

Securities (Registration, Licensing and Corporate Governance) Rules, 2010

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IT is hereby notified that the Minister of Finance, in terms of section 118(6) of the Securities Act [*Chapter 24:25*], has approved the following rules made by the Securities Commission in terms of subsection (1) of that section:—

## PART I

### PRELIMINARY

#### *Title*

1. These rules may be cited as the Securities (Registration, Licensing and Corporate Governance) Rules, 2010.

#### *Interpretation*

2. In these rules—

“applicant”, in relation to—

- (a) an application for the registration of a securities exchange, means the person who is to conduct the business of the securities exchange whose registration is sought, whether the application is being made by that person or by someone else on his or her behalf;
- (b) an application for a licence, means the person who is to conduct the licensable activity authorised by the licence, whether the application is being made by that person or by someone else on his or her behalf;

“auditor” means a person registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:11*];

“board”, in relation to a registered securities exchange, means the committee or other body responsible for managing the affairs of the exchange;

“broker” means a person who acts on behalf of another for a fee;

“compliance officer” means a person referred to in rule 11(1)(b);

“dealer” has the same meaning as broker;

“Form”, followed by a number, means the appropriate form specified in the First Schedule;  
 “issuer”, in relation to a security, means a company or other person that issues the security;  
 “listing requirements” means the requirements, determined by an exchange, that must be met before a security may be traded, or may continue to be traded, on that exchange;  
 “securities dealer” means the holder of a securities (dealers) licence;  
 “settle” means to discharge the obligations arising from a transaction in listed securities.

*References to qualifications, etc.*

3. Any reference in these rules to—

- (a) a Zimbabwean degree or qualification; or
- (b) membership of a professional institution established in Zimbabwe;

shall be construed as including any foreign degree, qualification or institution which, in the Commission’s opinion, is equivalent to the Zimbabwean one that is referred to.

PART II

SECURITIES EXCHANGES

*Application for registration of securities exchange*

4.(1) An application for the registration of a securities exchange shall be in Form No. 1 and shall be lodged with the Commission together with—

- (a) the supporting documents set out in section 30(2) of the Act; and
- (b) the fee specified in Part I of the Second Schedule for the initial registration of a securities exchange.

(2) Where an applicant for registration as a securities exchange has traded in the financial year immediately prior to the year in which the application is made, the application shall be accompanied by a copy of the applicant’s audited balance sheet and profit and loss account for that financial year, together with the auditor’s report thereon.

(3) Where an application for the registration of a securities exchange is refused, the Commission shall refund three-quarters of the initial registration fee paid by the applicant.

*Change of circumstances while application for registration is pending*

5.(1) If, while an application for the registration of a securities exchange is pending before the Commission, the applicant becomes aware of any event or circumstance which may materially affect the information supplied to the Commission in connection with the application, the applicant shall within seven days give the Commission written notice of that event or circumstance.

(2) If an applicant fails to give notice of an event or circumstance in terms of subsection (1), the application shall thereupon become void.

*Conditions of registration*

6.(1) It shall be a condition of the registration of any securities exchange that the board of the exchange shall—

- (a) comply with all terms and conditions specified in the registration certificate issued to the exchange in terms of section 32 of the Act; and
- (b) without delay give the Commission written notice upon becoming aware of any event or circumstance which may materially alter or affect any matter stated in the application for registration or the conduct of business of the exchange; and
- (c) obtain the Commission's consent before taking any action that may materially alter or affect any matter stated in the application for registration of the exchange; and
- (d) operate as a securities exchange only from the premises specified in the registration certificate; and
- (e) without delay, notify the Commission, in Form No.7, if the exchange ceases to carry on business.

(2) Subrule (1) shall not be construed as limiting the Commission's power under section 31 of the Act to determine additional terms and conditions for the registration of any securities exchange.

*Registration certificate*

7.(1) The registration certificate of a securities exchange issued in terms of section 32 of the Act shall be in Form No. 1.

(2) The board of a registered securities exchange shall ensure that the registration certificate issued to the exchange is displayed in such a manner as to be readily visible to the public at the premises where the business of the exchange is conducted.

(3) Where the Commission is satisfied that a registration certificate issued to a securities exchange has been lost, destroyed or defaced, the Commission shall replace the certificate on payment of the appropriate fee specified in Part I of the Second Schedule.

*Annual fee payable by registered securities exchange*

8.(1) The annual fee payable by a registered securities exchange in terms of section 34 of the Act shall be the amount specified in Part I of the Second Schedule.

(2) The annual fee referred to in subrule (1) shall be paid to the Commission in cash or bank transfer or, with the agreement of Chief Executive Officer, by cheque, and shall be payable in each year on or before the anniversary of the date on which the securities exchange concerned was first registered:

Provided that the fee shall not be paid in respect of the year in which the exchange concerned was first registered.

*Restrictions on holding of shares in registered securities exchange*

9.(1) No person shall hold shares in a registered securities exchange—

- (a) to a total nominal value that exceeds fifteen *per centum* of the total nominal value of all the issued shares of the exchange; or
- (b) which permit the person to cast more than fifteen *per centum* of the votes which all other shareholders can cast on any issue at a meeting of shareholders of the exchange.

(2) No person shall hold shares in a registered securities exchange which permit him or her to—

- (a) appoint or remove more than fifteen *per centum* of the members of the board of the exchange; or
- (b) prevent the appointment of persons to more than fifteen *per centum* of the positions on the board of the exchange.
- (3) For the purposes of subrules (1) and (2), a person shall be deemed to hold a share if—
  - (a) he or she holds the share jointly with another person; or
  - (b) some other person holds the share on his or her behalf; or
  - (c) the share is held by his or her partner.
- (4) Notwithstanding subrules (1) and (2), the Commission may for good cause shown waive any of the requirements of those subrules in any particular case.

*Board of registered securities exchange*

10.(1) The board of a registered securities exchange shall consist of not fewer than seven and not more than nine members, of whom—

- (a) one shall be a licensed securities dealer who is a member of the exchange;
- (b) one shall be a person who—
  - (i) has had at least ten years' experience in—
    - A. a banking institution; or
    - B. an institution engaged in asset or fund management; or
    - C. an institution that operates as a transfer secretary; or
    - D. an insurance company;
 of which period at least six years were at a senior management level; and
  - (ii) either—
    - A. holds at least a bachelors degree in one or more of the fields of banking, finance, economics, commerce, accounting, business administration; or
    - B. is qualified as a chartered financial analyst;
- (c) one shall be a person who—
  - (i) has had at least ten years' experience in company secretarial work, of which at least six years were at a senior management level, or in practice as a legal practitioner; and
  - (ii) is a member or associate member of the Institute of Secretaries and Administrators of Zimbabwe or a registered legal practitioner;
- (d) one shall be a full-time financial director or chief financial officer of the exchange, with the qualifications set out in rule 11;
- (e) one shall be a registered public accountant who—
  - (i) has had at least ten years' experience of accounting work, of which at least six years were at a senior management level; and
  - (ii) is a member of the Institute of Chartered Certified Accountants or of the Chartered Institute of Management Accountants or of the Institute of Chartered

Accountants of Zimbabwe or of the Institute of Chartered Secretaries and Administrators;

- (f) one shall represent the investing public;
  - (g) one shall represent the Government.
- (2) Of the board members referred to in subrule (1)—
- (a) the members referred to in paragraphs (a) to (e) of that subrule shall be—
    - (i) elected in terms of the articles, constitution or rules of the securities exchange concerned; and
    - (ii) approved by the Commission, either before or after their election, as fit and proper persons to serve on the board of the securities exchange concerned;
  - (b) the member referred to in paragraph (f) of that subrule shall be elected, subject to subrule (4), by the nomination committee appointed by the Minister in terms of section 6 of the Act;
  - (c) the member referred to in paragraph (g) shall be appointed by the Minister.
- (3) The Commission may refuse to approve a board member as a fit and proper person for the purpose of paragraph (a) of subrule (2) if he or she—
- (a) would be disqualified for appointment to the Commission in terms of paragraph (b) to (e) of subsection (1) of section 7 of the Act; or
  - (b) has within the five years preceding his or her election or proposed election, contravened any term or condition of his or her licence or any provision of Part IV and, in the Commission's opinion, the contravention involved dishonesty or serious negligence;

and, where the Commission refuses to approve a person after his or her election to the board of a registered securities exchange, the person's election shall be void.

(4) If within fourteen days after the Commission has requested it in writing to do so, the panel referred to in paragraph (b) of subrule (2) fails to submit to the Commission the name of a suitable person willing to be considered for appointment to the board of the exchange concerned, the Commission shall itself select a suitable person.

(5) The term of office of a member of the board of a registered securities exchange shall not exceed four years, and no board member shall be eligible for re-election or re-appointment if he or she has served for one or more terms which amount to four continuous years, unless at least two years have elapsed since he or she last served on the board.

(6) The chairperson of the board of a registered securities exchange shall not hold office as such for longer than four consecutive years.

#### *Rules of registered securities exchange*

11.(1) Without derogation from section 65 of the Act, the rules of a registered securities exchange shall provide for—

- (a) the appointment of a person by the board of the exchange to be the chief executive officer of the exchange, who shall—
  - (i) have the following qualifications and experience—

- A. a degree obtained from a reputable university or institution of higher learning in any of the following areas—
  - I. commerce;
  - II. economics;
  - III. business studies;
  - IV. accountancy;
  - V. law

or a qualification considered by the Commission to be equivalent to such a degree; and

- B. at least five years' experience as a senior manager in a company or other organisation, dealing with matters relating to law, finance, accounting, economics, banking or insurance; and
- C. expertise, to the satisfaction of the Commission, in matters relating to money, capital markets or finance;

and

- (ii) be responsible, subject to any directions given to him or her by the board of the exchange, for administering the exchange's affairs, funds and property and supervising the exchange's staff; and

(b) the appointment of a compliance officer, who shall—

- (i) be a person approved by the Commission, with a degree obtained from a reputable university or institution of higher learning in any of the following areas—

- A. economics;
- B. law;
- C. accounting;
- D. banking and finance;
- E. business studies;
- F. business administration;
- G. risk management;

and

- (ii) be given responsibility for—

- A. assisting the board of the exchange in ensuring that the exchange complies with the Act and these rules and any other law or requirement applicable to the exchange; and
- B. reporting to the audit committee referred to in paragraph (c) on any contraventions of the Act or other irregularities on the part of the exchange; and
- C. ensuring that the staff of the exchange comply with Act and these rules and any other law or requirement applicable to the exchange;

and

- (iii) not be related by blood or marriage to the chief executive officer or chairperson of the board of the exchange or have a financial interest in any company in which the chief executive officer or chairperson of the board holds five *per centum* or more of the shares;
  - (c) the appointment of an audit committee, consisting of at least four members of the board of the exchange who are not employees of the exchange and are not involved in its day-to-day management, which committee shall be responsible for—
    - (i) establishing appropriate accounting procedures and accounting controls for the exchange, and ensuring compliance with those procedures and controls; and
    - (ii) assisting the board to evaluate the adequacy and efficiency of the exchange's internal control systems, accounting practices, information systems and auditing processes; and
    - (iii) introducing measures to enhance the objectivity of financial statements and reports prepared with reference to the business of the exchange; and
    - (iv) selecting a suitably-qualified person for appointment as the external auditor of the exchange;
  - (d) the appointment of a financial director or chief financial officer, who shall be a registered public accountant and shall—
    - (i) have had at least ten years' experience in accounting work, of which at least six years were at a senior management level; and
    - (ii) be a member of the Institute of Chartered Certified Accountants or Chartered Institute of Management Accountants or Institute of Chartered Accountants or Institute of Chartered Secretaries and Administrators.
- (2) If the rules or proposed rules of a securities exchange or of an applicant for registration as a securities exchange do not comply with the requirements of subrule (1), the Commission may—
- (a) refuse to register the applicant as a securities exchange in terms of subsection (4) of section 30 of the Act; or
  - (b) refuse to approve the rules in terms of subsection (3) of section 65 of the Act; as the case may be.

