

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE SECURITIES ACT

CHAPTER 354 OF THE LAWS OF ZAMBIA

CHAPTER 354 SECURITIES ACT

SECURITIES ACT

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CHAPTER 354

SECURITIES ACT

An Act to provide for the regulation of the securities industry; to establish the Securities and Exchange Commission and to define its objects and functions; and to provide for matters connected with or incidental to the foregoing.

38 of 1993
13 of 1994
Statutory Instrument
172 of 1993

[8th August, 1993

PART I

PRELIMINARY

1. This Act may be cited as the Securities Act.*(1)

Short title

*Date of commencement 17th December, 1993.

2. (1) In this Act, unless the context otherwise requires-

Interpretation
Cap. 388
Cap. 387
Cap. 392

"Commission" means the Securities and Exchange Commission established by this Act;

"company" means a company registered or incorporated under the Companies Act;

"Court" means the High Court of Zambia;

"dealing", in relation to securities, means acquiring, disposing of, subscribing for or underwriting securities or making or offering to make with any person, or inducing or attempting to induce a person to enter into or offer to enter into, an agreement relating to the acquisition or disposal of, subscription for or underwriting of securities;

"dealer" means a person who carries on the business of dealing in securities, whether as principal or agent;

"dealer's licence" means a licence under Part IV authorising a company to carry on a business as a dealer;

"exchange rules", in relation to a securities exchange, means any rules made by the exchange that are binding on its members or any of them;

"investment adviser" means a person who carries on a business of providing advice to persons with respect to investments, but does not include-

- (a) a bank as defined in any written law governing the registration or licensing of banks and financial institutions (Banking and Financial Services Act);
- (b) an insurance company registered under the Insurance Act;
- (c) an advocate or accountant in practice whose advice with respect to investments is incidental to the practice of his profession;
- (d) a licensed dealer or a licensed dealer's representative whose advice with respect to investments is incidental to his business or employment in dealing in securities; or
- (e) the proprietor or publisher of a newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto or to purchasers thereof, in relation to any advice with respect to investments given therein, where-
 - (i) he receives no commission or other consideration for giving or publishing the advice; and
 - (ii) the giving or publication of that advice is incidental to the conduct of his business as a newspaper proprietor or publisher;

"investment adviser's licence" means a licence under Part IV authorising the licensee to carry on a business as an investment adviser;

"issuer" means every person who issues or proposes to issue any security;

"licence" means a licence in force under this Act, and "licensed" shall be construed accordingly;

"listed security" means a security which has been admitted to listing by a securities exchange for the purposes of dealing in that security on the exchange;

"representative" means a person who is employed by or acts for a dealer or an investment adviser and who performs for that dealer or investment adviser, any of the functions of a dealer or investment adviser, as the case may be, other than the work ordinarily performed by accountants, clerks or cashiers, whether his remuneration is by way of salary, wages, commission or otherwise, and includes any director or officer of a company who performs any such functions for the company;

PART II

SECURITIES AND EXCHANGE COMMISSION

3. (1) There is hereby established a body to be known as the Securities and Exchange Commission, which shall be a body corporate with a common seal, capable of suing and being sued and subject to the provisions of this Act, capable of performing all such acts as a body corporate may by law do or perform. The Commission

(2) The provisions of the First Schedule shall apply as to the constitution of the Commission and otherwise in relation thereto.

4. The Commission shall have the following functions:

Functions of the
Commission

- (a) to take all available steps to ensure that this Act and any rules made under this Act are complied with;
- (b) to supervise and monitor the activities of any securities exchange and the settlement of transactions in securities;
- (c) to license and monitor the activities of securities exchanges, dealers, investment advisers and their respective representatives and of persons who, within the meaning of rules made under this Act, are non-bank custodians or service registrars;
- (d) to approve the constitutions, charters, articles, by-laws, rules and regulations governing and pertaining to any securities exchange;
- (e) to make, issue, monitor and enforce rules for the conduct of participants in the securities industry and for the supervision and investigation of that conduct, including rules relating to licensing and for the revocation and suspension of licences;
- (f) to promote and encourage high standards of investor protection and integrity among members of any securities exchange;
- (g) to support the operation of a free, orderly, fair, secure and properly informed securities market;
- (h) to regulate the manner and scope of securities on any securities exchange, the exchange rules, listing requirements, margin requirements, capital adequacy requirements, disclosure and periodic reporting requirements, trade settlement and clearing requirements;
- (i) to take all reasonable steps to safeguard the interest of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities, whether on the securities exchange or otherwise;
- (j) to take all reasonable steps to promote and maintain the integrity of persons licensed under Part IV and encourage the promulgation by such persons of balanced and informed advice to their clients and to the public generally;
- (k) to consider and suggest proposals for the reform of the law relating to the securities industry;
- (l) to encourage the development of securities markets in Zambia and the increased use of such markets by investors in Zambia and elsewhere;
- (m) to promote and develop self-regulation by securities exchange;
- (n) to co-operate, by the sharing of information and otherwise, with other supervisory bodies in Zambia and elsewhere;
- (o) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon it by or under this or any other Act.

5. The Commission may delegate to its officers and employees such of its powers and functions as the Commission considers necessary or expedient to delegate.

Delegation of functions

- 6.** The Commission may by statutory instrument make rules in respect of the following: Rules relating to exchanges
- (a) the conditions subject to which, and the circumstances in which, any securities exchange may suspend dealings in securities;
 - (b) the qualifications for membership of securities exchanges and the maximum number of persons that may be admitted to membership of any securities exchange;
 - (c) the type of business that may be carried on, and services that may be provided by or at securities exchanges;
 - (d) prescribing the requirements to be met before securities may be listed on securities exchanges;
 - (e) prescribing the procedure for dealing with applications for the listing of securities at securities exchanges;
 - (f) providing for the cancellation or suspension of the listing of any specified securities at any securities exchange if the Commission's requirements for listing, or the requirements of any undertaking given to the Commission in connection with a listing agreement, are not complied with;
 - (g) providing for the cancellation or suspension of the listing of any specified securities at any securities exchange if the Commission considers that such action is necessary to maintain an orderly market.

PART III

SECURITIES EXCHANGES

7. (1) A person shall not establish or assist in establishing or maintaining, or hold himself out as providing or maintaining, a securities market that is not the securities market of a securities exchange established by a company licensed under this Act to do so. Unlawful securities market

(2) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(As amended by Act No. 13 of 1994)

8. (1) A company may apply in the prescribed form and manner to the Commission for a licence to establish and operate a securities exchange. Application for securities exchange licence

(2) Any such application shall be accompanied by the prescribed fee.

(3) Upon receipt of an application by a company under this section, the Commission may grant a licence to that company if the Commission is satisfied that-

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- (a) the establishment of the securities exchange is necessary in the public interest having regard to the nature of the securities industry; and
- (b) the applicant satisfies the requirements of the Second Schedule.

9. (1) With effect from the date of commencement of this Act, the Lusaka Stock Exchange (hereinafter referred to as "the Exchange") shall, subject to subsection (3) be deemed to be licensed under this Part. Lusaka Stock Exchange

(2) The Exchange shall, not later than six months after the commencement of this Act or within such longer period as the Commission may allow-

- (a) take such steps as are necessary to ensure that it satisfies the requirements of the Second Schedule; and
- (b) notify the Commission in writing of the steps so taken.

(3) If the Exchange fails to take action in accordance with subsection (2) within the time limited by or under that subsection, the Exchange shall be deemed to have ceased to be licensed under this Part upon the expiration of that period.

10. (1) Where the Commission is satisfied that it is in the interest of the investing public to give a direction under this section, or that it is appropriate to give such a direction for the protection of investors or for the proper regulation of a securities exchange, the Commission may give a direction to a securities exchange- Power of Commission to give directions to securities exchange

- (a) with respect to trading on or through the facilities of the exchange generally or with respect to trading of a particular security listed on that exchange;
- (b) with respect to the manner in which the exchange carries on any aspect of its business, including the manner of reporting off-market purchases; or
- (c) with respect to any other matters that the Commission considers necessary for the effective administration of this Act.

(2) A securities exchange which neglects or fails to comply with a direction given to it under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

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11. (1) A securities exchange that is dissatisfied by a direction of the Commission under section *ten* may, within thirty days after the direction is given appeal to the Minister. Appeal against direction of Commission

(2) The Minister may confirm, quash or vary the direction of the Commission.

(3) The Minister's decision on the appeal shall be final and binding except as to any matter of law, and in cases in which the appeal is allowed, it shall be the duty of the Commission to give effect to the Minister's decision.

(3) The Commission's direction is not stayed by the lodgement of an appeal, pending the decision of the Minister.

12. (1) On the grounds described in subsection (2), the Minister, after consultation with the Commission, may direct that a securities exchange shall be closed for the transaction of dealings in securities for such period as may be specified in the direction. Power of Minister to close securities exchange

(2) A direction under this section may only be given if the Minister is satisfied that the orderly transaction of business on the securities exchange is being or is likely to be prevented-

- (a) because of a natural disaster that has occurred in Zambia; or
- (b) because of an economic or financial crisis, whether in Zambia or elsewhere, or other like circumstance; or
- (c) because the exchange has ceased to meet the conditions set forth in the Second Schedule to this Act.

(3) A dealer who deals in securities at or through a securities exchange while a direction is in force under this section with respect to the exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

(4) The Commission may take such steps as it considers necessary to ensure compliance with a direction under this section and, without limiting the generality of the foregoing, may cause the premises of the exchange affected by the direction to be locked and secured.

(As amended by Act No. 13 of 1994)

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13. (1) The affairs of a securities exchange shall be managed by a board whose members shall comprise those elected or appointed in accordance with its articles of association. Management of securities exchange

(2) Subject to the provisions of this Act, the board shall have power in all things to administer the affairs of the exchange.

14. Subject to the approval of the Commission, a securities exchange may make such rules as it considers necessary or desirable for the proper and efficient regulation, operation, management and control of the exchange and the securities market operated by the exchange. Rules of securities exchange

15. A securities exchange shall provide such assistance to the Commission as the Commission may reasonably require for the performance of its functions and duties, including the furnishing of such returns and information relating to its business or in respect of dealings in securities or any other specified information as the Commission may require for the proper administration of this Act. Securities exchange to assist Commission

16. (1) A securities exchange that wishes to make any amendment (whether by way of rescission, alteration or addition) to its rules shall submit a draft of the proposed amendment to the Commission for approval. Amendments to rules of securities exchange

(2) The Commission may, within twenty-eight days after receipt of a draft in accordance with subsection (1), by notice to the exchange concerned disallow the amendment, whereupon the amendment, if made, ceases to have force or effect.

