an administrative penalty.

PART IX

CLIENTS' MONEY AND SECURITIES

Segregation of accounts

58. (1) A dealer shall at all times keep separate accounts for every client's transactions and shall not engage in the following acts:

- (a) commingling of client's funds with funds of the dealer in a single account;
- (b) commingling of securities carried for the account of a client with securities carried for the accounts of any other clients or self;
- (c) pledging of any securities of a client to borrow in the ordinary course of business as a dealer;
- (d) using of client's fund to purchase securities not specified in the prior mandate of the client;
- (e) altering the client's mandate without obtaining the prior written consent of the client;

- (f) using client's un-invested funds for purposes other than for the benefit of the client; and
- (g) not doing any other act that may be specified by the Commission for the protection of investors.

(2) A dealer may maintain margin accounts for clients, subject to the Act and the monetary guidelines issued by the Bank of Zambia, as a matter of policy and shall disclose such margins in the annual audited accounts and to the clients.

(3) A dealer shall not extend credit to a client in excess of ten times its net capital in aggregate, per annum which shall not be used for any other purpose other than for transactions in securities and file a quarterly report with details of the operations of the margin account.

Use and
management
of client's
funds and
assets

59. (1) A capital markets operator shall-
- (a) use client's funds and assets solely for the purposes stated in the signed contract and shall act within the limits of its authorization;
 - (b) be responsible for any mistake that may occur while executing clients' transactions and orders;
 - (c) not give any guarantee for any client against losses arising from dealings in securities, unless the nature of the security so guarantees; and
 - (d) not make unnecessary purchases and sales in respect of any client's account for the purpose of gaining commissions and fees.

(2) On receiving any client's money, a capital markets operator shall immediately place such funds into a separate and independent account opened with a bank licensed under the Banking and Financial Services Act.

(3) Clients' moneys may be placed in one or more bank accounts.

(4) A capital markets operator may transfer clients' funds and assets to third parties such as a clearing and settlement agency for the purpose of fulfilling the clients' obligations arising from securities transactions.

(5) A capital markets operator may deposit clients' securities held by the capital markets operator on behalf of its clients into an account or accounts open with a third party authorized for that purpose.

Separation
of trade
orders and
investment
portfolio
staff

60. A capital markets operator shall maintain complete separation between the staff making decisions on investment portfolios managed by the capital markets operator and any person who executes orders for the investment portfolios managed by the capital markets operator.

Unsuitable
transactions

61. If a client has expressed intention to carry out a transaction and a capital markets operator has advised that the transaction is not suitable but the client still decides to proceed with the transaction, the capital markets operator may accept an order to buy or sell the security from the client, provided that a copy of the advice given to the client is maintained.

Obligation to
make contract
notes

62. (1) A capital markets operator shall, in respect of every contract for the purchase, sale or transfer of securities in the secondary market, make out a contract note not later than the end of the next trading day of the contract.

(2) Where a contract was entered into by a capital markets operator as agent, a contract note shall be delivered to the person on whose behalf the contract was entered into.

(3) Where a contract was entered into by a capital markets operator as principal, the capital markets operator shall retain the contract note.

(4) A contract note shall include –

- (a) the name of the dealer and the address of the principal place at which the dealer carries on business;
- (b) the client's name, account number, and address;
- (c) where the capital markets operator is acting as principal, a statement that it is so acting;
- (d) the date of the contract and the date on which the contract note was made out;
- (e) the quantity and description of the securities which are the subject of the contract;
- (f) except in the case of securities traded in a securities exchange, the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of a transfer of an interest in securities,

sufficient particulars of the securities transferred;

- (h) the rate or amount, if any, payable in respect of the contract;
- (i) any costs incurred or to be incurred, including transaction taxes;
- (j) if the transaction involved or shall involve the purchase of one currency with another, the currency conversion rate involved or a statement that the rate will be supplied on request; and
- (k) the settlement date.

Safeguarding of clients money and assets

63. A capital market operator shall safeguard the money and assets under the capital markets operator's custody or under the custody of a sub-custodian on behalf of a client.

Obligation to return securities deposited

64. When a client terminates the securities deposit with a custodian, the custodian shall return, to the owner, securities of the same issue, species and characteristics as those that were delivered for safekeeping.

Confirmation or rejection of contracts

65. A capital markets operator providing custodial services shall confirm or reject the assignment of a contract in accordance with the orders issued by a client or agent.