(3) A registered securities exchange shall not charge any fees or levies in terms of its rules unless the fees or levies have been approved by the Commission.

(4) Rules of a registered securities exchange shall provide for any fines imposed on its members or their employees or agents to be paid into a fund for use in investor education and awareness. Form of official list kept by securities exchange

12. The official list kept by a securities exchange in terms of section 63 of the Act shall be in Form No. 4.

*Financial year of registered securities exchange*

13. The financial year of a registered securities exchange shall be the period from the 1st January to the 31st December in any year.

*Registered securities exchanges to observe corporate governance guidelines*

14. Every registered securities exchange shall comply with the corporate governance guidelines set out in the Fourth Schedule, to the extent that they are applicable to the exchange.

## PART III

## LICENCES

*Application for licence*

15.(1) An application for—

- (a) a securities (dealers) licence or a securities (client liaison) licence shall be in Form No. 2;
- (b) a securities (investment advisers) licence, a securities (investment management) licence or a securities (transfer) licence shall be in Form No. 1;
- (c) a securities (trustee) licence or a securities (custody) licence shall be in Form No.3;
- (d) a securities (multiple) licence shall be in Form No.1, together with the Forms appropriate to the licensable activities which the applicant wishes to carry on under the licence;

and shall be lodged with the Commission together with—

- (i) the supporting documents and information specified in the form concerned; and
- (ii) the fee specified in Part I of the Second Schedule for the application concerned.

(2) The Commission may issue a licence for a shorter period than that prescribed in subsection (3) of section 43 of the Act, in order to facilitate the subsequent renewal of the licence or for any other reason that the Commission considers sufficient.

(3) Where an application for a licence is refused, the Commission shall refund three-quarters of the fee paid by the applicant in terms of paragraph (ii) of subrule (1).

*Change of circumstances while application for licence is pending*

16. If, while an application for a licence is pending before the Commission, the applicant becomes aware of any event or circumstance which may materially affect the information supplied to the Commission in connection with the application, the applicant shall, within seven days of becoming aware of it, give the Commission written notice of that event or circumstance.

*Conditions of licences*

17.(1) It shall be a condition of every licence that—

- (a) the licence shall be personal to the holder and shall not be transferable; and
- (b) the holder shall—
  - (i) comply with the Act and these rules and any other law or requirement applicable to him or her in relation to any licensable activity, as well as all the terms and conditions attaching to the licence; and
  - (ii) without delay give the Commission written notice upon becoming aware of any event or circumstance which may materially alter or affect any matter stated in the application for the licence; and

- (iii) obtain the Commission's consent before taking any action that may materially alter or affect any matter stated in the application for the licence; and
- (iv) carry on any licensable activity only from the premises that are specified in the licence.

(2) Subrule (1) shall not be construed as limiting the Commission's power under section 42 of the Act to determine additional terms and conditions in relation to any licence.

*Forms of licences*

18. A—

- (a) securities (multiple) licence shall be in Form No.1;
- (b) securities (investment advisers) licence, a securities (investment management) licence and a securities (transfer) licence shall be in Form No.1, with such variations as may be necessary for the specific licence concerned;
- (c) securities (dealers) and a securities(client liaison)licence shall be in Form No.2;
- (d) securities (trustee) licence and a securities (custody) licence shall be in Form No.3, with such variations as may be necessary for the specific licence concerned;

*Display of licence*

19.(1) Every holder of a licence shall ensure that the licence is displayed in such a manner as to be readily visible to the public at the premises where the holder conducts licensable activities.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five.

*Replacement of licence*

20. Where the Commission is satisfied that a licence has been lost, destroyed or defaced, the Commission shall replace the licence on payment of the appropriate fee specified in Part I of the Second Schedule.

*Fee for renewal of licence*

21.(1) Subject to subrule (2), the fee for the renewal of a licence in terms of section 44 of the Act shall be the appropriate amount specified in Part I of the Second Schedule.

(2) Where a licence is issued for a shorter period than one year, the fee specified in Part I of the Second Schedule shall be reduced proportionately.

*Change of principal*

22.(1) Where a licence has been issued to a person in his or her capacity as the employee or agent of another person, the holder shall not change his or her principal unless he or she has lodged with the Commission a notice of the change in Form No. 8.

(2) A person who contravenes subrule (1) shall be guilty of an offence and liable to a fine not exceeding level five.

*Requirements for certain licences*

23.(1) The Third Schedule shall apply in relation to applications for the licences specified in that Schedule, and to the holders of such licences:

Provided that the Commission may, in appropriate cases, waive any requirement of the Third Schedule.

(2) The Third Schedule shall not be construed as limiting the Commission's discretion under section 41 of the Act in regard to the grant or refusal of licences.

*Suspension of licence*

24.(1) Without derogation from section 49 of the Act, if the Commission has reasonable grounds to believe that the holder of a licence—

- (a) has contravened any provision of Part IV in regard to his or her trust accounts and that it would not be in the public interest for him or her to carry on licensable activities until the contravention is investigated or rectified; or
- (b) has failed to pay any levy to the Commission;

the Commission may suspend the licence until the contravention has been investigated or rectified or the levy has been paid, as the case may be.

(2) Subsections (2) to (6) of section 49 of the Act shall apply to a suspension under subrule (1).

*Issue of licence to person guilty of previous misconduct*

25.(1) Notwithstanding any other provision of these rules, where a person who was previously licensed but whose licence was cancelled on the ground of misconduct applies for a licence, the Commission—

- (a) may take into account the following factors when considering whether or not to issue a licence to the applicant—
  - (i) the period that has elapsed since the applicant's previous licence was cancelled; and
  - (ii) any business or occupation conducted by the applicant since his or her previous licence was cancelled; and
  - (iii) if any persons suffered loss through the misconduct that caused the revocation of his or her previous licence, whether and to what extent the applicant has compensated such persons;

and may invite interested parties to make representations as to whether or not the licence should be issued;

- (b) shall not issue a licence to the applicant unless the Commission is satisfied that the applicant is a fit and proper person to hold the licence;
- (c) may, when issuing a licence to the applicant, impose conditions—
  - (i) requiring the applicant to carry out licensable activities under supervision;
  - (ii) restricting the licensable activities that the applicant may carry out;
  - (ii) requiring the applicant to compensate any persons who suffered loss through the misconduct that caused the revocation of his or her previous licence;

(iii) requiring the applicant to perform any other work or obligation.

(2) Subsection (1) shall apply, with any necessary changes, in respect of applicants whose licences or registration were cancelled before the date of commencement of the Act.

*Issue of licence to person licensed outside Zimbabwe*

26.(1) The Commission may issue a licence a person who has been the holder of an equivalent licence in another country if—

- (a) the authority responsible for regulating securities exchanges and additionally, or alternatively, licensed persons in that country certifies that the person has held and continues to be qualified to hold the equivalent licence concerned; and
- (b) the person is entitled under the Immigration Act [*Chapter 4:02*] to carry on licensable activities in Zimbabwe; and
- (c) the person is a fit and proper person to hold the licence concerned; and
- (d) the person has passed any local examinations which the Commission has required him or her to pass; and
- (e) the person has met any further requirements set by the Commission.

(2) For the purposes of subsection (1), a person shall be regarded as having been the holder of a licence in another country which is equivalent to a licence issuable by the Commission if he or she—

- (a) has held a licence authorising him or her to carry on activities; or
- (b) by virtue of some other qualification or lawful authorisation, carried on activities;

which, in the Commission's opinion, are similar to the licensable activities that may be carried on by the holder of the licence issuable by the Commission.

*Licensed persons to observe corporate governance guidelines*

27. Every licensed person that is a body corporate shall comply with the corporate governance guidelines set out in the Fourth Schedule, to the extent that they are applicable to such a person.

PART IV

TRUST ACCOUNTS

*Interpretation in Part IV*

28. In this Part—

“bank trust account” means a current account kept by a firm at a bank or with an institution approved by the Commission in terms of subsection (1) of section 50 of the Act;

“firm” means—

- (a) a holder of a licence who is carrying on licensable activities on his or her own account; or
- (b) a company or other body corporate that is the holder of a licence;

“trust investment account” means an interest bearing trust account kept by a firm in terms of subsection (2) or (3) of section 50 of the Act.

*Bank trust accounts*

29. A firm shall ensure that its bank trust account is such as to allow the withdrawal of funds therefrom on not more than seven days’ notice.

*Monthly trust account balances*

30.(1) At least once in respect of every calendar month, within thirty days after the end of the calendar month concerned, every firm shall—

- (a) extract a list of the credit balances shown in respect of each client in each trust account; and
- (b) note each balance listed in terms of paragraph (a) in some permanent and prominent manner in the ledger account from which such balance was extracted, by means of a mark approved by the firm’s auditor:

Provided that no such mark shall be required where the ledger account is recorded electronically by a computer and the list of credit balances has been produced automatically.

(2) Every firm shall preserve the list of balances extracted in terms of subrule (1) for not less than five years from the date on which the list was extracted.

*Balancing of books of account*

31. Every firm shall ensure that the books of account that are required to be kept in terms of section 51 of the Act are written up at least once in each month and are balanced within three months after the last date upon which the lists referred to in rule 30 are required to be extracted.

*Notification to Commission of details regarding trust accounts*

32.(1) Immediately after opening a bank trust account in terms of subsection (1), (2) or (3) of section 50 of the Act, a firm shall notify the Commission and the firm’s auditor of the name and address of the bank, building society or other institution at which the trust account is being kept.

(2) Within ten days after being required to do so by the Commission, a firm shall furnish the Commission with signed statements issued by each bank, building society or other institution at which the firm keeps a trust account, certifying the amount standing to the credit or debit, as the case may be, of the account at such date as the Commission may specify.

*Accounting to clients*

33.(1) Within a reasonable time after the performance or earlier termination of its mandate, every firm shall deliver to the client concerned a written statement setting out with reasonable clarity—

- (a) details of all amounts received by the firm in connection with the matter concerned, with appropriate and adequate explanatory narrative; and
- (b) particulars of all disbursements and payments made by the firm in connection with the matter; and

- (c) all fees and other charges raised against or charged to the client and, where any fee represents an agreed fee, a statement that it was agreed and the amount so agreed; and
- (d) the amount payable to or by the client.