(3) If no such notice is given within twenty-eight days after the proposed amendment was submitted to the Commission, the proposed amendment shall be deemed to have been approved.

17. (1) A person other than a licensed securities exchange who takes or uses, or has attached to or exhibited at any place- Use of certain titles

(a) the title "securities exchange" or "stock exchange"; or

(b) any title which so closely resembles either of those titles as to be likely to deceive,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding one year or to both.

(As amended by Act No. 13 of 1994)

PART IV

LICENSING OF DEALERS, INVESTMENT ADVISERS AND REPRESENTATIVES

18. An individual, or any company which is not the holder of a dealer's licence, that- Dealers to be licensed

- (a) carries on a business as a dealer; or
- (b) holds himself or itself out as carrying on a business as a dealer,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or, in the case of an individual, to imprisonment for a term not exceeding three years or to both.

(As amended by Act No. 13 of 1994)

19. A person who is not the holder of an investment adviser's licence and who- Investment advisers to be licensed

- (a) carries on a business as an investment adviser, or
- (b) holds himself out as carrying on a business as an investment adviser,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(As amended by Act No. 13 of 1994)

20. (1) A person who is not the holder of a representative's licence and who is employed as or acts as a representative shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding one year or to both. Representatives to be licensed

(2) Without limiting the generality of section *twenty-three*, a representative's licence may be conditioned on the licensee's being employed or acting only as the representative of a dealer or only as the representative of an investment adviser.

(As amended by Act No. 13 of 1994)

21. (1) Application for a licence under this Part or for the renewal of any such licence shall be made to the Commission in the prescribed form and manner and shall be accompanied by the prescribed fee. Applications for licences

(2) In the case of an application for renewal, the application shall be made not later than one month before the expiry of the licence.

(3) The Commission may require an applicant for a licence or renewal to provide it with such further information as the Commission thinks necessary.

22. (1) The Commission shall not grant a dealer's licence to an individual.

Refusal of licence or
renewal

(2) The Commission may refuse to grant or renew an investment adviser's licence under this Part to an individual on the grounds that-

- (a) the applicant has not provided the Commission with such information relating to him or any person employed by or associated with him, or to any circumstances likely to affect his method of conducting business, as may be prescribed by or under this Act;
- (b) the applicant has become incapable mentally or physically of performing the activities to which the licence relates;
- (c) the applicant is an undischarged bankrupt;
- (d) it appears to the Commission that, because the applicant, or any person employed by or associated with the applicant for the purposes of the activities to which the licence relates, has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence against this Act or the rules made under this Act relating to persons licensed under this Part, the applicant is not a fit and proper person to be licensed as an investment adviser; or
- (e) the Commission has reason to believe that the applicant is not of good repute or character;
- (f) the Commission has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly;
- (g) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act; or
- (h) the applicant is under twenty-one years of age.

(3) The Commission may refuse to grant or renew a dealer's licence or investment adviser's licence under this Part to a company on the ground that-

- (a) the applicant has not provided the Commission with such information relating to it or any person employed by or associated with it, or to any circumstance likely to affect its method of conducting business, as may be prescribed by or under this Act;

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- (b) any director of the applicant has become incapable mentally or physically of performing his duties in connection with the activities to which the applicant's licence relates;
- (c) any director of the applicant is an undischarged bankrupt;
- (d) it appears to the Commission that, because the applicant, or any director, controller or secretary of the applicant or any officer concerned in the management of the applicant's business or any employee of the applicant has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence against this Act or the rules made under this Act relating to persons licensed under this Part, the applicant is not a fit and proper person to be licensed under this Part;
- (e) it appears to the Commission that, by reason of any other circumstances which either are likely to lead to improper conduct of business by or reflect discredit on the method of conducting business of the applicant, the applicant is not a fit and proper person to be licensed under this Part;
- (f) the Commission has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly; or
- (g) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act.

(4) The Commission shall not grant a representative's licence to a company.

(5) The Commission shall grant or renew a representative's licence to an individual if after consideration of the application it does not have any reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly, but otherwise shall refuse the application.

23. (1) Unless sooner revoked, suspended or surrendered, a licence under this Part remains in force for the period specified in the licence.

Terms and conditions
of licences

(2) A licence under this Part is subject to the terms and conditions attached to it.

(3) The licence may be granted or renewed subject to such conditions as the Commission thinks fit to specify in the licence at the time of grant or renewal, and the Commission may at any time, by notice served on the licensee, vary the conditions for the time being attached to it or impose further conditions.

24. (1) Where any person licensed under this Part-

(a) being an individual, dies; or

(b) being a company, is dissolved,

the licence of that person is deemed to be revoked.

(2) The Commission may revoke the licence of an individual licensed under this Part, or, if it thinks it appropriate to do so, suspend the licence of such an individual for such time, or until the happening of such event, as it may determine, if the individual-

(a) becomes mentally or physically incapable of performing the activities to which the licence relates;

(b) becomes bankrupt, or compounds with his creditors or makes an assignment of his estate for their benefit;

(c) is convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty;

(d) is convicted of an offence against this Act or the rules made under this Act;

(e) is or has been guilty of any misconduct in relation to the conduct of the business, or the pursuit of the occupation, with reference to which he is licensed or, by reason of any other circumstances, is no longer a fit and proper person to hold a licence under this Part;

(f) is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act;

(g) ceases to carry on business in Zambia; or

(h) is the holder of a representative's licence and the licence of the dealer or investment adviser whom he represented is revoked or suspended.

(3) The Commission may revoke the licence of a company licensed under this Part or, if it thinks it appropriate to do so, suspend the licence of such a company for such time, or until the happening of such event, as it may determine, if-

(a) the company goes into liquidation or is ordered to be wound up;

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- (b) a receiver or manager of the property of the company is appointed;
- (c) the company has ceased to carry on business;
- (d) a levy of execution in respect of the company has not been satisfied;
- (e) the company has entered into a compromise or scheme of arrangement with its creditors;
- (f) any director of the company is convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty;
- (g) the company or any director of the company is or has been guilty of any misconduct in relation to the conduct of the business, or the pursuit of the occupation, with reference to which the company is licensed; or
- (h) the Commission has reason to believe that the company, or any of its directors or employees, has not performed his duties efficiently, honestly and fairly;
- (i) the licence of any director, secretary or other person concerned in the management of the company who is required to be licensed has been revoked or suspended; or
- (j) the company is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act.

(4) The Commission may revoke a licence at the request of its holder.

(5) A person whose licence is revoked or suspended under this Part shall be taken, for the purpose of this Act, not to be licensed.

(6) The suspension or revocation of a licence under this Part does not operate so as to-

- (a) avoid or affect any agreement transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction, or arrangement was entered into before or after the suspension or revocation of the licence; or
- (b) affect any right, obligation, or liability arising under any such agreement, transaction, or arrangement.

(7) A person whose licence is revoked under this Part may not apply to be licensed under this Part in any capacity until the expiration of at least twelve months from the revocation.

(8) In this section, "misconduct" means-

- (a) any contravention of or failure to comply with the requirements of any rules or regulations made under this Act with respect to licensed persons;
- (b) any failure to observe the terms and conditions of a licence; or
- (c) any act or omission relating to the business or occupation of a licensed person which is or is likely to be prejudicial to the interests of members of the investing public.

25. (1) Where the Commission refuses an application for a licence or the renewal of a licence under this Part, it shall notify the applicant in writing of that fact and shall include in the notice a statement of the reasons for the refusal. Rights of applicant

(2) The Commission shall not-

- (a) refuse to grant or renew a licence under this Part;
- (b) attach conditions to, or vary the conditions attached to, such a licence; or
- (c) revoke or suspend such a licence;

unless it notifies the applicant or licensee of its intention to do so and affords him an opportunity to show cause in writing why it should not do so.

26. (1) Any person aggrieved by a decision of the Commission- Appeals

- (a) to refuse to grant or renew a licence under this Part;
- (b) to attach conditions to, or vary the conditions attached to, such a licence; or
- (c) to cancel or suspend such a licence,

may, within thirty days after the date of that decision, appeal to the Court.

(2) The decision of the Commission is not stayed by the lodgment of an appeal.

27. (1) The Commission shall cause to be kept, in such form as it thinks fit, a Register of licences Register of licences
Register of persons holding licences under this Part.

(2) for each dealer's licence or investment adviser's licence, the Register shall record-

- (a) the name of the licensee;
- (b) in the case of a dealer's licence, or in the case of an investment adviser's licence granted to a company, the name of each director, and of the secretary, of the company and the names and respective shareholdings of each shareholder;
- (c) the date on which the licence was granted;
- (d) in relation to each business to which the licence relates-
 - (i) the address of the principal place at which the business is carried on;
 - (ii) the addresses of the other places, if any, at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee, that name or style;
- (e) particulars of any suspension or cancellation of the licence; and
- (f) such other matters as may be prescribed by rules made under this Act.

(3) For each representative's licence, the Register shall record-

- (a) the name of the person licensed and the date of issue of the licence;
- (b) the name and address of the business of the dealer or investment adviser in relation to whom the representative is licensed;
- (c) particulars of any suspension or cancellation of licence; and
- (d) such other matters as may be prescribed by rules made under this Act.

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(4) Where a person no longer holds a particular licence, the Commission shall make an appropriate entry in the Register.

(5) Any person may, upon payment of the prescribed fee, inspect and make copies of, or take extracts from, the Register.

28. (1) A person who is licensed under this Part shall maintain a record in the prescribed form of the securities in which he has an interest.

Records to be kept by licensees

(2) Particulars required by the form prescribed under subsection (1) shall be entered in the record within seven days of the acquisition of the interest.

(3) Where there is a change in the interests or interests in securities of a person licensed under this Part, he shall enter in the record, within seven days after the date of the change, full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred; and for the purpose of this subsection, where a person acquires or disposes of securities, there shall be deemed to be a change in the interest or interests of that person in the securities concerned.

(4) A person who fails to keep a record as required by this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding twelve months or to both.