Registration of constitution, transmission or cancellations of liens, etc

66. A capital markets operator providing custodial services shall register in its records the constitution, transmission or cancellation of liens and restrictions on securities.

Exercise of
clients
securities
rights

67. (1) A capital markets operator shall enable a client, who holds an investment portfolio, to exercise all the rights arising from the ownership of securities, such as the right to take any action on securities, vote, make nominations and make appointments to boards.

(2) A capital markets operator shall execute client's instructions regarding the rights attached to assets, in order to safeguard the client's interests.

Monthly
reconciliations
of funds and
securities
accounts

68. A capital markets operator shall conduct monthly reconciliations of the capital markets operator's internal accounts and records with the bank accounts in which the clients' funds are held and with the records of any third party holding the clients' securities and any discrepancy shall be corrected immediately and reported to the Commission.

Periodic
reports to
clients

69. (1) Every dealer shall furnish a client with a quarterly report –

- (a) showing all transactions on behalf of the client including the statement of account for the period; and
- (b) detailing the client's share portfolio, including the statement of share ownership from a clearing and settlement agency.

(2) Notwithstanding sub rule (1) a dealer shall provide a client, on demand, a statement of account showing both credit and cash transactions on behalf of the client.

PART IX

RISK MANAGEMENT AND CAPITAL REQUIREMENTS

Risk Management 70. (1) Every capital markets operator shall –

- (a) include risk management as part of its accounting policies; and
- (b) disclose, by way of notes –
 - (i) any material effect of unmitigated risk on corporate profitability; and
 - (ii) strategies for preventing risks the capital markets operator is exposed to.

(2) The board of a capital markets operator shall establish a risk management committee to assist it in its oversight of the risk profile, risk management framework and the risk reward strategy determined by the board.

Risk management system 71. A capital market operator shall have a risk management system, which is proportional to the activities and services provided, to assist in identifying, assessing, mitigating, controlling and monitoring risks.

Organisational arrangement for risk management 72. A capital market operator shall have an appropriate organizational arrangement to ensure that risk management policies and procedures are developed, reviewed and implemented, including compliance with regulatory capital requirements.

Independence of risk management staff 73. Employees in charge of risk management shall be independent from the activities of the capital markets operator which may expose the capital market operator to risks.

Base capital, borrowing limits and lending to clients 74. (1) A capital market operator shall maintain a base capital equal or greater than the

minimum capital requirements and additional capital requirements, as prescribed by the Commission in financial rules.

(2) Base capital shall be comprised of Tier I capital plus Tier II capital minus deductions, as follows:

- (a) Tier I capital shall consist of paid up common capital and preference shares (without cumulative dividends rights), additional paid up capital, retained earnings and reserves (other than revaluation reserves);
- (b) Tier II capital shall consist of preference shares (with cumulative dividends rights), perpetual and long term (5 years or more) subordinated debt and net asset revaluation; and
- (c) Deductions may be made for goodwill and other intangible assets, material holdings/significant investments in other financial institutions, losses of the current financial year, deferred tax assets that rely on future profitability, and illiquid assets (including tangible fixed assets, holdings of securities which are not readily realizable, receivables, deposits which are not repayable within 90 days, loans or other amounts owed that are due to be repaid after 90 days, and physical stocks).

(3) Tier II capital shall not account for more than seventy-five percent of Tier I capital.

(4) A capital markets operator's liability shall not exceed seventy-five percent of the capital markets operator's total assets.

(5) A capital markets operator's lending to a specific client shall not exceed ten percent of its base capital and such lending may be provided only in the context of securities transactions.

Minimum and additional capital

75. (1) Where a capital markets operator provides two or more services, the minimum capital shall be that of the activity with the highest capital requirements.

(2) A capital markets operator shall maintain additional capital, as prescribed by the Commission in financial rules, to withstand the risks it assumes.

PART X CORPORATE GOVERNANCE

Compliance with corporate governance principles and measures, etc

76. A capital markets operator shall ensure compliance with the corporate governance principles and measures provided for in the Act, this Part and other corporate governance rules, charters, codes and guidelines applicable to capital markets operators and listed companies as prescribed by the Commission and a recognised self-regulatory organisation.

Board of directors

77. (1) A capital markets operator shall establish an effective board of directors which shall be responsible for ensuring long term success and sustainability of the business of the capital markets operator and evaluating and monitoring the performance of management.