(2) Unless otherwise instructed, every firm shall pay any amount due to its client within the period prescribed by the securities exchange concerned for the settlement of accounts.

*Deposits into and payments from trust accounts*

34.(1) Whenever a firm receives money on account of any person, the firm shall deposit the money promptly in its trust bank account, either on the same day that it receives the money or on the first banking day thereafter on which it can reasonably be expected to do so.

(2) Whenever any money deposited in a trust account of a firm becomes payable to any person, the firm shall pay the money within the securities exchange prescribed trading and payment times to the person entitled to it.

*Fees and disbursements*

35. Either before or within a reasonable time after claiming payment of any fee due to it or in respect of any disbursement made by it, a firm shall pass a corresponding debit in its books of account.

*Trust cheques*

36. Every firm shall ensure that each cheque drawn upon its bank trust account—

- (a) is not made payable to “cash” or “bearer” or to “cash or order” but is made payable to or to the order of a specific payee named or designated on the cheque; and
- (b) indicates the name of the firm and bears the words “trust account”.

*Trust shortfalls*

37. The total of the trust credit balances shown on the trust account in the ledgers of any firm shall not at any time exceed the total amount of the moneys in the firm’s bank trust account and any trust investment accounts, together with the trust cash in hand.

*Transfers from trust to other accounts*

38. Every firm shall employ and maintain an adequate accounting system which ensures that—

- (a) notwithstanding the payment of any money into a special trust investment account, the client concerned is still reflected as a trust creditor; and
- (b) generally, the requirements of this Part are complied with whenever money is transferred from the firm’s trust bank account to any other account.

*Powers of curator regarding trust accounts*

39.(1) A curator *bonis* appointed in terms of subsection (2) of section 53 of the Act to control and administer a trust account may be vested with any one or more of the following rights, duties and powers—

- (a) to take possession of all books, records and documents relating to the trust account;

- (b) to advertise, in such manner as the Master of the High Court may direct, for the lodging of claims in respect of the trust account;
- (c) to record any claims in respect of the trust account lodged in response to any advertisement;
- (d) to settle, in such manner as the Master of the High Court may direct or approve, the amount of any claims in respect of the trust account;
- (e) to bring or defend proceedings in any court arising out of any claim in respect of the trust account;
- (f) to draw up and lodge with the Master of the High Court an account reflecting the assets and liabilities of the trust account and allocation of the assets to the persons who have claims in respect of the trust account;
- (g) subject to the directions of the Master of the High Court, to distribute the assets of the trust account among the persons who have claims in respect of the trust account;
- (h) to pay any balance in the trust account, after all claims have been satisfied, to such person as the Master of the High Court may direct;
- (i) to do such other things to ensure the proper distribution of the trust account as the Master of the High Court may specify.

(2) A curator *bonis* appointed in terms of subsection (2) of section 53 of the Act to control and administer a trust account may receive from the trust account such remuneration as the Master of the High Court may fix.

#### *Audit certificates*

40.(1) A licensed person who is required to open and keep a separate trust account in terms of section 50 of the Act shall at least once in each calendar year submit to the Commission an audit certificate in Form No. 14 signed by a firm's auditor—

- (a) within one month after the annual audit or three months after year end whichever is earlier, of the trust books of account of the licensed person or of the firm with which the licensed person is associated, as the case may be; or
- (b) within six months after the annual closing of the trust books account of the licensed person or of the firm with which the licensed person is associated, as the case may be;

whichever is the earlier.

(2) One audit certificate submitted by a firm shall constitute compliance with subrule (1) by all the licensed persons associated with such firm, whether as members, employees or otherwise.

(3) Where in any year a licensed person—

- (a) retires from a firm and thereafter carries on licensed activities on his own account or in partnership or association with other such persons; or
- (b) who has formerly carried on licensed activities on his own account commences to carry them on in partnership or association with other such persons;

he or she shall submit an audit certificate covering all relevant periods both before and after the change or changes.

(4) Where a licensed person who has carried on licensed activities on his own account retires from practice, he shall submit an audit certificate covering the period up to the date of his retirement.

*Interest on trust money*

41. Where a firm receives interest on money deposited in a trust account opened in terms of subsection (1) or (2) of section 50 of the Act, the firm shall pay that interest on a monthly basis to the appropriate client's account or in the case of unaccounted amounts to the guarantee fund immediately before the firm applies for the renewal of his or her licence shall provide the Commission with an auditor's certificate as evidence that the interest has been so paid.

*Offences in relation to trust accounts*

42. A firm that contravenes rule 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 or 40 shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

PART V

GENERAL

*Appeals*

43.(1) An appeal in terms of section 108 of the Act shall be in writing, setting out—

- (a) the following particulars relating to the decision, proposal or action that is the subject of the appeal, to the extent that the appellant is aware of them—
  - (i) the identity of the board or operator which reached the decision, made the proposal or took the action, as the case may be; and
  - (ii) the terms or nature of the decision, proposal or action; and
  - (iii) the date on which the board or operator reached the decision, made the proposal or took the action, as the case may be;

and

- (b) the precise grounds on which the appellant bases his or her appeal.

(2) Together with his or her appeal in terms of section 108 of the Act, an appellant shall attach the record of the proceedings, where it is available, and any reasons provided by the board or operator concerned.

(3) In determining an appeal under section 108 of the Act, the Commission shall observe the rules of natural justice as provided in section 111 of the Act.

*Levies*

44.(1) Subject to rules 45 and 46, the levies set out in Part II of the Second Schedule shall be payable in accordance with the provisions of that Schedule.

(2) Where the holder of a securities (dealers) licence pays a levy specified in paragraph 1 or 2 of Part II of the Second Schedule, he or she may recover the amount of the levy from the purchaser or transferee of the securities in respect of which the levy is paid.

*Payment of fees and levies*

45.(1) A fee or levy payable in terms of these rules shall be paid to the Commission in cash or bank transfer or, with the agreement of the Chief Executive Officer, by cheque.

(2) A levy payable by the holder of a securities (dealers) licence shall be payable not later than close of business on the Friday of the week after the week in which he or she concluded the purchase, sale or exchange of securities on which the levy is calculated.

(3) If a person fails to pay a fee or levy more than one week after it has become due, he or she shall thereupon become liable to pay the Commission a surcharge of one hundred *per centum* of the unpaid amount, and interest at the rate prescribed in the Prescribed Rate of Interest Act [*Chapter 8:10*] shall commence to run on the unpaid amount and the surcharge.

(4) The Commission may, by written notice—

- (a) authorise a registered securities exchange to pay levies on behalf of its members, and in that event this rule shall apply as if the exchange were itself liable to pay the levies;
- (b) extend the date by which any fee or levy is payable, and in that event the period referred to in subrule (3) shall be calculated from that later date.

(5) Where a person has become liable to pay a surcharge in terms of subrule (3), the Commission may serve a notice on him or her demanding payment of the overdue fee or levy, together with the surcharge and any interest that may have accrued thereon, and if that person fails without lawful excuse to pay the amount demanded within one week after service of the demand, he or she shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment. The Commission may suspend or withdraw the licence of such a person.

*Waiver of fees and levies*

46. If the Commission considers it appropriate to do so in the exceptional circumstances of a particular case, the Commission may—

- (a) waive payment of the whole or part of any fee or levy payable in terms of these rules;
- (b) refund the whole or part of any fee or levy paid in terms of these rules.

*Publication of particulars of transgressors*

47.(1) The Commission may publish, in such manner and to such extent as it considers necessary and appropriate, the name of a person—

- (a) who has been guilty of a contravention of the Act or these rules or who has failed to comply with a term or condition of his or her licence; or
- (b) whose licence has been suspended or cancelled in terms of the Act or these rules;

and may publish such particulars of the person and of the nature of the contravention or of the non-compliance, or the reasons for the suspension or cancellation, as the case may be, as the Commission considers appropriate.

(2) The Commission shall not publish the name or particulars of a person under subrule (1) unless, in the Commission's opinion, the publication—

- (a) will protect the investing public and other persons who may have dealings with the person concerned; or

- (b) will serve to protect the integrity and reputation of the profession of which the person concerned is or was a member; or
- (c) is otherwise necessary or desirable in the public interest.

*Central securities depositories*

48.(1) An application for the Commission's approval of a scheme for a central securities depository shall—

- (a) be in Form No. 1; and
- (b) be accompanied by the documents set out in Form No. 1 and the appropriate fee set out in Part I of the Second Schedule.

(2) A central securities depository or the scheme, by which it is established, as the case may be, shall comply with the requirements of the Fifth Schedule in addition to the requirements set out in section 69 of the Act.

*Reporting of significant events*

49.(1) Where the board of a registered securities exchange considers it necessary to—

- (a) suspend the listing of a listed security on its official list; or
- (b) remove a listed security from its official list; or
- (c) limit, suspend or cancel the right of a licensed person to deal or conduct business on or in relation to the exchange;

the board shall, as soon as practicable, give the Commission written notice of its intentions and the reasons for wanting to do so.

(2) Where the board of a registered securities exchange becomes aware that an issuer of securities listed on the exchange has received a qualified audit report, the board shall, as soon as practicable and in any event within three days after becoming aware of it, give the Commission written notice of the fact and, if possible, shall provide the Commission with a copy of the audit report.

(3) Any person who contravenes subrule (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five.

*Penalty for contravention of requirements of Commission*

50. Any registered securities exchange which, or licensed person who, contravenes or fails to comply with a lawful requirement of the Commission shall be guilty of an offence and, unless a different penalty is provided for the offence under any other provision of these rules, shall be liable to a fine not exceeding level three or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

*Certain obligations unenforceable*

51. No licensed person shall, in the course of his or her dealings with a client, impose any contractual term, condition or obligation upon the client which contravenes a written guideline or notice issued by the Commission for the proper conduct of such licensed persons, and any such term, condition or obligation shall be void.

*Fees, charges and levies by transfer secretaries and custodians*

52. The holder of a securities (custody) licence or a securities (transfer) licence shall not charge any fee, charge or levy unless it has been approved by the Commission and published in two issues of a newspaper circulating in the area in which the fee, charge or levy will be applicable.

*Capital adequacy requirements*

53. Every registered securities exchange, central securities depository and licensed person shall maintain the levels of capital specified in the Sixth Schedule in relation to the exchange, depository or person concerned.

*Resolution of disputes*

54. The Seventh Schedule shall apply to the resolution of disputes between—

- (a) licensed persons; or
- (b) registered securities exchanges; or
- (c) central securities depositories; or
- (d) a person referred to in paragraph (a), (b) or (c) and a person referred to in another of those paragraphs;

where the disputes arise out of licensable activities.

*Transitional provisions*

55.(1) The person who, immediately before the date of commencement of these rules, held office as chief executive officer of the Zimbabwe Stock Exchange may continue to hold that office, subject to the rules of that exchange, even if he or she does not possess the qualifications set out in rule 11.

(2) In the event of a conflict between these rules and any rule which was made or was deemed to have been made by the Zimbabwe Stock Exchange and which was in force immediately before the date of commencement of these rules, the rule made by the Zimbabwe Stock Exchange shall remain in force for not more than 30 days after that date, unless it is earlier repealed or amended.