(As amended by Act No. 13 of 1994)

29. (1) Every applicant for a licence under this Part shall, together with his application, give notice to the Commission in the prescribed form containing such particulars as are prescribed, including the place at which he will keep the required record of his interest in securities.

Information to be supplied by licensees

(2) A person who ceases to carry on the business authorised by a licence under this part shall, within fourteen days of his so ceasing, give notice of the fact to the Commission.

(3) Every person licensed under this Part shall forthwith notify the Commission in writing of any change which, while his licence is in force, may occur-

- (a) in the address in Zambia at which he carries on the business to which the licence relates; or
- (b) in any information supplied in or in connection with his application for his licence or any renewal thereof, being information prescribed by the rules made under this Act.

(4) If at any time while a company is licensed under this Part, any person becomes or ceases to be a director of the company, the company shall within seven days after the event notify the commission in writing of the name and address of that person.

(5) Every person licensed under this Part shall forthwith notify the Commission of any misconduct in his organisation that has resulted in legal or disciplinary proceedings.

(6) The rules made under this Act may require a person licensed under this Part to furnish the Commission with additional information by way of periodic report or otherwise.

(7) A person who neglects or fails to give any notice or supply any information as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand penalty units.

(As amended by Act No. 13 of 1994)

30. Any person who for the purpose of obtaining a licence or the renewal of a licence under this Part, whether for himself or for any other person, makes any representation, whether in writing, orally, or otherwise, which he knows to be false or misleading as to a material particular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

Fraudulent applications

(As amended by Act No. 13 of 1994)

31. (1) All licensed dealers and investment advisers shall deposit with the Commission such amount as may be required by rules made under this Act.

Deposits by dealers and investment advisers

(2) A licensed dealer or investment adviser that neglects or fails to comply with the requirements of this section, or is in arrears as regards such compliance, is liable to pay interest on the amount of the default at such rate as rules under this Act may prescribe.

(3) Any deposit or interest payable under this section is a debt due to the Commission and may be recovered at the suit of the Commission in any court of competent jurisdiction.

PART V

REGISTRATION OF SECURITIES

32. (1) If a registration statement in the prescribed form relating to a security, signed by the issuer of the security or its representative and accompanied by the prescribed fee, has been filed with and approved by the Commission, the Commission may register the security.

Securities to be registered

(2) If:

- (a) any security of a public company is publicly traded, or directly or indirectly promoted or advertised or offered for sale to the public; and
- (b) the security has not been registered under this section, and is not guaranteed by the Government or exempted, by rules made under this Act, from the requirements of this section,

the issuer of the security shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding two hundred thousand penalty units.

(3) For the purposes of this section, securities of a public company shall be treated as being publicly traded if-

- (a) the company had more than fifty shareholders; or
- (b) the Commission, by notice in writing to the issuer, has declared that, after ninety days, those securities would be treated as being publicly traded, and ninety days has elapsed since that notice was given.

(As amended by Act No. 13 of 1994)

33. A prospectus prepared for the purposes of any public offer to be made in relation to any securities that are registerable under section *thirty-two*-

Prospectus

- (a) shall contain or be accompanied by all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer of the securities and the rights attaching to the securities; and
- (b) shall contain or be accompanied by such other information and particulars, and shall comply with such other requirements, as may be prescribed by rules made by the Commission.

34. A dealer that transacts a dealing in securities at or through a securities market which it knows or could reasonably be expected to know is not a market operated by a securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

Dealers not to deal in securities market not operated by securities exchange

(As amended by Act No. 13 of 1994)

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35. A person who deals in any listed, registered securities otherwise than through a securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

Trading of listed securities

(As amended by Act No. 13 of 1994)

36. (1) Any person who deals in any unlisted, registered securities otherwise than through a securities exchange and who does not forthwith report that dealing to the prescribed securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

Registered securities to be traded through licensed dealers

(2) The Commission may, by notice to every licensed dealer, declare that any security specified in the notice, being a security which, in the opinion of the Commission, is being actively traded shall be dealt with as if it were a listed security, and section *thirty-five* shall apply accordingly.

(As amended by Act No. 13 of 1994)

37. (1) Any person who deals in any registered securities otherwise than through a licensed dealer shall be guilty of an offence and shall be liable on conviction to fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

Registered securities to be traded through licensed dealers

(2) This section does not apply to any dealings of a kind or description prescribed by rules made under this Act.

(As amended by Act No. 13 of 1994)

38. (1) Once registered securities are issued, the issuer must inform and keep the public informed of all matters which affect the value of the securities immediately upon their becoming known to the directors of the issuer, by placing an advertisement in a newspaper of general circulation and by reports to the Commission and to any securities exchange on which they are listed.

Continuing obligations in relation to registered securities

(2) Rules made under this Act may prescribe further obligation to be met by the issuers of registered securities.

(3) An issuer of securities that neglects or fails to comply with this section or the rules made for the purposes of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.

(As amended by Act No. 13 of 1994)

PART VI

CONDUCT OF SECURITIES BUSINESS

39. (1) A person shall not make or pursue an offer in respect of a takeover or substantial acquisition of the securities of any company except in accordance with the conditions prescribed by the rules made under this Act.

Takeovers and substantial acquisitions

(2) For the purposes of this section, "substantial acquisition" means acquisition of at least twenty per cent of the issued securities of the company concerned.

40. (1) The Commission may by statutory instrument make rules prescribing a code of conduct for the securities business.

Code of conduct with respect to conduct of securities business

(2) Where any contract for the sale of securities is entered into in contravention of the code of conduct, the contravention is actionable at the suit of any person who suffers loss as a result of the contravention.

41. (1) Every dealer shall in respect of every contract for the purchase, sale or exchange of securities entered into by him (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and-

Contract notes

- (a) where the contract was entered into by the dealer as agent, deliver the contract note to the person on whose behalf it entered into the contract; or
- (b) where the contract was entered into by the dealer as principal, retain the contract note for itself.

(2) The contract note shall include-

- (a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which it so carries on business;
- (b) where the dealer is acting as principal, a statement that it is so acting;
- (c) the name of the person (if any) to whom the dealer is required to give the contract note;

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- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities the subject of the contract;
- (f) except in the case of an exchange, the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission (if any) payable in respect of the contract;
- (i) the amount of stamp duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement;
- (k) such other information as may be prescribed by the rules made under this Act to ensure that there shall be a complete audit trail for the execution of customer instructions and settlement of market transactions.

(3) Any dealer who completes a contract for the purchase, sale or exchange of securities without having complied with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units.

(4) Any disclaimer or exclusionary clause in contract notes shall be void and of no effect.

(As amended by Act No. 13 of 1994)

42. The Commission may by statutory instrument make rules for the regulation of the terms upon which bargains in securities are settled and may thereby prohibit or restrict forward transactions or option contracts.

Terms of settlement of bargains in securities, etc.

43. (1) A person who sells securities which he does not hold at or through a securities exchange shall be guilty of an offence unless, at the time he sells them-

Short selling

- (a) he has or, where he is selling as agent, his principal has; or

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- (b) he reasonably and honestly believes that he has or, where he is selling as agent, that his principal has.

a presently exercisable and unconditional right to vest the securities in the purchaser of them, and has on deposit in the manner prescribed one hundred per cent collateral against the short sale, marked to market at the close of every trading day until the transaction is complete.

(2) A person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(3) For the purposes of this section, "marked to market" means revalued, for the purposes of the seller's obligation, at the current market.

(As amended by Act No. 13 of 1994)

44. (1) The Commission may by statutory instrument make rules for or with repeat to the segregation of client moneys or other property and for the safe custody thereof.

Safeguarding of investors' property

(2) The Commission may by statutory instrument make rules requiring the licensing of depositories and persons providing securities registration services or custodian services which are not banks or financial institutions regulated by any written law governing the registration of banks and financial institutions.

45. (1) The holder of a dealer's licence or investment adviser's licence shall keep or cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of all business relating to the licence and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time and shall cause those records to be kept in such prescribed manner and form as to enable them to be conveniently and properly audited.

Accounts to be kept by licensees

(2) Without limiting the generality of subsection (1), each such licensed person shall maintain such books and records, and file such reports, in the prescribed manner and form.

(3) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.

(As amended by Act No. 13 of 1994)

46. The Commission may, with the approval of the Minister, make rules requiring licensed dealers and licensed investment advisers to have and maintain, in respect of the business in relation to which they are licensed, such financial resources as are required by the rules made under this Act.

Financial resources rules

(2) Rules made under this section may-

- (a) impose requirements which are absolute or which are to vary from time to time by reference to factors which are either specified in, or are to be determined in accordance with, the rules;
- (b) impose requirements which take account of any business carried on by the person concerned in conjunction with, or in addition to, the business in relation to which he is licensed; and
- (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person's financial resources for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose.

47. (1) An investment adviser shall not enter into an investment advisory contract with any person in Zambia (in this section referred to as his client), or extend or renew any such contract, or in any way perform any such investment advisory contract entered into, extended or renewed after the commencement of this Act, if the contract-

Investment advisory
contracts

- (a) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;
- (b) does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or
- (c) does not include a provision to the effect that the investment adviser-
 - (i) if he practices in partnership with one or more other investment advisers, will notify the client of any change in the partnership; or
 - (ii) if a company, will notify the client of any change in the directors of the company,

within a reasonable time after the change.

(2) Subsection (1) (a) does not-

- (a) prohibit an investment advisory contract which provides for remuneration based on the total value of a fund averaged over a definite period or on definite dates, or taken on a definite date; or

- (b) apply to an investment advisory contract with respect to participation in a collective investment scheme, as defined in Part X, authorised by the Commission under the Part that provides for remuneration based on the asset value of the scheme or company under management averaged over a specified period and increasing and decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to either-
- (i) the investment record of an appropriate index of securities; or
 - (ii) such other measure of investment performance as the Commission may approve in connection with its authorisation of the collective investment scheme concerned or on the application of either party to a contract or intended contract.

(3) For the purposes of this section, "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client.

(4) Any investment adviser who knowingly enters into any contract in contravention of any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.

(5) Any contract entered into in contravention of any of the provisions of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

(As amended by Act No. 13 of 1994)

PART VII

IMPROPER TRADING PRACTICES

48. (1) A person shall not create or cause to be created, or do anything with the intention of creating-

False trading and manipulation of the market

- (a) a false or misleading appearance of the volume of trading in any securities on any securities exchange; or
- (b) a false or misleading appearance of the market for, or the price of, any such securities.