(2) The size and composition of the board of directors shall reflect the scale and complexity of the business of the capital markets operator.

(3) A capital market operator shall endeavour to achieve a balance of executive and non-executive directors, with the requisite skills, competence, knowledge and experience, except that the board of directors shall include at least one independent member, who shall be chairperson and shall make decisions without influence, pressures or obstacles.

Separation of specialisations and functions

78. (1) There shall be a clear separation between specialisations and functions of the board of directors and that of the senior management to ensure full independence of the board of directors.

(2) The capital markets operator shall specify the roles, responsibilities and duties for each board member and that of the senior management and shall clearly specify the authorities and powers of senior management.

Roles, functions and powers board of directors

79. (1) The board of directors shall set the strategic objectives of the capital markets operator and ensure that necessary financial and human resources are in place for the meeting the strategic objectives and formulate significant policies on the following matters:

- (a) governance, risk management and compliance;
- (b) customer relations, including customer awareness and complaints and grievance handling mechanisms; and
- (c) segregation of clients' assets from that of the dealer's assets.

- (2) A board of directors shall –
- (a) approve the capital markets operator’s major goals, strategies, plans and policies;
 - (b) approve the annual budgets and periodic and annual financial statement and report;
 - (c) supervise the capital markets operator’s main capital charges and asset ownership and disposal;
 - (d) ensure the capital markets operator’s commitment with policies and procedures that procure compliance with legal and regulatory obligations and internal rules and regulations;
 - (e) establish compliance with internal codes of conduct and ethical standards;
 - (f) adopt key performance indicators for the board of directors and senior management;
 - (g) prepare information and the annual report for the annual general meeting; and
 - (h) form specialized committees, such as audit, risk management, nomination, remunerations and others as needed.

(3) The board of directors shall develop and adopt a board charter which shall, amongst other corporate governance matters, provide for the establishment, appointment, tenure, functions, powers and remuneration of the board, specialised committees and other committees established by the board, which

board charter shall be approved by the Commission before execution.

(4) The board of directors shall devise an effective whistle-blower mechanism to enable stakeholders, including employees, to freely communicate concerns about any illegal or unethical behaviour or practices.

Corporate and compliance reporting framework

80. A capital markets operator shall, not later than four months from close of its financial year, prepare and submit a corporate and compliance statement, signed by the chief executive officer, to the effect that –

(a) there were no transactions entered into by the capital markets operator, during the year, which were fraudulent, illegal or which violated the Act and the Rules and Regulations; and

(b) the capital markets operator had complied with the corporate governance principles and measures specified in the Act and these Rules.

Meetings of board of directors with senior management

81. The board of directors shall hold periodic meetings with senior management to present and discuss the affairs of the capital markets operators and work-related issues and challenges.

Performance measures

82. The board of directors shall set performance measures and criteria for senior management, consistent with the capital markets operator's mission and strategic objectives, for –

(a) appointing or removing senior management;

- (b) determining the remuneration categories to be given for senior management and other employees such as fixed remuneration category, long term risks and performance remunerations and shares-like remuneration category;
- (c) regulating dealings with related parties to avoid conflicts of interest;
- (d) ensuring validity of financial and accounting systems including those relating to financial reporting; and
- (e) procuring the application of sound audit rules for risk measuring and management, through determining scope of risks and constructing an appropriate environment of risk prevention and presenting the same transparently with shareholders and related parties.

Functions
and powers
of senior
management

83. The senior management of a capital markets operators shall –

- (a) execute all company internal policies and regulations which have been approved by the board of directors;
- (b) execute the annual strategy and plan approved by the board of directors; and
- (c) prepare periodic reports (financial and non-financial) concerning the accomplished growth of the capital markets operator's activity in light of the capital markets operator's strategic

plans and objectives and submitting these reports to the board of directors.

(2) The senior management of a capital markets operator shall set up integrated accounting systems which store books, records and accounts that reflect in detail and accurately the financial statements and income accounts, in accordance with accounting and financial reporting standards approved by the Zambia Institute of Chartered Accountants.

(3) The senior management of a capital markets operator shall-

- (a) participate effectively in building a culture of observing ethical values; and
- (b) set internal audit and risk management systems and ensure efficiency and sufficiency of the systems.

Securities and Exchange Commission

LUSAKA

, 2020

(SEC/ /)