FIRST SCHEDULE (*Rule 2*)

## FORMS

	<i>Form No.</i>
1. Application for registration of securities exchange .....	1
2. Registration certificate for registered securities exchange.....	1
3. Application for securities (investment advisers) licence, securities (investment management) licence or securities (transfer) licence.....	1
4. Application for securities (multiple) licence.....	1
5. Securities (investment advisers) licence, securities (investment management) licence or securities (transfer) licence.....	1

6. Securities (multiple) licence .....	1
7. Application for approval of scheme for establishment of central securities depository .....	1
8. Application for securities (dealers) licence.....	2
9. Securities (dealers) licence .....	2
10. Application for securities (client liaison) licence.....	2
11. Securities (client liaison) licence .....	2
12. Application for securities (trustee) licence or securities (custody) licence.....	3
13. Securities (trustee) licence or securities (custody) licence .....	3
14. Official list of securities kept by securities exchange.....	4
15. Notification of cessation of business .....	5
16. Notice of change of principal.....	6
17. Audit certificate .....	7

[The forms listed above are not set out in this Schedule but, in terms of section 5 of the Interpretation Act [*Chapter 1:01*], may be inspected free of charge at the offices of the Securities Commission during normal office hours.]

## SECOND SCHEDULE (*Rules 4, 7, 8, 15, 20, 21, 44 and 46*)

### FEEs AND LEVIES

#### PART I

#### FEEs

	<i>US \$</i>
1. Initial registration of a securities exchange .....	10 000,00
2. Annual registration fee for securities exchange: .....	5 000,00
3. Replacement of certificate of registration or licence: .....	50,00
4. Notification of change of name, address or prescribed particulars of holder of licence: .....	50,00
5. Application for:	
(a) securities (dealing firm) licence: .....	8 000,00
(b) securities (dealer) licence: .....	2 000,00
(c) securities (authorised dealer) licence: .....	2 000,00
(d) securities(client liaison) licence .....	1 000,00
(e) securities(transfer) licence: .....	2 000,00
(f) securities (trustee) licence: .....	1 000,00
(g) securities (custody) licence: .....	1 000,00

- (h) securities (investment advisers) licence ..... 2 000,00
- (i) securities (investment management) licence 10 000,00
- (j) securities (multiple) licence ..... 10 000,00
6. Renewal of:
- (a) securities (dealing firm) licence: ..... 3 000,00
- (b) securities (dealer) licence: ..... 1 500,00
- (c) securities (authorised dealer) licence: ..... 500,00
- (d) securities(client liaison) licence: ..... 500,00
- (e) securities (transfer) licence: ..... 1 500,00
- (f) securities (trustee) licence: ..... 1 000,00
- (g) securities (custody) licence: ..... 1 000,00
- (h) securities (investment advisers) licence: ..... 1 000,00
- (i) securities (investment management) licence: 3 000,00.....
- (j) securities (multiple) licence: ..... 4 000,00
7. Central securities depository:
- (a) Approval of scheme for establishment of central securities depository: ..... 10 000,00
- (b) The annual fee payable by central securities depository shall be nought comma nought nought nought one *per centum* (0,0001%) of the value, calculated in U.S. dollars, of all transfers of deposited securities effected during the year concerned.

## PART II

### LEVIES

#### 1. *Securities Commission Levy*

Every holder of a securities (dealers) licence shall pay a levy of nought comma one eight *per centum* (0,18%) of the total consideration, net of any duty or tax, payable for any purchase, sale or exchange of securities brokered by him or her on a securities exchange, and shall remit it to the Commission by not later than close of business on the Wednesday of the week following the week in which the securities concerned were purchased, sold or exchanged..

#### 2. *Investor Protection Levy*

Every holder of a securities (dealers) licence shall charge an investor protection levy of nought comma nought five *per centum* (0,05%) of the total consideration for any purchase, sale or exchange of securities brokered by him or her on a securities exchange, and shall remit it to the Commission or to the Investor Protection Fund by not later than the tenth day of the month following the month in which the securities concerned were purchased, sold or exchanged:

Provided that, if the settlement date for any such transaction occurs in the month after the securities were purchased, sold or exchanged, the levy shall be remitted by not later than the tenth day of the next succeeding month.

3. *Securities Exchange Levy*

Every registered securities exchange shall pay a levy of nought comma five *per centum* (0,5%) of its monthly gross income, and shall remit it to the Commission by not later than the tenth day of the month following the month in respect of which the levy is paid.

4. *Securities (Investment Management) Company Levy*

Every licensed securities (investment management) company shall pay a levy of nought comma five *per centum* (0,5%) of its monthly gross income, and shall remit it to the Commission by not later than the tenth day of the month following the month in respect of which the levy is paid.

5. *Securities (Investment Advisors) Company Levy*

Every licensed securities (investment advisors) company shall pay a levy of nought comma three five *per centum* (0,35%) of the gross income of the investment advisor, and shall remit it to the Commission by not later than the tenth day of the month following the month in respect of which the levy is paid.

6. *Corporate Action Levy*

Every issuer of a security that is initially offered for sale on a registered security exchange shall pay a corporate action levy of nought comma one *per centum* (0,1%) of the gross amount raised through the sale, and shall remit it to the Commission by not later than the tenth day of the month following the sale.

### THIRD SCHEDULE (*Rule 23*)

#### REQUIREMENTS FOR CERTAIN LICENCES

##### A. SECURITIES (DEALERS) LICENCE

1.(1) To obtain a securities (dealers) licence authorising the holder to carry on business as an authorised dealer, that is to say as a member or employee of a broking firm, an applicant must—

- (a) be at least twenty-one years old; and
- (b) have the following minimum educational qualifications—
  - (i) five passes at “O” Level, or the equivalent, in subjects that include English and Mathematics; and
  - (ii) two passes at “A” Level or the equivalent;
 and
- (c) have passed the following modules of the Registered Persons Examinations of the South African Institute of Financial Markets—
  - (i) Introduction to International Capital Markets;
  - (ii) International Equity Market;
  - (iii) Bond Market;

(iv) the Derivatives Market;

and

(d) subject to subparagraph (2), have worked in the back office of a dealing firm for at least eighteen months.

(2) In lieu of the experience specified in subparagraph (1)(d), the Commission may accept a shorter period of nine months or more, provided the person—

(a) possesses any of the following degrees or qualifications awarded or issued by a reputable institution of higher learning—

- (i) B.Com.;
- (ii) B.Sc. (Economics);
- (iii) B.B.S.;
- (iv) B. Acc.;
- (v) M.B.A.

or any other qualification which, in the Commission's opinion, is equivalent to any of those qualifications; and

(b) has experience in investment management, financial management or portfolio management at managerial level; and

(c) is a member of any of the following professional bodies—

- (i) the Institute of Chartered Secretaries and Administrators of Zimbabwe (I.C.S.A.Z.);
- (ii) the Chartered Institute of Management Accountants (C.I.M.A.);
- (iii) the Association of Chartered Certified Accountants (A.C.C.A.);
- (iv) the Institute of Chartered Accountants in Zimbabwe (I.C.A.Z.);
- (v) the Institute of Chartered Financial Analysts (C.F.A.);
- (vi) the Institute of Internal Auditors (I.I.A.);
- (vii) the Securities and Investment Institute (S.I.I.).

2. To obtain a securities (dealers) licence authorising the holder to carry on business as a dealer on his or her own account, an applicant must—

- (a) be at least twenty-five years old;
- (b) be ordinarily resident in Zimbabwe; and
- (c) have been employed, in a capacity approved by the Commission, in a broking firm for at least two years; and
- (d) have the qualifications and experience prescribed in paragraph 1.

3.(1) To obtain a securities (dealers) licence authorising the holder to carry on business as a dealing firm, an applicant must—

- (a) be a company; and
- (b) satisfy the Commission that it can comply with the requirements of subparagraph (2);

and to retain such a licence the holder must comply with subparagraphs (2) to (5).

- (2) The holder of a securities (dealers) licence referred to in subparagraph (1) must—
- (a) be under the management of a chief executive or managing director who has practised as a broker for at least two years; and
  - (b) appoint a person who is approved by the Commission and is qualified under subparagraph (3) to be a compliance officer with responsibility for—
    - (i) promoting and monitoring compliance by the firm and its employees with the Act, these rules and any requirements of the Commission; and
    - (ii) reporting to the firm's risk, audit and compliance committee on all compliance issues as required by the Act; and
    - (iii) ensuring that the holder's staff comply with all directives and requirements of the Commission; and
    - (iv) reporting to the Commission on the holder's compliance with all directives and requirements of the Commission.

(3) The compliance officer appointed under subparagraph (2)(b) must possess a degree obtained from a reputable university or institution of higher learning in any of the following areas—

- (a) economics;
- (b) law;
- (c) accounting;
- (d) banking and finance;
- (e) business studies;
- (f) business administration;
- (g) risk management;

and must not be related to the chief executive or managing director or be involved in any other company in which the chief executive or managing director has five *per centum* or more of the shares.

(4) If the compliance officer appointed under subparagraph (2)(b) resigns his or her post, the licence-holder must—

- (a) without delay, inform the Commission of the resignation and the reasons for it; and
- (b) ensure that the compliance officer has an opportunity to inform the Commission of the reasons for his or her resignation;

and the licence-holder must ensure that any vacancy in the compliance officer's post, whether arising through resignation or any other reason, is filled by a substantive appointment within three months, and that in the interim the post is temporarily filled by a senior employee of the holder who is not the chief executive or managing director.

- (5) The holder of a securities (dealers) licence referred to in subparagraph (1) must—
- (f) have staff, including at least two holders of a securities (dealers) licence, capable of providing professional services to clients in connection with all the firm's licensable activities; and

- (g) ensure that the firm's licensable activities are carried on by members of the firm's staff who are holders of securities (dealers) licences; and
- (h) ensure that all its directors and employees are fit and proper persons, having regard to the factors set out in section 41 of the Act;
- (i) carry on its licensable activities from premises suitably located and equipped to provide a satisfactory service to its clients.

#### B. SECURITIES (CLIENT LIAISON) LICENCE

To obtain a securities (client liaison) licence authorising the holder to carry on licensable activities as an employee of a broking firm, an applicant must—

- (a) be at least twenty-one years old; and
- (b) have the following minimum educational qualifications—
  - (i) five passes at “O” Level, or the equivalent, in subjects that include English and mathematics; and
  - (ii) two passes at “A” Level or the equivalent;
 and
- (c) have passed the following modules of the Registered Persons Examinations of the South African Institute of Financial Markets—
  - (i) Introduction to International Capital Markets;
  - (ii) International Equity Market;
  - (iii) Bond Market;
  - (iv) the Derivatives Market.