(2) A person shall not, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any securities.

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(3) A purchase or sale of securities does not, for the purposes of subsection (2), involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with him in relation to those securities, holds an interest in the securities after the purchase or sale.

(4) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

49. A person who induces or attempts to induce another person to deal in securities-

Use of deceptive statements, etc. as inducements

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts; or
- (c) by recklessly or dishonestly making or publishing any statement, promise or forecast that is false or misleading,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

50. A person who, directly or indirectly, in connection with any transaction with any other person involving the purchase, sale or exchange of securities-

Fraudulent transactions

- (a) employs any device, scheme or artifice to defraud that other person; or
- (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

51. A person who, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any company, makes with respect to those securities, or with respect to the operations or the past or future performance of the company-

False or misleading statement in connection with sale of securities

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds to believe to be false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

As amended by Act No. 13 of 1994

52. (1) A person to whom this section applies who deals, or counsels or procures another person to deal, in securities of a company concerning which he has any knowledge that-

Insider dealing

- (a) is not publicly available; and
- (b) would, if it were publicly available, materially affect the price of the securities,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(2) This section applies to-

- (a) any director, officer or employee of the company concerned;
- (b) any person associated in a professional capacity with that company; and
- (c) any person who obtains such information from any of the persons mentioned in paragraph (a) or (b).

(3) No dealing shall be void or voidable by reason only that it was entered into in contravention of this section.

(As amended by Act No. 13 of 1994)

53. (1) The Commission may from time to time inspect under conditions of secrecy the bank accounts, documents and transactions of a person licensed under this Part.

Powers of inspection

(2) The Commission may appoint any person (in this section referred to as the "inspector") to exercise the powers of the Commission under this section.

(3) For the purposes of an inspection under this section, a person licensed under this Part shall afford the inspector access to, and shall produce, his books, accounts and documents and shall give such information and afford the use of such facilities as may be required for the inspection.

(4) The inspector shall at all times have the power to make copies of or take extracts from, and take possession of, the books, accounts and other documents of the licensed person.

(5) A person licensed under this Part who fails, without reasonable excuse, to produce any book, account or document to the inspector, or to furnish any information or afford the use of any facilities as required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(As amended by Act No. 13 of 1994)

54. (1) A person who is convicted of an offence under this Part shall, in addition to any criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

Damages for loss sustained through contravention of this Part

(2) Nothing in this section limits or diminishes any civil liability which any person may incur under any other law.

PART VIII

POWERS OF INTERVENTION

55. (1) The powers conferred on the Commission by this Part may only be exercised in relation to any person licensed under Part IV if it appears to the Commission that-

Scope of powers under this Part

- (a) the person is not a fit and proper person to be the holder of his licence;
- (b) the person has contravened or failed to comply with any provision of or requirement under this Act or the rules made under this Act or, in purported compliance with any such provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading; or

- (c) the exercise of the power is otherwise necessary for the protection of investors,

and the provisions of this Part shall accordingly be construed subject to this section.

(2) For the purposes of this section, the Commission may take into account any matters that could be taken into account in deciding whether to suspend or revoke a licence.

(3) The powers conferred on the Commission by this Part may be exercised in relation to a person whose licence has been suspended or revoked (whether or not the suspension or revocation is the subject of appeal) as if a reference in this Part to a licensed person included a reference to any such person.

56. (1) The Commission may by notice in writing prohibit a person licensed under Part IV from doing any one or more of the following: Restriction of business

- (a) entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
- (b) soliciting business from persons of a class or description so specified or from persons other than persons of such a class or description; or
- (c) carrying on business in a specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of the business in respect of which the person is licensed or to other business which is carried on in connection with or for the purposes of any such business.

57. The Commission may, as regards any assets whether in Zambia or elsewhere and whether they are the assets of a person licensed under Part IV or not, by notice in writing- Restriction on dealing with assets

- (a) prohibit a person so licensed from disposing of such assets or prohibit him from dealing with them in a manner specified in the notice; or
- (b) require a person so licensed to deal with such assets in, and only in, a manner specified in the notice.

58. (1) The Commission may by notice in writing require a person licensed under Part IV to maintain in Zambia assets of such value as appears to the Commission to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of the business to which his licence relates. Maintenance of assets

(2) The Commission may direct that, for the purposes of any requirement under this section, assets of any specified class or description shall or shall not be taken into account.

59. The Commission may, either of its own motion or on the application of a licensed person on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Rescission or variation
of prohibition or
requirement

60. (1) The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by the Commission on the licensed person concerned, and any such notice shall take effect on such date as is specified in it.

Notices

(2) If the Commission refuses to rescind or vary a prohibition or requirement on the application of the licensed person to whom it applies, it shall serve notice on that person to that effect.

(3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the licensed person to whom it applies, and any notice under subsection (2), shall state the reasons for which the prohibition or requirement has been imposed or varied or, as the case may require, why the application for variation or rescission was refused.

(4) The Commission may give public notice of any prohibition or requirement imposed by it under this Part and of any rescission or variation thereof, and any such notice may, if the Commission considers necessary, include a statement of the reasons for the prohibition, requirement, variation or rescission.

61. If, in the case of a company licensed under Part IV, it appears to the Commission that it is desirable for the protection of investors that the company should be wound up under the Companies Act, the Commission may present a petition for it to be wound up under that Act on the ground that it is just and equitable that it should be wound up.

Winding up orders
Cap. 388

62. If it appears to the Commission that it is desirable for the protection of investors to do so, the Commission may present a petition for a receiving order in accordance with the Bankruptcy Act against a person licensed under Part IV if the person has committed an act of bankruptcy within the meaning of that Act, and that Act shall, with any necessary modifications, apply in relation to any such petition as it applies in relation to a petition presented by a creditor.

Receiving orders
Cap. 82

63. (1) Where, on the application of the Commission, it appears to the Court that a person has contravened this Act or any conditions of his licence, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders: Orders of the Court

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;
- (b) in relation to a licensed dealer, an order appointing a person to administer the property of the dealer;
- (c) an order declaring a contract relating to securities to be void or voidable;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
- (e) any ancillary order which it considers necessary in consequence of the making of any other order under this section.

(2) The Court shall, before making an order under this section, satisfy itself, so far as it reasonably can, that the order would not unfairly operate to the detriment of any person.

(3) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) The Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

PART IX

COMPENSATION FUND

64. The Minister shall establish and maintain a compensation fund for the purposes of this Part. Compensation fund

65. (1) There shall be a committee, to be known as the Compensation Fund Committee, which shall be responsible for the administration of the compensation fund and for the settlement of claims against the fund. Compensation Fund Committee

(2) The Committee shall consist of:

- (a) a person nominated by the Bankers' Association;
- (b) a person nominated by the Lusaka Stock Exchange;
- (c) a person nominated by the Law Association of Zambia;
- (d) a person nominated by the Zambia Chamber of Commerce and Industry;
and
- (e) a member of the Commission.

(3) The members of the Committee shall elect one of their number to be the Chairman of the Committee.

(4) The Committee may, subject to this Act, regulate its own procedure.

66. The compensation fund shall consist of-

Constitution of fund

- (a) all moneys paid to or deposited into it by any licensed dealer or licensed investment adviser in accordance with section *thirty-one*;
- (b) all moneys recovered by or on behalf of the Commission by the exercise of any right of action conferred by this Act; and
- (c) all other moneys accruing to the fund.

67. The compensation fund shall be held and applied on such terms and conditions as the Minister may be regulation determine, for the purpose of compensating persons who suffer pecuniary loss occasioned by any default of a licensed dealer or licensed investment adviser, or any employee of such a dealer or adviser, in the course of or in connection with any dealing in securities, being a loss in relation to any money, securities or other property which, in the course of or in connection with the business of any such licensee, was entrusted to or received by the licensee or any such employee for and on the person's behalf.

Purpose of fund

- 68.** Subject to this Part, there shall be paid out of the compensation fund as and when required and in such order as the Compensation Fund Committee considers proper-
- Disbursements from the fund
- (a) the amount of all claims, including costs, allowed by the Compensation Fund Committee;
 - (b) all legal and other expenses incurred in investigating or defending claims made under this Act or incurred in relation to the fund or in the exercise by the Committee of the rights, powers and authorities vested in it by this Act in relation to the fund;
 - (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the Committee;
 - (d) the expenses incurred or involved in the administration of the fund; and
 - (e) all other moneys lawfully payable out of the fund in accordance with the provisions of this Act.
- 69.** The Minister may make regulations prescribing all such matters and things as are necessary or expedient to be prescribed for or with respect to the administration, management and application of any compensation fund established under this Part.
- Management of fund
- 70.** Payment from the compensation fund shall be limited, in respect of each licensee in default, to such amount as the Minister may by regulation provide.
- Liability of fund to be limited
- 71.** Any disbursement from the compensation fund that is accountable to the default of any licensed person is a debt due to the fund and is recoverable at the suit of the Commission in any court of competent jurisdiction.
- Recovery of disbursements from defaulters

PART X

COLLECTIVE INVESTMENT SCHEMES

- 72.** In this Part-
- Definitions
- "collective investment scheme" means any arrangements with respect to money or other property of any description, under which-
- (a) provision is made for persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
 - (b) property the subject of the arrangements-
 - (i) is owned or held in trust by; or

(ii) is managed by or on behalf of,

a body corporate (in this Part referred to as the "operator" of the scheme); and

- (c) the interests of persons participating in the arrangements is represented by shares or other securities of the body corporate or, in the case of a unit trust, by units;
- (d) funds invested in accordance with the arrangements purporting to be invested with the aim of spreading investment risk.

"investment company" means a company that is the owner of property the subject of a collective investment scheme;

"open - ended investment company" means an investment company whose collective investment scheme makes provision for-

- (a) redemption or repurchase, by (or out of funds provided by) the company, of shares, securities or units representing the interests of participants in the scheme; or
- (b) the sale of such shares, securities or units by the participants on a securities exchange at a price related to the value of the property the subject of the scheme;

"unit trust" means a collective investment scheme in which:

- (a) property the subject of which the scheme is held on trust for the participants of the scheme by a person other than the operator of the scheme; and
- (b) the interests of participants in the scheme is represented by what are commonly known as units in the trust or by a mode of representation, by whatever name described, that the Commission considers equivalent.

73. (1) The Commission may authorise collective investment schemes for the purposes of this Part.

Authorisation and regulation of schemes

(2) Any such authorisation may be granted subject to such terms and conditions as the Commission considers to be necessary or desirable for the protection of investors.

(3) The Commission may by statutory instrument make rules for or with respect to-

- (a) the criteria for and conditions of any authorisation for the purposes of this Part;
- (b) the establishing and operation of a collective investment scheme;
- (c) the promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;
- (d) the administration of collective investment schemes;
- (e) the provision by any body corporate or individual of trustee, custodial and operator services, or any other services, for or in connection with collective investment schemes;
- (f) any fee, remuneration or reward payable or obtainable for any services referred to in paragraph (e).

(4) Without limiting the generality of subsection (3), rules made for the purpose of that subsection with respect to any aspect of or matter concerning a collective investment scheme may be made to differ according to whether the scheme is operated by a unit trust or by an open-ended investment company or another kind of investment company.

(5) A person who enters into or offers to enter into any agreement for or with a view to acquiring, disposing of or subscribing for any shares, units or other securities representing an interest in a collective investment scheme that is not authorised under this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

74. A person who-

- (a) issues or causes to be issued any advertisement or invitation inviting persons to become or offer to become participants in a collective investment scheme that is not authorised under this Part, or containing information calculated to lead directly or indirectly to persons' becoming or offering to become participants in such a scheme; or
- (b) advises or procures any person to become or offer to become a participant in such a scheme;

Restriction on promotions

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As amended by Act No. 13 of 1994)

PART XI

MISCELLANEOUS

75. No person shall be liable to any action in damages for anything done or omitted in the exercise or performance of any power or function conferred or imposed on him by or under this Act unless the act or omission is shown to have been in bad faith.

Immunity of
Commission, etc.

76. A person who obstructs the Commission or any public officer or any person in the exercise or performance of any power, authority, duty, or function under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for one year or to both.

Obstruction

(As amended by Act No. 13 of 1994)

77. If a body corporate is convicted of an offence against this Act or the rules or regulations made under this Act, every person:

Offences by bodies
corporate

- (a) who is a director of the corporation; or
- (b) who is concerned in the management of the corporation, shall be deemed to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

78. (1) The Commission may by statutory instrument make rules for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, other than a matter required or permitted to be prescribed by the Minister.

Rules

(2) Without limiting the generality of subsection (1), such rules may be made for or with respect to-

- (a) the conduct of business by licensed dealers, licensed investment advisers and their licensed representatives;
- (b) matters incidental to the licensing of any persons under this Act;
- (c) the class of persons in relation to whom, and the manner and circumstances in which, licensed dealers and their licensed representatives may deal in securities;
- (d) the types of security in which licensed dealers and their licensed representatives may deal;

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- (e) the class of persons in relation to whom, and the manner and circumstances in which, licensed investment advisers and their licensed representatives may carry on business as investment advisers or as investment representatives, as the case may be;
- (f) the amount of deposit required to be made for the purposes of section *thirty-one* and the application of deposits under that section;
- (g) the exhibition, by persons licensed under Part IV, of their licenses at their places of business;
- (h) the correction of any errors in any register or record kept under this Act;
- (i) particulars to be recorded for the purposes of this Act in relation to accounts of licensed persons;
- (j) the lodgment by licensed persons of annual financial statements;
- (k) the lodgment of auditors' reports and the information to be contained in them;
- (l) the remuneration of an inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;
- (m) the forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;
- (n) fees and charges to be levied and paid in respect of any matter or thing required or permitted to be done for the purposes of this Act, including annual or other periodic licence fees;
- (o) regulating or prohibiting the advertising of securities otherwise than by way of prospectus;
- (p) maintenance of the confidentiality of clients of persons licensed under Part IV;
- (q) information and the matters to be displayed on business stationery of licensed persons;
- (r) regulating or prohibiting transactions with related persons (as defined in the rules);
- (s) the extension of margin facilities to clients of persons licensed under Part IV;

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- (t) insurance by persons licensed under Part IV against negligence or default;
 - (u) the issue of duplicate licences in case of loss or destruction;
 - (v) the maintenance, by officers and employees of the Commission or any other prescribed persons, of confidentiality of information obtained by them or to which they have access in connection with the performance of their duties;
 - (w) the exemption, on such terms and conditions as may be prescribed, of any bank, financial institution or person from any specified provision of this Act or any rule made under this Act, and the revocation of any such exemption or the modification of any such terms or conditions; and
 - (x) any saving or transitional provision the Commission considers necessary or convenient to be made in consequence of the enactment of this Act and the repeal by this Act of the Stock Exchange Act, 1990.
- (3) The rules may be made so as-
- (a) to make prescription vary depending on different factors or circumstances; or
 - (b) to be of general or specifically limited application; or
 - (c) to permit any matter to be from time to time determined by any person or body specified in the rules.

79. The Commission may issue such guidance notes, bulletins or other regulatory statements as the Commission may consider necessary or desirable for the administration of this Act.

Guidance notes, etc.

80. (1) The Stock Exchange Act, 1990 is hereby repealed.

Repeal of Act No. 43,
1990 and savings

(2) Notwithstanding the repeal of the Stock Exchange Act, 1990-

- (a) any applications pending before the Zambia Stock Exchange Council under any provision of that Act shall be deemed to have been made to the Commission under the corresponding provision of this Act;

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- (b) the holder of a licence under section *eighteen* of that Act, whether a company or an individual, shall be deemed, until expiry of that licence, to be the holder of a dealer's licence under this Act, but subject to any rights or benefits accruing, or any liabilities suffered, under that Act, and without right of renewal otherwise than subject to and in accordance with this Act;
- (c) the Board of Appeal constituted under section *twenty-one* of that Act, or any court exercising jurisdiction conferred by that Act, may continue to exercise its functions in relation to any matter pending or part-heard before it, and its decision shall be given effect to and shall be binding on the parties to any appeal or other proceedings, as if that Act were still in force;
- (d) any investigation or proceeding commenced by the Council and not concluded at the commencement of this Act may be continued by the Commission; and
- (e) any rules or regulations made or directions given under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.

(3) On and from the commencement of this Act, there shall be transferred to, and shall vest in or subsist against the Commission by virtue of this Act and without further assurance all property, rights, liabilities and obligations that, immediately before the commencement of this Act, were the property, rights, liabilities and obligations of the Zambia Stock Exchange Council.

(4) Except as provided by this Act, every deed, bond or agreement (other than an agreement for personal services) to which the Zambia Stock Exchange Council was a party immediately before the commencement of this Act, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless the subject - matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof, as if-

- (a) the Commission had been a party thereto;
- (b) for any reference to the Council there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to the Commission; and
- (c) for any reference to any other officer of the Council not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer as the Commission shall designate.

(5) Subject to subsection (4), documents other than those referred to in that subsection and which refer specifically or generally to the Council shall be construed in accordance with that subsection as far as applicable.

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FIRST SCHEDULE

(Section 3)

THE SECURITIES AND EXCHANGE COMMISSION

1. (1) The Commission shall consist of seven members, being nominees from each of the following organisations: Member
the
Commi
- (a) the Bank of Zambia;
 - (b) the Law Association of Zambia;
 - (c) the Zambia Institute of Chartered Accountants;
 - (d) the Zambia Council of Commerce and Industry;
 - (e) the Non-Governmental Organisation Coordinating Committee;
 - (f) the Lusaka Stock Exchange; and
 - (g) the Ministry of Legal Affairs.
- (2) The members of the Commission shall be nominated by their respective organisations and shall be appointed by the Minister.
- (3) Two of the members shall, in and by the terms of their respective appointments, be appointed as the Chairman and Vice-Chairman of the Commission.
- (4) Pending the appointment by the Minister of the members of the Commission, each of the persons who, immediately before the commencement of this Schedule, held office as Chairman or as a member of the Zambia Stock Exchange Council under the Stock Exchange Act, 1990, shall be deemed to be the Chairman or a member, respectively, of the Commission for a period of ninety days after that commencement or until a replacement is sooner appointed.
- (5) A person shall not be appointed under subclause (2), or hold office under subclause (4), as a member of the Commission if he-
- (a) is an undischarged bankrupt;
 - (b) has been convicted of an offence under this Act;
 - (c) has been convicted of an offence involving fraud or dishonesty; or
 - (d) has been convicted of an offence against any other written law and sentenced to a term of imprisonment of not less than six months without the option of a fine.

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2. (1) A member of the Commission shall, subject to the provisions of this Schedule, hold office for a term of not more than three years. Term of office as vacanc
- (2) A member of the Commission shall be eligible for reappointment upon the expiry of his term of office.
- (3) Upon the expiration of the term for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall any such extension of the term exceed three months.
- (4) The office of a member shall be vacated-
- (a) upon his death;
 - (b) if he is adjudged bankrupt;
 - (c) if he is absent from three consecutive meetings of the Commission without the prior approval of the Commission;
 - (d) upon the expiry of one month's notice of his intention to resign his office given by him in writing to the Minister;
 - (e) upon the expiry of one month's notice of his removal given to him in writing by the Minister;
 - (f) if he becomes mentally or physically incapable of performing his duties as a member;
 - (g) if he is convicted of an offence under this Act; or
 - (h) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine.
- (5) The Commission may act notwithstanding any vacancy of office among its members.

3. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission. Secret:
- (2) The Secretary shall be the chief executive of the Commission and it shall be his duty to assist the Commission in all respects and in such manner as the Commission may from time to time require in the discharge of its functions under this Act.
- (3) Subject to subclause (4), the Secretary shall perform such of the functions of the Commission as are for the time being delegated to him by the Commission.
- (4) The Secretary shall not exercise any function generally delegated to him by the Commission under subclause (3) without the express specific approval of the Commission in relation to-
- (a) any matter in respect of which the Commission may not exercise its powers under this Act without the prior consent or approval of the Minister;
 - (b) the sale, disposal or writing off of any property or assets of the Commission the value of which exceeds one million kwacha; or
 - (c) any general variation of the salaries, wages or allowances of persons employed by the Commission.
- (5) The Secretary shall furnish the Minister, through the Commission, with all such information relating to the activities and undertakings of the Commission as the Minister may at any time require.