#### C. SECURITIES (INVESTMENT ADVISERS) LICENCE

To obtain a securities (investment advisers) licence, an applicant must—

- (a) in the case of an individual, be a person who has; or
- (b) in the case of a company, satisfy the Commission that the company will be under the management of a person who has;

either of the following—

- (i) at least five years' experience in any one or more of the following fields: investment management, stockbroking, financial management, portfolio management or corporate finance; or
- (ii) any of the following qualifications—
  - A. any of the following degrees awarded by a reputable institution of higher learning—
    - I. B.Com.;
    - II. B.Sc. (Economics);
    - III. B.B.S.;

IV. B. Acc.;

V. M.B.A.;

or any other qualification which, in the Commission's opinion, is equivalent to any of those qualifications; or

B. membership of any of the following professional bodies—

- I. the Institute of Chartered Secretaries and Administrators of Zimbabwe (I.C.S.A.Z.);
- II. the Chartered Institute of Management Accountants (C.I.M.A.);
- III. the Association of Chartered Certified Accountants (A.C.C.A.);
- IV. the Institute of Chartered Accountants in Zimbabwe (I.C.A.Z.);
- V. the Institute of Chartered Financial Analysts (C.F.A.);
- VI. the Institute of Internal Auditors (I.I.A.);
- VII. the Securities and Investment Institute (S.I.I.).

#### D. SECURITIES (INVESTMENT MANAGEMENT) LICENCE

1. To obtain a securities (investment management) licence, an applicant must—

- (a) in the case of an individual, be a person who has; or
- (b) in the case of a company, satisfy the Commission that the company will be under the management of a person who has;

either of the following—

- (i) at least five years' experience in any one or more of the following fields: investment management, stockbroking, financial management, portfolio management or corporate finance; or
- (ii) any of the following qualifications—

A. any of the following degrees awarded by a reputable institution of higher learning—

- I. B.Com.;
- II. B.Sc. (Economics);
- III. B.B.S.;
- IV. B. Acc.;
- V. M.B.A.;

or any other qualification which, in the Commission's opinion, is equivalent to any of those qualifications; or

B. membership of any of the following professional bodies—

- I. the Institute of Chartered Secretaries and Administrators of Zimbabwe (I.C.S.A.Z.);
- II. the Chartered Institute of Management Accountants (C.I.M.A.);
- III. the Association of Chartered Certified Accountants (A.C.C.A.);

- IV. the Institute of Chartered Accountants in Zimbabwe (I.C.A.Z.);
- V. the Institute of Chartered Financial Analysts (C.F.A.);
- VI. the Institute of Internal Auditors (I.I.A.);
- VII. the Securities and Investment Institute (S.I.I.).

2. (1) To retain a securities (investment management) licence, the holder must comply with subparagraphs (2) to (4).

(2) The holder of a securities (investment management) licence must appoint a person who is approved by the Commission and is qualified under subparagraph (3) to be a compliance officer with responsibility for—

- (a) promoting and monitoring compliance by the firm and its employees with the Act, these rules and any requirements of the Commission; and
- (b) reporting to the firm's risk, audit and compliance committee on all compliance issues as required by the Act; and
- (c) ensuring that the holder's staff comply with all directives and requirements of the Commission; and
- (d) reporting to the Commission on the holder's compliance with all directives and requirements of the Commission.

(3) The compliance officer appointed under subparagraph (2) must possess a degree obtained from a reputable university or institution of higher learning in any of the following areas—

- (a) economics;
- (b) law;
- (c) accounting;
- (d) banking and finance;
- (e) business studies;
- (f) business administration;
- (g) risk management;

and must not be related to the chief executive or managing director or be involved in any other company in which the chief executive or managing director has five *per centum* or more of the shares.

(4) If the compliance officer appointed under subparagraph (2) resigns his or her post, the licence-holder must—

- (a) without delay, inform the Commission of the resignation and the reasons for it; and
- (b) ensure that the compliance officer has an opportunity to inform the Commission of the reasons for his or her resignation;

and the licence-holder must ensure that any vacancy in the compliance officer's post, whether arising through resignation or any other reason, is filled by a substantive appointment within three months, and that in the interim the post is temporarily filled by a senior employee of the holder who is not the chief executive or managing director.

## E. SECURITIES (TRANSFER) LICENCE

1. To obtain a securities (transfer) licence, an applicant must—

- (a) in the case of an individual, be a person who has; or
- (b) in the case of a company, satisfy the Commission that the company will be under the management of a person who has;

the following qualifications and experience—

- (i) at least five years' experience at senior management level in any one or more of the following fields: law, finance, accounting, economics, banking or insurance; and
- (ii) expertise in matters relating to money, capital markets or finance; and
- (iii) any of the following qualifications—

A. any of the following degrees awarded by a reputable institution of higher learning—

- I. B.Com.;
- II. B.Sc. (Economics);
- III. B.B.S.;
- IV. B. Acc.;
- V. M.B.A.;

or any other qualification which, in the Commission's opinion, is equivalent to any of those qualifications; or

B. membership of any of the following professional bodies—

- I. the Institute of Chartered Secretaries and Administrators of Zimbabwe (I.C.S.A.Z.);
- II. the Chartered Institute of Management Accountants (C.I.M.A.);
- III. the Association of Chartered Certified Accountants (A.C.C.A.);
- IV. the Institute of Chartered Accountants in Zimbabwe (I.C.A.Z.);
- V. the Institute of Chartered Financial Analysts (C.F.A.);
- VI. the Institute of Internal Auditors (I.I.A.);
- VII. the Securities and Investment Institute (S.I.I.).

2. (1) To retain a securities (transfer) licence, the holder must comply with subparagraphs (2) to (5).

(2) The holder of a securities (transfer) licence must appoint person who is approved by the Commission and is qualified under subparagraph (3) to be a compliance officer with responsibility for—

- (a) promoting and monitoring compliance by the firm and its employees with the Act, these rules and any requirements of the Commission; and
- (b) reporting to the firm's risk, audit and compliance committee on all compliance issues as required by the Act; and

(c) ensuring that the holder's staff comply with all directives and requirements of the Commission; and

(d) reporting to the Commission on the holder's compliance with all directives and requirements of the Commission.

(3) The compliance officer appointed under subparagraph (2) must possess a degree obtained from a reputable university or institution of higher learning in any of the following areas—

(a) economics;

(b) law;

(c) accounting;

(d) banking and finance;

(e) business studies;

(f) business administration;

(g) risk management;

and must have passed an examination set or approved by the Commission or by the securities exchange concerned relating to all aspects of the role of compliance officer.

(4) The compliance officer appointed under subparagraph (2) must not be related to the licence-holder's chief executive or managing director nor be involved in any other company in which the chief executive or managing director has five *per centum* or more of the shares.

(5) If the compliance officer appointed under subparagraph (2) resigns his or her post, the licence-holder must—

(a) without delay, inform the Commission of the resignation and the reasons for it; and

(b) ensure that the compliance officer has an opportunity to inform the Commission of the reasons for his or her resignation;

and the licence-holder must ensure that any vacancy in the compliance officer's post, whether arising through resignation or any other reason, is filled by a substantive appointment within three months, and that in the interim the post is temporarily filled by a senior employee of the holder who is not the chief executive or managing director.

#### F. SECURITIES (CUSTODY) LICENCE

To obtain a securities (custody) licence, an applicant must—

(a) in the case of an individual, be a person who has; or

(b) in the case of a company, satisfy the Commission that the company will be under the management of a person who has;

the following qualifications and experience—

(i) at least five years' experience at senior management level in any one or more of the following fields: law, finance, accounting, economics, banking or insurance; and

(ii) expertise in matters relating to money, capital markets or finance; and

- (ii) a business diploma or H.N.D. awarded or issued by a reputable institution of higher learning or professional body or any other qualification which the Commission considers is equivalent to those qualifications.

#### G. SECURITIES (TRUSTEE) LICENCE

To obtain a securities (trustee) licence, an applicant must—

- (a) in the case of an individual, be a person who has; or
- (b) in the case of a company, satisfy the Commission that the company will be under the management of a person who has;

the following qualifications and experience—

- (i) at least five years' experience at senior management level in any one or more of the following fields: law, finance, accounting, economics, banking or insurance; and
- (ii) expertise in matters relating to money, capital markets or finance; and
- (ii) a business diploma or H.N.D. awarded or issued by a reputable institution of higher learning or professional body or any other qualification which the Commission considers is equivalent to those qualifications.

#### H. RECOGNITION OF PRIOR EXPERIENCE

Any person who was a registered stockbroker under the repealed Act and who, by virtue of section 121 of the Act, was deemed to have been the holder of a licence immediately before the date of commencement of these regulations shall be entitled to have that licence renewed even if he or she does not possess the educational qualifications required by this Schedule, provided that he or she complies with the other requirements of these rules.

#### I. ADDITIONAL REQUIREMENTS FOR LICENSEES

1. Every applicant for a licence to conduct licensable activities will be required to write and pass an examination set by the Commission to test his or her understanding of the legal framework governing the Securities Industry.

2. Every licensed person must attend such seminars as may be required by the Securities Commission to acquaint licensed persons with developments in capital markets or regulatory issues or any other developments which, in the Commission's opinion, have a significant impact on the carrying on of licensable activities.

### FOURTH SCHEDULE (*Rules 14 and 27*)

#### GUIDELINES ON CORPORATE GOVERNANCE

#### ARRANGEMENT OF PARAGRAPHS

*Paragraph*

1. Introduction.
2. Definitions.
3. Principles of Good Corporate Governance Practices.
  - 3.1 Board of Directors.
    - 3.1.1 The Board and Board Committees
    - 3.1.2 Directors' Remuneration
    - 3.1.3 Supply and Disclosure of Information
    - 3.1.4 Board Balance
    - 3.1.5 Appointments to the Board
    - 3.1.6 Multiple Directorships
    - 3.1.7 Re-election of Directors
    - 3.1.8 Resignation of Directors
  - 3.2 Role of Chairperson and Chief Executive
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    - 3.3.1 Approval of Major Decisions by Shareholders
    - 3.3.2 The Annual General Meeting
  - 3.4 Accountability and Audit
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4. Recommended Best Practices in Corporate Governance by Corporate Bodies
  - 4.1 Best practices relating to the Board of Directors
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  - 4.2 Best Practices Relating to the Position of Chairperson and Chief Executive
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  - 4.5 Best Practices Relating to the Accountability and Role of Audit Committees
    - 4.5.1 The Audit Committee
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    - 4.5.3 Duties of Audit Committees
    - 4.5.4 Audit Committees and Internal Audit Functions
    - 4.5.5 Participation in the Meetings of Audit Committees
  - 4.6 Best Practices Relating to Advisers.

## GUIDELINES ON CORPORATE GOVERNANCE PRACTICES

### 1. INTRODUCTION

- 1.1 The Securities Commission has developed these guidelines for good corporate governance practices by registered securities exchanges and licensed persons that are bodies corporate in response to the growing importance of governance issues both in emerging and developing economies and for promoting domestic and regional capital markets growth. It is also in recognition of the role of good governance in corporate performance, capital formation and maximization of shareholders value as well as protection of investors' rights.
- 1.2 These guidelines have been developed taking into account the work, which has been undertaken extensively by several jurisdictions through many task forces committees including, but not limited to, the United Kingdom, South Africa, King's Report on Corporate Governance and Commonwealth Association for Corporate Governance.
- 1.3 The objective of these guidelines is to strengthen corporate governance practices by registered securities exchanges and licensed persons and promote the standards of self-regulation so as to bring the level of governance in line with international trends.
- 1.4 The Commission, in developing these guidelines, has adopted both a prescriptive and non-prescriptive approach in order to provide for flexibility and innovative dynamism to corporate governance practices by registered securities exchanges and licensed persons.
- 1.5 Good corporate governance practices must be nurtured and encouraged to evolve as a matter of best practices but certain aspects of operation in a corporate body must of necessity require minimum standards of good governance. In this regard the Commission expects the directors of every registered securities exchange and licensed person to undertake or commit themselves to adopt good corporate governance practices as part of their continuing listing obligations.
- 1.6 It is important that the extent of compliance with these guidelines should form an essential part of disclosure obligations in the corporate annual reports. It is equally important that disclosure of areas of non-compliance of alternative practices be made a part of these disclosure requirements.
- 1.7 Every registered securities exchange and licensed person must disclose in its annual reports and statements of the directors as to whether the corporate body is complying with these guidelines on corporate governance.
- 1.8 Where a registered securities exchange or licensed person is not fully compliant with these guidelines the directors must indicate the steps the company will take to adhere to full compliance.

### 2. DEFINITIONS

In these guidelines—

“Corporate Body” means—

- (a) a registered securities exchange; or
- (b) a licensed person that is a company or other body corporate;

“Corporate Governance” means the process and structure used to direct and manage business affairs of the corporate body towards enhancing prosperity and corporate accounting with the ultimate objective of realizing shareholders long-term value while taking into account the interest of other stakeholders;

“Director” has the meaning given to it in the Companies Act [*Chapter 24:03*];

“Executive Director” means a director who is involved in the administrative or managerial operations of the corporate body;

“Independent Director” means a director who—

- (a) has not been employed by the corporate body in an executive capacity within the last five years; and
  - (b) is not affiliated to an adviser or consultant to the corporate body or a member of the corporate body’s senior management or a significant customer or supplier of the corporate body or with a not-for-profit entity that receives significant contributions from the corporate body or within the last five years, has not had any business relationship with the corporate body (other than service as a director) for which the corporate body has been required to make disclosure; and
  - (c) has no personal service contract with the corporate body or with a member of the corporate body’s senior management; and
  - (d) is not employed by a corporate body at which an executive officer of the corporate body serves as a director; and
  - (e) is not a member of the immediate family of any person described above;
- and has not had any of the relationships described above with any affiliate of the corporate body;

“Non Executive Director” means a director who is not involved in the administrative or managerial operations of the corporate body;

“Majority shareholder” means a shareholder who has more than 50 per cent shareholding of a corporate body;

“Substantial Shareholder” means a person who holds not less than 15 per cent of the voting shares of a listed corporate body and has the ability to exercise a majority voting for the election of the director.

### 3. PRINCIPLES OF GOOD CORPORATE GOVERNANCE PRACTICES

There are a number of principles that are essential for good corporate governance practices of which the following have been identified as representing critical foundation for and virtues of good corporate governance practices.

#### 3.1 Board of Directors

Every corporate body should be headed by an effective board to offer strategic guidance, lead and control the corporate body and be accountable to its shareholders. Procedures for the nomination of Board members shall be formal and transparent. The Board may delegate this responsibility to a Nominations Committee, which makes recommendations to the Board.

### 3.1.1 *The Board and Board Committees*

- (a) The Board should establish relevant committees and delegate specific mandates to such committees as may be necessary.
- (b) The Board must specifically establish an Audit Committee as well as Nominations committee.

### 3.1.2 *Directors' Remuneration*

- (a) The directors' remuneration should be sufficient to attract and retain directors to run the corporate body effectively and should be approved by shareholders.
- (b) The executive directors' remuneration should be competitively structured and linked to performance.
- (c) The non-executive directors' remuneration should be competitive in line with remuneration for other directors in competing sectors.
- (d) Corporate bodies should establish a formal and transparent procedure for remuneration of directors, which should be with the approval of the shareholders.

### 3.1.3 *Supply and Disclosure of Information*

- (a) The board should be supplied with relevant, accurate and timely information to enable the board discharge its duties.
- (b) Every board should annually disclose (in its annual report) its policies for remuneration including incentives for the board and senior management particularly the following—
  - (i) quantum and component of remuneration for directors including non-executive directors on a consolidated basis in the following categories—
    - A. executive directors fees;
    - B. executive directors emoluments;
    - C. non executive directors fees;
    - D. non-executive directors emoluments.
  - (ii) a list of ten major shareholders of the corporate body;
  - (iii) Share options and other forms of executive compensation that have to be ;made or have been made during the course of the financial year; and
  - (iv) Directors' loans.

### 3.1.4 *Board Balance*

The board should compose of a minimum of two thirds of independent directors and non-executive directors of diverse skills or expertise and provide demographic equity in order to ensure that no individual or small group of individuals can dominate boards decision-making processes.

### 3.1.5 *Appointments to the Board*

- (a) There should be a formal and transparent procedure in the appointment of directors to the board and all persons appointed or offering themselves for appointments, as directors should disclose any potential area of conflict that

may undermine their position or service as director. The establishment of a Nominations Committee, which inter alia shall set the nominations policy and outline the procedures to be taken in the appointment of directors.

- (b) With regard to appointed directors, the Board should, among other things ensure that—
  - (i) conflicted directors disclose the nature and extent of their interests to the Board and their interests are noted in the corporate body's interest register;
  - (ii) conflicted directors are given notice to any board meeting at which the subject matter of the conflict is to be considered;
  - (iii) conflicted directors should recuse themselves at any board meeting when the subject matter of the conflict is to be considered;
  - (iv) directors with a continuing material conflict of interest, consider resigning from office.

#### 3.1.6 *Multiple Directorships*

- (a) No person may hold more than seven directorships concurrently in corporate bodies and public listed companies;
- (b) Paragraph (a) does not apply to—
  - (i) an officer of the State, who may hold more than seven directorships by virtue of his office as custodian of government shares in public companies;
  - (ii) directorships in companies within the same group.

#### 3.1.7 *Re-election of Directors*

- (a) All directors should be required to submit themselves for re-election at regular intervals or at least every three years.
- (b) Executive directors should have a fixed service contract not exceeding five years with a provision to renew subject to—
  - (i) regular performance appraisal; and
  - (ii) shareholders approval.
- (c) Disclosure should be made to the shareholders at the annual general meeting and in the annual reports of all directors approaching their sixty-fifth (65<sup>th</sup>) birthday that respective year.

#### 3.1.8 *Resignation of Directors*

Resignation by a serving director should be disclosed in the annual report together with the details of the circumstances necessitating the resignation.

### **3.2 Role of Chairperson and Chief Executive**

- 3.2.1 There should be a clear separation of the role and responsibilities of the chairperson and chief executive which will ensure a balance of power of authority and provide for checks and balances such that no one individual has unfettered

powers of decision-making. Where such roles are combined a rationale for the same should be disclosed and approved by the shareholders.

- 3.2.2 No person may be the chairperson of more than one corporate body at any one time, except in the case where it can be proven that the person is a consultant who specialises in chairing boards, but the person should be authorised by the Securities Exchange for each new appointment. The Securities Exchange should reserve the right to decline such an application.

### **3.3 Shareholders**

#### *3.3.1 Approval of Major Decisions by Shareholders*

There should be shareholders participation in major decisions of the corporate body. The board should therefore provide the shareholders with information on matters that include but are not limited to major disposal of corporate body's assets, restructuring, takeovers, mergers, acquisitions or reorganization.

#### *3.3.2 The Annual General Meeting*

- (a) The board should provide to all its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided during the general meeting.
- (b) The board should make shareholders expenses and convenience the primary criteria when selecting venue and location of annual general meetings; and
- (c) The directors should provide sufficient time for shareholders questions on matters pertaining to the corporate body's performances and seek to explain to the shareholders their concern.

### **3.4 Accountability and Audit**

#### *3.4.1 Annual Report and Accounts*

The board should present an objective and understandable assessment of the corporate body's operating position and prospects.

The board should ensure that the financial statements are presented in line with the International Financial Reporting Standards (IFRS) as adopted for local use by the Zimbabwe Accounting Practices Board (ZAPB) a technical sub-committee of the Public Accountants and Auditors Board (PAAB) established in terms of the Public Accountants and Auditors Act (*Chapter 27:12*).

The board should ensure that financial statements and the rest of the annual report comply with listing requirements issued by the Securities Exchange and the Securities Commission.

#### *3.4.2 Internal Control*

The board should maintain a sound system of internal control to safeguard the shareholders investments and assets.

#### *3.4.3 Independent Auditors*

The board should establish a formal and transparent arrangement for appointment of independent auditors at each annual general meeting.

#### 3.4.4 *Relationship with the Auditors*

The board should establish a formal and transparent arrangement for maintaining professional interaction with the corporate body's auditors.

### 4. RECOMMENDED BEST PRACTICES IN CORPORATE GOVERNANCE BY CORPORATE BODIES

The adoption of International standards in corporate governance best practices is essential for corporate bodies in Zimbabwe in order to maximise shareholder value through effective and efficient management of corporate resources. As a matter of best practice, every corporate body should endeavour to achieve the following—

#### 4.1 **Best Practices Relating to the Board of Directors**

##### 4.1.1 *The Role and Responsibilities of the Board of Directors*

The board of directors should assume a primary responsibility of fostering long-term business of the corporation consistent with their fiduciary responsibility to the shareholders. Board members should accord sufficient time to their functions and act on a fully-informed basis, while treating all shareholders fairly in the discharge of the following responsibilities (among others)—

- (a) Define the corporate body's mission, its strategy, goals, risk policy, plans and objectives including approval of its annual budgets;
- (b) Oversee the corporate management and operations, management accounts, major capital expenditures, acquisitions and divestitures and review corporate performance and strategies at least on a quarterly basis;
- (c) Identify the corporate business opportunities as well as principal risks in its operating environment including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;
- (d) Development of appropriate staffing and remuneration policy including the appointment of chief executive and the senior staff, particularly the finance director, operations director and the corporate body secretary as may be applicable;
- (e) Review on a regular basis the adequacy and integrity of the corporate body's internal control, accounting and financial reporting and management information systems including compliance with applicable laws, regulations, rules and guidelines;
- (f) Establish and implement a system that provides necessary information to the shareholders including shareholder communication policy for the corporate body;
- (g) Monitor the effectiveness of the corporate governance practices under which it operates and propose revisions as may be required;
- (h) Take into consideration the interests of the corporate body's stakeholders in its decision-making process.

#### 4.1.2 *A Balanced Board: Constitution of an Effective Board*

- (a) The board of directors of every corporate body should reflect a balance between independent, non-executive directors and executive directors.
- (b) The independent directors and non-executive directors should form at least two thirds of the membership of the board.
- (c) The structure of the board should also comprise a number of directors, which fairly reflects the corporate body's shareholding structure. The board composition should not be biased towards representation by a substantial shareholder but should reflect the corporate body's broad shareholding structure.
- (d) The composition of the board should also provide a mechanism for representation of the minority shareholders without undermining the collective responsibility of the directors.
- (e) In circumstances where there is no majority shareholder but there is still a single substantial shareholder the board should exercise judgement in determining the board representation of such shareholder and those of the other shareholders, which reflects the shareholding structure of the corporate body.
- (f) The board should disclose in its annual report whether independent and non-executive directors constitute two thirds of the board and if it satisfies the representation of the minority shareholders.
- (g) The size of the board should not be too large to undermine an interactive discussion during board meetings or too small such that the inclusion of a wider expertise and skills to improve the effectiveness of the board is compromised.
- (h) The Board should monitor and manage potential conflicts of interests at management, board and shareholder levels.