4. (1) Subject to the other provisions of this Act, the Commission may regulate its procedure. Busine of the Commi
- (2) The Commission shall meet as often as necessary or expedient for the discharge of its business and such meetings shall be held at such places, times and days as the Commission may determine.
- (3) The Chairman may at any time call a meeting of the Commission and shall call a special meeting to be held within seven days of receipt of a written request for that purpose addressed to him by at least one-third of the members of the Commission.
- (4) There shall preside at any meeting of the Commission-
- (a) the Chairman;
 - (b) in the absence of the Chairman, the Vice-Chairman; or
 - (c) in the absence of both the Chairman and Vice-Chairman, such member as the members present may elect for the purpose of the meeting.
- (5) The decision of the Commission shall be by a majority of votes and in addition to an original vote, the Chairman or other person presiding at the meeting shall have a casting vote in any case in which the voting is equal.
- (6) Four members of the Commission shall form a quorum.
- (7) Minutes of each meeting of the Commission shall be kept and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

Business of the Commission

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5. (1) The Commission may for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it considers necessary. Commi
- (2) The Commission may appoint as members of a Committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.
- (3) Subject to any specific or general direction of the Commission, any committee established under subsection (1) may regulate its own procedure.
- (4) Each committee shall keep minutes of its meetings and shall keep the Commission informed of its activities and shall conduct its proceedings in such manner as the Commission may direct.
- (5) Meetings of a committee shall be held at such times and places as the committee may determine or as the Commission shall direct.
6. A member of the Commission or any committee thereof shall be paid such travelling and subsistence allowances, Allowai if any, as the Minister may, in his case, fix.
7. If any person is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested, he shall Disclos of inter as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.
8. (1) The Commission may appoint and employ, on such terms and conditions as it thinks fit, such professional, Staff of Commi technical and other officers, and such other staff, as may be necessary for the exercise and discharge of its powers and functions.
- (2) The Commission may make arrangements for or with respect to the provision and maintenance of schemes (whether contributory or not) for the payment to its employees and their dependants of such retirement benefits, gratuities or other allowances as it may determine.
9. The Commission shall be funded by- Commi funds
- (a) such sums as may be payable to the Commission from time to time from moneys appropriated by Parliament for the purpose;
- (b) such sums as may be payable to the Commission under this Act or any other written law;
- (c) such sums as may be levied by the Commission in terms of licence fees, transaction commissions and any other levies imposed; and
- (d) such sums of money or such other assets as may accrue to or vest in the Commission from time to time, whether in the course of the exercise of its functions or otherwise.
10. The financial year of the Commission shall be the period of twelve months ending on 31st March in each year. Financ year
11. (1) The Commission shall cause proper accounts to be kept of its assets and liabilities and of its income and expenditure for each financial year. Accour and au
- (2) The accounts of the Commission for each financial year shall be audited by one or more persons who publicly carry on the profession of accountants in Zambia, and who shall be appointed auditors to the Commission by the Commission with the approval of the Minister.
12. The Commission shall, not later than six months after the end of each financial year of the Commission, submit to the Minister a report of its activities, together with a copy of its audited accounts for that financial year, and the Minister shall, not later than fourteen days after the first sitting of the National Assembly next after the receipt of such report, lay it before the National Assembly. Annual report

SECOND SCHEDULE

(Section 8)

REQUIREMENTS TO BE MET BY APPLICANTS FOR SECURITIES EXCHANGE LICENCE

For the purposes of section *eight*, the requirements are as follows:

- A. The applicant must have financial resources sufficient for the proper performance of its functions.
- B. At least five of the applicant's members shall be persons engaged in carrying on the business of dealing in securities independently of and in competition with each other.
- C. The rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities will be conducted in an orderly manner and so as to afford proper protection to investors. In particular, the rules of the proposed exchange shall make such provisions as the Commission considers satisfactory with regard to-
 - (a) efficient, honest, fair, competitive and informed trading in securities;
 - (b) the qualifications for membership of the proposed exchange;
 - (c) the exclusion from its membership of persons who are not of good character and business integrity, and the suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for contravention or failure to comply with the rules of the proposed exchange or the provisions of this Act;
 - (d) the conditions governing dealings in securities by members of the proposed exchange, and the class or classes of securities that may be dealt in by members;
 - (e) the carrying on of the business of the securities exchange with due regard to the interests of the public; and
 - (f) preventing a member of the proposed exchange from resigning where the proposed exchange intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or to take other disciplinary action against that member.
- D. The applicant has made such provision as the Commission considers satisfactory for-
 - (a) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the proposed exchange, and for the recording of such transactions;
 - (b) the effective monitoring and enforcement of compliance with its rules and the provisions of this Act and the rules made under this Act; and
 - (c) investigating complaints in respect of business transacted by any of its members.
- E. The applicant must be able and willing to promote and maintain high standards of integrity and fair dealing by its members.

SUBSIDIARY LEGISLATION

THE SECURITIES (CONDUCT OF BUSINESS) RULES

ARRANGEMENT OF RULES

PART I

PRELIMINARY

The Laws of Zambia

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21. Customer order priority
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28. Insider dealing
29. Safeguarding of customer investments
30. Complaints
31. Compliance
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33. Customer confidentiality
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SECTION 48-SECURITIES (CONDUCT OF BUSINESS) RULES

Statutory Instrument
168 of 1993

PART I

PRELIMINARY

1. These Rules may be cited as the Securities (Conduct of Business) Rules. Title
- Copyright Ministry of Legal Affairs, Government of the Republic of Zambia

2. In these Rules, unless the context otherwise requires-

Interpretation

"advertisement" includes every form of advertising, whether in a publication, brochure or handout, or by the display of notices or by means of circulars or other documents, or by an exhibition of pictures or photographic or cinematographic films or videos, or by way of sound broadcasting or television or by the distribution of recordings or in any other manner;

"customer" means a person for whom a licensee acts as an agent and to whom the licensee owes a duty of care, and includes a potential customer;

"licensee" means a person licensed under Part IV of the Act;

"own account transaction" means a transaction effected or arranged by the licensee in the course of carrying on his securities business and which was done on his own account;

"regulatory system" means the arrangements for regulating a licensee under the Act and subsidiary legislation made thereunder or directions given by the Commission.

3. (1) These Rules, which include the statements of principle in Part II, apply in relation to all licensees in respect of their securities business. Application

(2) These Rules are of general application to all securities business provided that, where a rule applies only in particular circumstances, that rule will apply to a licensee only if those circumstances are relevant to the course of the securities business undertaken by that licensee.

PART II

STATEMENTS OF PRINCIPLE

4. In his conduct of securities business, a licensee shall at all times act according to the principles of best practice and, in particular, shall- Principles of best practice
- (a) observe high standard of integrity and fair dealing;
 - (b) act with due skill, care and diligence;
 - (c) observe high standards of market conduct;
 - (d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling him to fulfil a licensee's responsibilities to his customer;
 - (e) take reasonable steps to give every customer he advises, in a comprehensible and timely way, any information needed to enable the customer to make a balanced and informed investment decision;
 - (f) avoid any conflict of interest with his customers and, where such a conflict unavoidably arises, to ensure fair treatment to his customer by complete disclosure or by declining to act; furthermore he should never unfairly place his interests above those of his customers;
 - (g) protect properly, by way of segregation and identification, those customer assets for which a licensee is properly responsible;
 - (h) maintain adequate financial resources to meet his securities business commitments and withstand the risk to which his business is subject;
 - (i) organise and control his internal affairs in a responsible manner;
 - (j) keep proper records;
 - (k) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and
 - (l) deal with the Commission in an open and co-operative manner and keep the Commission informed of anything concerning the licensee that might reasonably be expected to be disclosed to it.

PART III

CONDUCT OF BUSINESS

5. Where a licensee is advising or acting for a customer- Independence
- (a) he shall not claim he is independent or impartial if he is not; and
 - (b) he shall ensure that any claim he makes as to his independence or impartiality adequately includes any limitation that there may be on either.
6. Where a licensee has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless he has- Material Interest
- (a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or
 - (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

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- 7.** A licensee must take reasonable steps to ensure that neither he nor any of his employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers. Inducements
- 8.** Where a licensee issues an advertisement concerning his securities business, he shall take all reasonable steps to ensure that- Issue of advertisements
- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading;
 - (b) the advertisement discloses fairly the risks concerned.
- 9.** Where a licensee issues an advertisement concerning securities business, he shall ensure that the advertisement identifies him as the advertiser. Identification of issuer
- 10.** (1) A licensee may make a communication with another person which is designed to promote the provision of securities services only if he can show that he believes on reasonable grounds that the communication is fair, comprehensive and not misleading. Fair and clear communications
- (2) A licensee shall take reasonable steps to ensure that any agreement, written communication, notification or information that he gives or sends to customers to whom he provides securities services is presented fairly and clearly.
- 11.** A licensee shall not- Customer's understanding of risk
- (a) recommend a transaction to a customer, or effect a discretionary transaction with or for him, unless he has taken all reasonable steps to enable the customer to understand the risks involved;
 - (b) mislead a customer as to any advantages or disadvantages of a contemplated transaction; or
 - (c) promise a return unless such return is contractually guaranteed.
- 12.** A licensee shall take reasonable steps to ensure that a customer to whom he provides securities services is given adequate information about his identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives with whom the customer has contact. Information about the licensee
- 13.** Before or when making a personal recommendation to a customer to invest in a collective investment scheme, a licensee shall give him- Information about collective investment schemes
- (a) information about the scheme which is adequate to enable him to make an informed investment decision;
 - (b) appropriate written particulars.

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14. (1) A licensee shall satisfy himself on reasonable grounds and on a continuing basis that any representative he appoints is fit and proper to act for him in that capacity.

Representatives of licensee

(2) The licensee shall also satisfy himself on reasonable grounds and on a continuing basis that he has adequate resources to monitor and enforce compliance by his representatives with high standards of business conduct.

15. (1) A licensee shall not provide to a customer any securities services relating to-

Where written customer agreement required

(a) the discretionary management of a portfolio; or

(b) any other type of business that is prescribed by the Commission, except under a written agreement signed by the customer and returned to licensee.

(2) The Commission and a licensed securities exchange may from time to time prescribe special procedures relating to the operation of discretionary accounts and every licensee must follow such special procedures or shall secure that such special procedures are followed.