#### 4.1.3 *Appointment and Qualifications of Directors*

- (a) The board of every corporate body should appoint a nominating committee composed of majority non-executive directors with the responsibility of proposing new nominees for the board and for assessing the performance and effectiveness of directors to perform their role in the corporate body.
- (b) The nominating committee should consider only persons of calibre and credibility, who have necessary skills and expertise to exercise independent judgement on issues that are necessary to promote the corporate body's objectives and performance in its area of business.
- (c) The nominating committee should also consider candidates for directorship proposed by the chief executive and shareholders.
- (d) The board, through the nominating committee, should on an annual basis review its required mix, skills and expertise of which the executive directors as well as independent or non-executive directors should bring to the board and make disclosure of the same in the annual report.

- (e) The board should also implement a process of assessing the effectiveness of the board as a whole, committees of the board, as well as of each individual director and such task should be assigned to the nominating committee.
- (f) Newly appointed directors should be provided with necessary orientation in the area of the corporate body's business in order to enhance their effectiveness in the board.
- (g) The nominating committee should recommend to the board candidates for directorship to be filled by the shareholders as the responsibility of nominating rests on the full board, after considering the recommendations of the nominating committee.
- (h) The process of the appointment of directors should be sensitive to gender representation.
- (i) No person should hold more than seven directorships in any company or corporate body at any one time in order to ensure effective participation in the board.

#### 4.1.4 *Remuneration of Directors*

- (a) The board of directors of every corporate body should appoint a remuneration committee or assign a mandate to a nominating committee consisting mainly of independent and non-executive directors to recommend to the board the remuneration of the executive directors and the structure of their compensation package.
- (b) The determination of the remuneration for the non-executive directors should be a matter for the whole board.
- (c) The remuneration of the executive directors should include an element that is linked to long-term sustainable corporate performance so as to ensure the maximization of the shareholders' value.
- (d) The consolidated total remuneration of the directors should be disclosed to the shareholders in the annual report specifying the following categories—
  - (i) Total remuneration for executive directors;
  - (ii) Total fees for non-executive directors.

## **4.2 Best Practices Relating to the Position of Chairperson and Chief Executive**

- (a) Every corporate body should, as a matter of best practice, separate the role of the chairperson and chief executive in order to ensure a balance of power and authority and provide for checks and balances.
- (b) Where the role of the chairperson and the chief executive is combined (Executive Chairman), there should be a clear rationale and justification which should—
  - (i) be for a limited period, which in any event should not be longer than 12 months,
  - (ii) be approved by the shareholders excluding that share which is held by the Executive Chairman in his personal capacity or in a corporate body which he has control over or related parties.

- (iii) include measures that have been implemented to ensure that no one individual has unfettered powers of decision in the corporate body; and
  - (iv) include plan for separation of the role where such combined role is deemed necessary during the restructuring or change process.
- (c) Only an independent or non-executive director should be the chairperson of a corporate body.
  - (d) No person should be the chairperson of more than one public listed company or corporate body at any one time in order to ensure effective participation in their affairs.
  - (e) Every corporate body should also have a clear succession plan for its chairperson and chief executive in order to avoid unplanned and sudden departure, which could undermine the corporate body and shareholders' interest.
  - (f) The chief executive should be responsible for implementing the board corporate decisions and there should be a clear flow of information between management and the board in order to facilitate both quantitative and qualitative evaluation and appraisal of the corporate body's performance.
  - (g) The chairperson of the board should undertake a primary responsibility for organizing information necessary for the board to deal with and for providing necessary information to the directors on a timely basis.
  - (h) The chief executive is obliged to provide such necessary quality information to the board in the discharge of the board's business.

#### **4.3 Best Practices Relating to the Rights of Shareholders**

The essence of good corporate governance practices is to promote and protect shareholders' rights.

- (a) Every corporate body board should ensure equitable treatment of shareholders including the minority shareholders.
- (b) All shareholders should receive relevant information on the corporate body's performance through distribution of regular annual reports and accounts, and half-yearly results as a matter of best practice.
- (c) The shareholders should receive a secure method of transfer and registration of ownership as well as a certificate or statement evidencing such ownership in the case of a central depository environment.
- (d) Every shareholder has a right to participate and vote at the general shareholders meeting including the election of directors.
- (e) Every shareholder is entitled to ask questions, seek clarification on the corporate body's performance as reflected in the annual reports and accounts or in any matter that may be relevant to the corporate body's performance or promotion of shareholders' interests and to receive explanation by the directors and/or management.
- (f) Every shareholder is entitled to distributed profit in form of dividends and other rights for bonus, shares, script, dividend or rights issue, as applicable and in the proportion of its shareholding in the corporate body's share capital.

- (g) The board should maintain an effective communication policy that enables both management and the board to communicate effectively with its shareholders, stakeholders and the public in general.
- (h) The annual report and accounts to the shareholders should include highlights of the operation of the corporate body and financial performance.
- (i) All shareholders should be encouraged to participate in the annual general meetings and to exercise their votes.
- (j) Corporate bodies, as a matter of best practice, are encouraged to organise regular investor briefings when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote interaction with investors.
- (k) Every corporate body should encourage the establishment and use of the corporate body's website by shareholders to ease communication and interaction among shareholders and the corporate body.
- (l) Every corporate body should encourage and facilitate the establishment of a Shareholders' Association to promote dialogue between the corporate body and the shareholders. The Association should play an important role in promoting good corporate governance and actively encourage all shareholders to participate in the annual general meeting of the corporate body or assign necessary voting proxy.
- (m) Shareholders while exercising their right of participation and voting during annual general meetings of their corporate body should not act in a disrespectful manner to all persons present as such action may undermine the corporate body's interest.

#### **4.4 Best Practices Relating to the Conduct of General Meetings**

The board of a corporate body should ensure that shareholders' rights of full participation at general meetings are protected by—

- (a) Giving shareholders sufficient information on voting rules and procedures.
- (b) Giving shareholders the opportunity to question management.
- (c) Giving shareholders the opportunity to place items on the agenda at general meetings.
- (d) Giving shareholders the opportunity to vote in absentia.
- (e) Giving shareholders the opportunity to consider the costs and benefits of their votes.

#### **4.5 Best Practice Relating to the Accountability and Role of Audit Committees**

As a matter of best practice, the constitution of audit committees represents an important step towards promoting good corporate governance. The following represents the recommended best practice relating to the role and constitution of audit committees by corporate bodies—

##### *4.5.1 The Audit Committee*

The board must establish an audit committee of at least three independent directors and non-executive directors who must report to the board, with written terms of reference, which deal clearly with its authority and duties. The chairperson of the audit committee should be an independent or non-executive director. The Chairman of the board cannot be a member of the Audit Committee

.The board should disclose in its annual report whether it has an audit committee and the mandate of such committee.

#### 4.5.2 *Attributes of Audit Committee Members*

Important attributes of committee members should include—

- (a) broad business knowledge relevant to the corporate body's business;
- (b) keen awareness of the interests of the investing public;
- (c) familiarity with basic accounting principles; and
- (d) objectivity in carrying out their mandate and no conflict of interest.

#### 4.5.3 *Duties of Audit Committees*

Audit Committees should have adequate resources and authority to discharge their responsibilities. The members of the audit committee must—

- (a) Be informed, vigilant and effective overseers of the financial reporting process and the corporate body's internal controls.
- (b) Review and make recommendations on management programs established to monitor compliance with the code of conduct.
- (c) Consider the appointment of the external auditor, the audit fee and any questions of resignation or dismissal of the external auditor.
- (d) Discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved.
- (e) Review management's evaluation of factors related to the independence of the corporate body's external auditor. Both the audit committee and management should assist the external auditor in preserving its independence.
- (f) Review the quarterly, half-yearly and year-end financial statements of the corporate body, focusing particularly on—
  - (i) any changes in accounting policies and practices;
  - (ii) significant adjustments arising from the audit;
  - (iii) the going concern assumption; and
  - (iv) compliance with International Financial Accounting Standards and other legal requirements.
- (g) Discuss problems and reservations arising from the interim and final audits, and any matter the external auditor may wish to discuss (in the absence of management where necessary).
- (h) Review the external auditor's letter(s) to the management and management's response.
- (i) Consider any related party transactions that may arise within the corporate body or group.
- (j) Consider the major findings of internal investigations and management's response.

- (k) Have explicit authority to investigate any matter within its terms of reference, the resources that it needs to do so and full access to information.
- (l) Obtain external professional advice and to invite outsiders with relevant experience to attend, if necessary; and
- (m) Consider other topics as defined by the Board including regular review of the capacity of the internal audit function.

#### 4.5.4 *Audit Committees and Internal Audit functions*

The board should establish an internal audit function and the audit committee's function in relation to internal audit functions should include—

- (a) Review of the adequacy, scope, functions and resources of the internal audit function, and ensure that it has the necessary authority to carry out its work;
- (b) Review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;
- (c) Review any appraisal or assessment of the performance of members of the internal audit function;
- (d) Approve any appointment or termination of senior staff members of the internal audit function;
- (e) Ensure that the internal audit function is independent of the activities of the corporate body and is performed with impartiality, proficiency and due professional care;
- (f) Determine the effectiveness of the internal audit functions; and
- (g) Be informed of resignation of internal audit staff members and provide the resigning staff members an opportunity to submit reasons for resigning.

#### 4.5.5 *Participation in the Meetings of Audit Committees*

- (a) The finance director, the head of internal audit (where such a function exists) and a representative of the external auditors must normally attend meetings of the audit committee while other board members may attend meetings upon the invitation by the audit committee.
- (b) At least once a year the committee must meet with the external auditors without the presence of executive board members.
- (c) The audit committee should meet regularly, with due notice of issues to be discussed and should record its conclusions in discharging its duties and responsibilities.
- (d) The board should disclose in an informative way, details of the activities of audit committees, the number of audit meetings held in a year and details of attendance of each individual director in respect of meetings.

#### 4.6 Best Practices Relating to Advisers

Anyone appointed to advise a corporate body on legal or investment matters, or to sponsor financial transactions such as initial public offerings or capital restructuring, should comply with the following rules:

- (a) the adviser should be independent of the corporate body's directors, and should not be personally related to them, nor in partnership with them;
- (b) the adviser should also be independent of any other corporate body or company that is controlled by one or more of the directors of the corporate body;
- (c) save in exceptional circumstances, the adviser should not advise on both legal and financial matters, and should not combine such advise with sponsorship of financial transactions;
- (d) save in exceptional circumstances, the adviser should not advise on any transaction to which he or she is a party.

#### FIFTH SCHEDULE (*Rule 48*)

##### REQUIREMENTS FOR CENTRAL SECURITIES DEPOSITORIES

1. To obtain the Commission's approval in terms of section 69 of the Act, a scheme for the establishment of a central securities depository must provide for the matters set out in this Schedule.