16. (1) Where a licensee provides securities services to a customer on written contractual terms (whether pursuant to rule 15 or otherwise), the agreement shall set out in adequate detail the basis on which those services are provided.

Customer agreements

(2) The High Court may, if it considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this rule, but no such order affects any dealing or transaction entered into or carried out by the licensee on behalf of the customer.

17. (1) licensee shall not, in any written communication or agreement, seek to exclude or restrict-

Customers' rights

(a) any duty or liability to a customer which he has under the Act or any subsidiary legislation made thereunder;

(b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to him of securities services;

(c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of him in the provision of securities services.

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(2) A purported exclusion or restriction prohibited by this rule shall be void and of no effect.

18. A licensee shall take all reasonable steps to ensure that he does not give securities advice to, nor effect a discretionary transaction with or for, a customer unless that advice or transaction is suitable for him having regard to the facts disclosed by that customer and other relevant facts about the customer of which the licensee is or ought reasonably to be aware. Suitability

19. (1) A licensee's charges shall not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances. Charges

(2) Before a licensee provides securities services to a customer it shall disclose to him the basis or amount of the licensee's charges for the provisions of those services and the nature of and amount of any other remuneration receivable by him and attributable to them.

20. (1) Where a licensee effects a sale or purchase of securities with or for a customer, he shall ensure that the customer is sent with due dispatch a contract note containing the essential details of the transaction in accordance with section *forty-one* of the Act. Confirmation and periodic information

(2) Where a licensee acts as an investment manager for a customer, he shall ensure that the customer is sent at suitable intervals a report stating the value of the portfolio or account at the beginning and end of the period, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

21. A licensee shall deal with customer and own account orders fairly and in due turn. Customer order priority

22. When a licensee has agreed or decided in his discretion to effect or arrange a customer order, he shall effect or arrange the execution of the order as soon as is reasonably practicable in the circumstances. Timely execution

23. Where a licensee deals with or for a customer he shall take all reasonable steps to find and deal on the terms which are the best available to the customer. Best execution

24. A licensee shall ensure that a transaction he executes is promptly allocated. Timely allocation

25. Where a licensee has aggregated an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation-

Fair allocation

- (a) he shall not give unfair preference to himself or to any of those for whom he dealt; and
- (b) if all orders cannot be satisfied, he shall give priority to satisfying orders for customer transactions.

26. Where a licensee intends to publish to customers a price-sensitive recommendation or research or analysis, he shall not knowingly effect an own account transaction in the investment concerned or in any related investment until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

Front running

27. A licensee shall not-

Churning

- (a) deal or arrange a deal in the exercise or discretion for any customer; or
- (b) advise a customer to deal,

if the dealing could in the circumstances reasonably be regarded as too frequent or too large.

28. A licensee shall not knowingly profit or seek to profit, either for his own account, the account of a customer or any third party, from inside information in the hands of any of his officers, employees or agents, or assist anyone with such information to make a profit for himself.

Insider dealing

29. A licensee who has custody of a customer's securities in connection with or with a view to securities business shall-

Safeguarding of customer investment

- (a) keep safe, or arrange for the safekeeping of, any documents of title, or documents evidencing title, relating to them; and
- (b) ensure that any securities that he buys or holds for a customer are properly registered in his name or, with the consent of the customer, in the name of an appropriate nominee.

30. A licensee shall have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

Complaints

31. (1) A licensee shall take reasonable steps, including the establishment and maintenance of procedures, to ensure that-

Compliance

- (a) his officers, employees and other representatives are aware of their obligations under the Act and any subsidiary legislation made thereunder, and that they act in conformity with them; and

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- (b) sufficient information is recorded and retained about his securities business and compliance with the regulatory system.

(2) Records required to be maintained by the regulatory system shall be kept available, for a period of not less than six years, by the licensee for inspection by any person duly authorised by the Commission.

32. A licensee shall establish and maintain procedures- Supervision

- (a) for the supervision of each of his officers, employees and other representatives; and
(b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

33. (1) Subject to subrule (2), all information in the possession of a licensee relating to a customer shall be kept confidential by the licensee. Customer confidentiality

(2) A licensee may disclose information relating to a customer when properly required to do so by the Commission, a clearing house or the market supervision department of a licensed securities exchange of which he is a member, or if he is ordered to do so by a court of competent jurisdiction or other due process of law.

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

- (a) forthwith notify the Commission and each of his customers of such decision; and
(b) ensure to the satisfaction of the Commission that any such business which is outstanding is properly completed or transferred to another licensee.

35. A licensee who contravenes any of the provisions of these Rules shall be guilty of an offence and his licence shall be liable to suspension or revocation under section *twenty-four* of the Act. Suspension or revocation of licence

SECTION 78-THE SECURITIES (TRANSITIONAL) RULES.

Statutory Instrument
169 of 1993

1. These Rules may be cited as the Securities (Transitional) Rules. Title

2. In these Rules, unless the context otherwise requires, "collective investment scheme" has the same meaning as in section *seventy-two* of the Act. Interpretation

3. (1) Where a person would, but for these Rules, be liable to a penalty for not being licensed under Part IV of the Act, subject to subrule (4) that person shall not be so liable-

Transitional provisions

- (a) until the expiration of a period of seven days after the commencement of the Act; or
- (b) where, before the expiration of that period, that person applies to be licensed, until:
 - (i) the licence is granted; or
 - (ii) the application for a licence is withdrawn or refused.

(2) Where a person would, but for these Rules, be liable to a penalty because publicly traded securities are not registered under Part V of the Act, subject to subrule (4) that person shall not be so liable-

- (a) until the expiration of a period of two months after the commencement of the Act; or
- (b) where, before the expiration of that period, that person applies for the registration of the publicly traded securities, until:
 - (i) such securities are registered; or
 - (ii) the application for registration is withdrawn or refused.

(3) In respect of a collective investment scheme which was in existence and had been publicly marketed before the enactment of the Act, where a person would, but for these Rules, be liable to a penalty because such scheme is not authorised under Part X of the Act, subject to subrule (4) that person shall not be so liable-

- (a) until the expiration of a period of seven days after the commencement of the Act; or
- (b) where, before the expiration of that period, that person applies for the authorisation of the collective investment scheme, until:
 - (i) the collective investment scheme is authorised; or
 - (ii) the application for authorisation is withdrawn or refused.

(4) Except for the periods of grace allowed by subrules (1), (2) and (3), all of the other provisions of the Act shall apply in all cases and in all respects.

(5) A person who, before the expiration of the period specified in subrule (1), applies for a licence under Part IV of the Act shall be treated for all purposes as if he is a licensee pending the determination of his application.

THE SECURITIES (LICENSING, FEES AND LEVIES) RULES

ARRANGEMENT OF RULES

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SECTION 78-SECURITIES (LICENSING, FEES AND LEVIES) RULE

Statutory Instrument
165 of 1993
153 of 1995

Rules by the Securities and Exchange Commission

PART I

PRELIMINARY

1. These Rules may be cited as the Securities (Licensing, Fees and Levies) Rules. Title

2. In these Rules, unless the context otherwise requires- Interpretation

"financial year" means the period from 1st April to 31st March;

"licence" means a licence under Part IV of the Act and "licensee" shall be construed accordingly.

PART II

LICENCES

3. Applications for the purposes described in the second column of the First Schedule shall be in the form specified in the third column, such forms being set out in the Second Schedule. Applications

4. A form prescribed by these Rules shall be completed in accordance with any directions specified in the form. Directions in forms

5. (1) An application for a licence or renewal of a licence in the form prescribed together with any relevant annexures shall be enclosed in a sealed envelope and lodged with the Commission. Manner of application for licence

(2) Each application for a licence, or for the renewal thereof, shall be accompanied by a detailed statement of the applicant's assets and liabilities signed by the applicant, or, in the case of an applicant which is a company-

(a) copies certified by a director of the company to be true copies of the last balance sheet and of the last profit and loss account (if any), incorporating the results of the last financial year, and which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereof); and

- (b) a copy of the report of the auditors thereon (certified as aforesaid).

(3) An application by a company to be licensed as a securities exchange shall be made in the prescribed form and shall be accompanied by a copy of its rules and its Memorandum and Articles of Association certified to be true copies by the person signing the application, and shall be lodged with the Commission.

(4) The Commission may refuse to accept any application made under these Rules if it is not accompanied by the licence fee prescribed.

6. An application for a licence under Part IV of the Act shall forthwith give written notice to the Commission of-

Alteration of facts
disclosed in
applications

- (a) any proposed alteration to; or
(b) the occurrence of any event which he knows affects or may affect in a material respect;

information supplied by him to the Commission in relation to his application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

7. It shall be a condition of every licence that-

General conditions

- (a) the licence shall be personal to the applicant and shall not be transferable;
(b) the holder of the licence shall forthwith give written notice to the Commission of-

(i) any proposed alteration to, or

(ii) the occurrence of any event which he knows affects or may affect in any material respect,

any matter in respect of which he was required to supply information to the Commission in the course of his application for that licence;

(c) the consent of the Commission shall be obtained prior to-

(i) the implementation of any alteration of the kind referred to in subrule (b) (i); or

(ii) the taking of action resulting from any event of the kind referred to in subrule (b) (ii); and

(d) a licence shall not carry on, nor hold himself out as carrying on, any securities business other than that permitted by his licence and from any premises specified in his licence.

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8. Where the Commission is satisfied that a licence has been inadvertently lost, destroyed or defaced, the Commission shall replace the licence on payment by the licensee of the prescribed fee. Replacement of licence

9. (1) Every holder of a licence granted under Part IV of the Act shall display his licence at all premises in which he transacts with the public the securities business authorised by the licence. Display of licence

(2) The requirement in sub-rule (1) shall not be satisfied unless the licence is displayed in such a manner as to be readily visible to the public.

10. A dealer's representative or an investment representative shall not change his principal in relation to which his licence was issued unless he has lodged a notice in Form 12 with the Commission. Change of principal

PART III

FEES AND LEVIES

11. The fees prescribed in the Third Schedule shall be payable to the Commission, with respect to- Fees

- (a) the grant and renewal of licences;
- (b) the registration of securities under Part V of the Act; and
- (c) the authorisation of collective investment schemes under Part X of the Act.