2. No person, whether alone or with associates, may—

- (a) hold shares in a central securities depository if their total nominal value represents more than fifteen *per centum* of the nominal value of all the shares issued by the central securities depository; or
- (b) hold shares in a central securities depository which entitle the person to exercise more than fifteen *per centum* of the voting rights attached to all the shares issued by the central securities depository; or
- (c) have power to determine the appointment of more than fifteen *per centum* of the directors of a central securities depository, including the power to—
  - (i) appoint or remove, without the concurrence of another person, more than fifteen *per centum* of the directors; or
  - (ii) prevent a person from being appointed as a director without another person's consent.

3. A central securities depository must be under the control of a person who has the following qualifications and experience—

- (a) at least five years' experience at senior management level in any one or more of the following fields: law, finance, accounting, economics, banking or insurance; and
- (b) expertise in matters relating to money, capital markets or finance; and
- (c) any of the following degrees or qualifications awarded or issued by a reputable institution of higher learning—
  - (i) B.Com.;

- (ii) B.Sc. (Economics);
- (iii) B.B.S.;
- (iv) B. Acc.;
- (v) M.B.A;
- (vi) a business diploma or H.N.D.;

or any other qualification which, in the Commission's opinion, is equivalent to any of those qualifications; and

- (d) membership of any of the following professional bodies—
  - (i) the Institute of Chartered Secretaries and Administrators of Zimbabwe (I.C.S.A.Z.);
  - (ii) the Chartered Institute of Management Accountants (C.I.M.A.);
  - (iii) the Association of Chartered Certified Accountants (A.C.C.A.);
  - (iv) the Institute of Chartered Accountants in Zimbabwe (I.C.A.Z.);
  - (v) the Institute of Chartered Financial Analysts (C.F.A.);
  - (vi) the Institute of Internal Auditors (I.I.A.);
  - (vii) the Securities and Investment Institute (S.I.I.).

4.(1) A central securities depository must appoint a person who is approved by the Commission and is qualified under subparagraph (2) to be a compliance officer with responsibility for—

- (a) promoting and monitoring compliance by the firm and its employees with the Act, these rules and any requirements of the Commission; and
- (b) reporting to the firm's risk, audit and compliance committee on all compliance issues as required by the Act; and
- (c) ensuring that the holder's staff comply with all directives and requirements of the Commission; and
- (d) reporting to the Commission on the holder's compliance with all directives and requirements of the Commission.

(2) The compliance officer appointed under subparagraph (1) must possess a degree obtained from a reputable university or institution of higher learning in any of the following areas—

- (a) economics;
- (b) law;
- (c) accounting;
- (d) banking and finance;
- (e) business studies;
- (f) business administration;
- (g) risk management;

and must not be related to the chief executive or managing director or be involved in any other company in which the chief executive or managing director has five *per centum* or more of the shares.

(3) If the compliance officer appointed under subparagraph (1) resigns his or her post, the central securities depository must—

- (a) without delay, inform the Commission of the resignation and the reasons for it; and
- (b) ensure that the compliance officer has an opportunity to inform the Commission of the reasons for his or her resignation;

and the central securities depository must ensure that any vacancy in the compliance officer's post, whether arising through resignation or any other reason, is filled by a substantive appointment within three months, and that in the interim the post is temporarily filled by a senior employee of the depository who is not the chief executive or managing director.

## SIXTH SCHEDULE (*Rule 53*)

### CAPITAL ADEQUACY REQUIREMENTS

#### *Interpretation*

1. In this Schedule—

- “custodian” means the holder of a securities (custody) licence;
- “investment advisor” means the holder of a securities (investment advisers) licence;
- “investment manager” means the holder of a securities (investment management) licence;
- “securities dealer” means the holder of a securities (dealer) licence;
- “securities dealing firm” means the holder of a securities (dealing firm) licence;
- “transfer secretary” means the holder of a securities (transfer) licence;

#### *Securities exchange*

2.(1) The capital adequacy requirements of a registered securities exchange shall be determined from time to time by the Commission in consultation with the exchange concerned, and shall be based on the operational costs of the exchange, the required capital expenditure and the risk taken by the exchange.

(2) The Commission shall without delay notify the securities exchange concerned, in writing, of the capital adequacy requirements it has determined for the exchange.

(3) The Commission shall ensure that an exchange for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

#### *Central securities depository*

3.(1) The capital adequacy requirements of a central securities depository shall be determined from time to time by the Commission in consultation with the depository concerned, and shall be based on the operational costs of the depository, the required capital expenditure and the risk taken by the depository.

(2) The Commission shall without delay notify the central securities depository concerned, in writing, of the capital adequacy requirements it has determined for the depository.

(3) The Commission shall ensure that a central securities depository for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

*Securities Dealing Company*

4.(1) The capital adequacy requirements of a securities dealing company shall determined from time to time by the Commission in consultation with the company concerned, and shall be based on—

- (a) Tier 1 Capital, namely liquid capital equivalent to—
  - (i) the company's operational costs over a minimum of thirteen weeks; or
  - (ii) one hundred and fifty thousand United States Dollars;
 whichever is the higher; and
- (b) Tier 2 Capital, namely capital assets including computers, computer systems, software, telecommunication infrastructure, property, vehicles and office equipment; and
- (c) Tier 3 Capital, determined by the risk to which the company exposes itself through the nature of its business.

(2) The Commission shall without delay notify the securities dealing company concerned, in writing, of the capital adequacy requirements it has determined for the company.

(3) The Commission shall ensure that a securities dealing company for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

*Securities dealer*

5.(1) The capital requirement of a securities dealer shall be that the dealer's assets shall exceed his or her liabilities by more than ten thousand United States Dollars.

(2) Every securities dealer shall have a professional indemnity insurance cover from the date on which he or she commences operations.

*Investment manager*

6.(1) The capital adequacy requirements of an investment manager shall be determined from time to time by the Commission in consultation with the investment manager concerned, and shall be based on the operational costs of the investment manager, the required capital expenditure and the risk taken by the investment manager.

(2) The Commission shall without delay notify the investment manager concerned, in writing, of the capital adequacy requirements it has determined for the investment manager.

(3) The Commission shall ensure that an investment manager for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

*Investment advisor*

7.(1) The capital requirement of an investment advisor shall be that the advisor's assets shall exceed his or her liabilities by more than ten thousand United States Dollars.

(2) Every investment advisor shall have a professional indemnity insurance cover from the date on which he or she commences operations.

*Transfer Secretary*

8.(1) The capital adequacy requirements of a transfer secretary shall be determined from time to time by the Commission in consultation with the transfer secretary concerned, and shall be based on the operational costs of the transfer secretary, the required capital expenditure and the risk taken by the transfer secretary.

(2) The Commission shall without delay notify the transfer secretary concerned, in writing, of the capital adequacy requirements it has determined for the transfer secretary.

(3) The Commission shall ensure that a transfer secretary for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

*Custodian*

9.(1) The capital adequacy requirements of a custodian shall be determined from time to time by the Commission in consultation with the custodian concerned, and shall be based on the operational costs of the custodian, the required capital expenditure and the risk taken by the custodian.

(2) The Commission shall without delay notify the custodian concerned, in writing, of the capital adequacy requirements it has determined for the custodian.

(3) The Commission shall ensure that a custodian for which it has determined capital adequacy requirements is given a reasonable time within which to comply with them.

SEVENTH SCHEDULE (*Rule 54*)

RESOLUTION OF DISPUTES

1. In this Schedule—

“applicant” means the party to a dispute who refers the dispute to the enforcement committee;

“Chief Executive Officer” means the Chief Executive Officer of the Commission appointed in terms of section 14 of the Act;

“dispute” means a dispute such as is referred to in section 54, which arises between parties specified in that section;

“enforcement committee” means the committee established by paragraph 7;

“respondent” means a party with whom an applicant is engaged in a dispute.

*Reference of disputes to enforcement committee*

2.(1) If the parties to a dispute cannot settle it by agreement, neither party shall institute proceedings in a court to determine the dispute unless it has been referred to the enforcement committee in terms of this Schedule and the committee has been given an opportunity to resolve it.

(2) A reference under subparagraph (1) shall be in writing, setting out the facts giving rise to the dispute and any legal issues on which the enforcement committee's ruling is sought, and a brief statement of the applicant's contentions in regard to the dispute.

(3) The applicant shall cause a reference under subparagraph (1) to be delivered to the Chief Executive Officer and as soon as possible thereafter shall cause a copy to be delivered to the respondent.

*Respondent's statement*

3.(1) Within seven days after receiving a copy of a reference under paragraph 2, the respondent shall deliver to the Chief Executive Officer a written statement setting out the respondent's case, and—

- (a) stating any facts and legal issues which, in the respondent's opinion, have been omitted from the reference; and
- (b) briefly setting out the respondent's contentions in regard to the dispute.

(2) As soon as possible after delivering a statement to the Chief Executive Officer under subparagraph (1), the respondent shall cause a copy to be delivered to the applicant.

*Statement of agreed facts*

4. Where the parties to a dispute are agreed upon the material facts of the dispute and the issues on which the enforcement committee is to be asked to give a ruling, they may, instead of delivering a reference and a statement under paragraphs 2 and 3, prepare a statement of agreed facts, signed by both parties, and deliver it to the Chief Executive Officer.

*Settlement statements*

5. Where the parties to a dispute have settled their dispute by agreement, whether before or after it has been referred to the enforcement committee, they may deliver to the Chief Executive Officer a written statement of their agreement, signed by both of them, for it to be made a ruling of the enforcement committee.

*Delivery of documents to enforcement committee*

6. The Chief Executive Officer shall deliver all documents received by him or her in terms of paragraph 2, 3, 4 or 5 to the chairperson of the enforcement committee within twenty-four hours after receiving them.

*Appointment of enforcement committee*

7.(1) The Commission shall appoint an enforcement committee consisting of—

- (a) a chairperson, who is—
  - (i) a judge or former judge of the Supreme Court or the High Court; or
  - (ii) a legal practitioner who has been for at least ten years entitled to practise as such in Zimbabwe and who is chosen by the Commission from a list provided by the Law Society of Zimbabwe;

and

- (b) a person who is registered as a public accountant or public auditor under the Public Accountants and Auditors Act [*Chapter 27:12*] and who is chosen by the Commission from a list provided by the Institute of Chartered Accountants in Zimbabwe; and
  - (c) a person chosen by the Commission for his or her knowledge of the capital and financial markets in Zimbabwe.
- (2) The Chief Executive Officer shall be the secretary of the enforcement committee.
- (3) All expenses of the enforcement committee, including any remuneration payable to its members, shall be paid from the Commission's funds.

*Decisions of enforcement committee*

- 8.(1) Decisions of the enforcement committee shall be by a simple majority.
- (2) The Chief Executive Officer may take part in the deliberations of the enforcement committee but shall have no vote in its decisions.

*Application of Arbitration Act*

9. Subject to these rules, the Arbitration Act [*Chapter 7:15*] shall apply to the proceedings of the enforcement committee and the enforcement of its decisions.