12. (1) Where the Commission considers it appropriate in the exceptional circumstances of a particular case, the Commission may in its discretion waive payment of all or part of the fee which would otherwise be payable under these Rules. Waiver, etc. by Commission

(2) Where it appears to the Commission that, owing to the exceptional circumstances of a particular case, the retention by the Commission of a fee which has been paid would be inequitable, the Commission may in its discretion refund all or part of the fee.

13. (1) The amount to be deposited under subsection (1) of section *thirty-one* of the Act shall be- Compensation fund levy

- (a) five per cent of the net capital employed in the licensee's business; or

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(b) one million kwacha,
whichever is less.

(2) Such amount shall be payable-

(a) within seven days, or such further time as the Commission may in a particular case allow, after grant of the licence; and

(b) at such times thereafter as the Commission, having regard to the purposes and requirements of Part IX of the Act, shall direct.

(As amended by S.I. No. 153 of 1995)

FIRST SCHEDULE

(Rule 3)

LIST OF FORMS

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>
Provisions of Act or Rules	Description of Form	Number of Form in Second Schedule
section 8 (1)	Application by company to be licensed as a securities exchange	1
section 21 (1)	Application by a company for dealer's licence	2
section 21 (1)	Application by an individual for investment adviser's licence	3
section 21 (1)	Application by a company for investment adviser's licence	4
section 21 (1)	Application for renewal of dealer's licence or investment adviser's licence	5
section 21 (1)	Application for representative's licence	6
section 21 (1)	Application for renewal of representative's licence	7
section 28 (1)	Record of securities	8
section 29 (1)	Notice of place at which record is to be kept	9
section 29 (3)	Notice of change of place of business and change of place at which record is kept	10
section 29 (2)	Notification of cessation of business	11
Rule 11	Notice of change of representative's principal and notice of change of place at which record is kept	12

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SECOND SCHEDULE

FORMS

(Section 8 and Rule 3)

The Laws of Zambia
Form 1

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION BY COMPANY TO BE LICENSED AS A SECURITIES EXCHANGE

Application is hereby made to be licensed as a securities exchange under the Act and the following statements are made in respect thereof:

Note:

This application must be accompanied by-

- (a) the last audited balance sheet and profit and loss account certified as required by rule 6 of the Securities (Licensing and Fees) Rules, 1993;
- (b) a certified true copy of the rules of the proposed securities exchange;
- (c) a certified true copy of the applicant's certificate of incorporation; and
- (d) a certified true copy of the applicant's memorandum and articles of association.

Name of company:

Date of incorporation:

Registered office:

Proposed name of securities exchange:

Hours of business:

Number of members:

Number of members who will carry on business of dealing in securities independently of and in competition with each other:

Dated this.....day of.....19.....

Signature.....

Name.....

Chairman of the Securities Exchange

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Form 2

(Section 21 (1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION BY COMPANY FOR DEALER'S LICENCE

Application is hereby made for a dealer's licence under the Act and the following statements are made in respect thereof:

Notes:

- (1) If space is insufficient to provide details, please attach annexure(s). Any such annexure should be identified as such and signed by the signatory to this application.
- (2) This application must be accompanied by the last audited balance-sheet and profit and loss account certified as required by rule *six* of the Securities (Licensing and Fees) Rules, 1993.

PART 1

INFORMATION ON THE APPLICANT

The Laws of Zambia

1. (a) Name of applicant:
- (b) Registered office:
- (c) Place of incorporation:
- (d) Full address and telephone number of the principal place at which the business of the applicant is to be carried on:
- (e) The authorised and paid-up capital of the applicant, including the types of shares issued:
- (f) The details of shareholders of the applicant's, including the name, address, amount of shares being held and date of acquisition:
- (g) Address of place at which applicant's record under section *twenty-eight* of the Act will be kept:
- (h) Set out as an annexure hereto details of each director and secretary showing full name, residential address, date of birth, office held and date of appointment:

2. State the nature of the principal business of the applicant:

3. (a) State in detail the activity and the manner in which the applicant proposes to conduct the business for which the applicant requires a dealer's licence:

(b) The type of clients with whom the applicant proposes to do business:

(c) Describe in detail the organisation structure and internal control procedures which the applicant has adopted or proposes to adopt for its proposed business.

4. Set out name and address of each person who, directly or indirectly, exercises or has power to exercise a controlling influence over the management and policies of the applicant other than those shown as directors:

5. Is any director or secretary of the applicant a director or secretary of any other corporation?

Using an annexure, answer "Yes" or "No" for each person; if "Yes", give details of:

- (a) names of corporations;
- (b) places of incorporation; and
- (c) dates of appointment.

(For questions 6 to 8, answer "Yes" or "No" in space provided. If "Yes", attach annexures giving all relevant particulars.)

6. Has the applicant or any director or secretary of the applicant within the past 10 years-

Answer

- (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities?
- (b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?
- (c) been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?

7. Has any director or secretary of the applicant within the past 10 years-

Answer

- (a) been a member or partner in a member firm of any securities exchange?
- (b) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?
- (c) been refused membership of any securities exchange?
- (d) been known by any name other than the name or names shown in this application?
- (e) been convicted of any offence other than a traffic offence in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction?
- (f) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Zambia or elsewhere? (If "Yes", using an annexure, give full details, including whether judgement is unsatisfied.)
- (g) been declared bankrupt or compounded with or made an arrangement for the benefit of his creditors, in Zambia or elsewhere?
- (h) been engaged in the management of any corporation other than those referred to in answer to question 5?

The Laws of Zambia

PART 2

MISCELLANEOUS

1. We are aware of the provisions of section *thirty* of the Act relating to fraudulent applications.
2. We declare that all information given in this application and in the attached annexures (if any) are true and correct.

Dated this.....day of.....19.....

*Signature..... Signature.....

.....
(Name of Director) (Name of Director/Secretary)**

*This application is to be signed by two directors, or a director and the secretary of the applicant.

**Delete whichever is inapplicable.

The Laws of Zambia

Form 3

(*Section 21 (1)*)

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION BY AN INDIVIDUAL FOR INVESTMENT ADVISER'S LICENCE

The Laws of Zambia

Application is hereby made for an investment adviser's licence under the Act and the following statements are made in respect thereof:

Note:

- (1) If space is insufficient to provide details, please attach annexure(s). Any such annexure should be identified as such and signed by the signatory to this application.
- (2) This application shall be accompanied by a detailed statement of the applicant's assets and liabilities and shall be signed by the applicant.

1. Personal particulars of the applicant.

- (a) Name of applicant:
- (b) Full address and telephone number of the principal place at which the business of the applicant is/is to be carried on:
- (c) National Registration Card ID number:
- (d) Residential address:
- (e) Address of place at which applicant's record under section *twenty-eight* of the Act will be kept:

2. (a) Indicate area of proposed business for which the applicant requires an Investment Adviser's licence: advising others concerning securities.

issues or promulgates analyses or reports concerning securities.

pursuant to a contract or arrangement with a customer, undertakes on behalf of the customer (whether on a discretionary authority granted by the customer or otherwise) the management of a portfolio of securities for the purpose of investment.

(b) For each indicated area of proposed business, state in detail the manner in which the business will be conducted and the experience of the applicant and his management staff in that business.

(c) Describe in detail the organisation structure and internal control procedures which the applicant has adopted or proposes to adopt in the conduct of his business.

3. The type of customers with whom the applicant proposes to do business.

4. Is the business of investment adviser the principal business carried on by the applicant? (Answer "Yes" or "No", give details of the applicant' principal business.)

5. Does the applicant have an interest in one or more shares in any company the shares of which are quoted on a securities exchange, the aggregate of the nominal amount of which constitutes not less than 5% of the aggregate of the nominal amount of all the issued shares of the corporation? (Answer "Yes" or "No". If "Yes", give full details of such interest including names of companies and percentage of interest.)

6. Is the applicant a director of any corporation in Zambia or elsewhere? (Answer "Yes" or "No".) If "Yes", using an annexure, give details of-

- (a) names of the corporations;
- (b) places of incorporation; and
- (c) the relevant interests.

(Answer questions "Yes" or "No" in space provided. If "Yes", attach annexures giving all relevant particulars.)

7. Has the applicant within the past 10 years-

Answer

- (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities or acting as investment adviser?
- (b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?
- (c) has been refused the right or restricted in his right to carry on any business or profession for which a specific licence, registration or other authority is required by law in any place?
- (d) has been a member or partner in a member firm or a securities exchange?
- (e) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?
- (f) been refused membership of any securities exchange?
- (g) carried on business under any name other than the name or names shown in this application?

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Form 4

(Section 21 (1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION BY A COMPANY FOR INVESTMENT ADVISER'S LICENCE

Application is hereby made for an Investment Adviser's licence under the Act and the following statements are made in respect thereof:

Notes:

- (1) If space is insufficient to provide details, where necessary, please attach annexure(s). Any such annexure should be identified as such and signed by the signatory to this application.
- (2) This application shall be accompanied by the last audited balance-sheet and profit and loss account certified as required by rule *six* of the Securities (Licensing and Fees) Rules, 1993.

PART 1

INFORMATION ON THE APPLICANT

The Laws of Zambia

- 1. (a) Name of applicant:
- (b) Registered office:
- (c) Place of incorporation:
- (d) Full address and telephone number of the principal place at which the business of the applicant is or is to be carried on:
- (e) The authorised and paid-up capital of the applicant, including the types of shares issued or to be issued:
- (f) The details of shareholders of the applicant, including the name, address, amount of shares being held and date of acquisition:
- (g) Address of place at which applicant's record under section *twenty-eight* of the Act will be kept:
- (h) Set out as an annexure hereto details of each director and secretary showing full name, residential address, date of birth, office held and date of appointment:

2. State the nature of the principal business of the applicant.

3. (a) Indicate areas of proposed business for which the applicant requires an Investment Adviser's licence: advisers others concerning securities.

issues or promulgates analyses or reports concerning securities.

pursuant to a contract or arrangement with a customer, undertakes on behalf of the customer (whether on a discretionary authority granted by the customer or otherwise) the management on behalf of customers of a portfolio of securities for the purpose of investment.

(b) For each indicated area of proposed business, state in detail the manner in which business will be conducted and the experience of the applicant and its management staff in that business.

(c) The type of customers with whom the applicant proposes to do business.

(d) Describe in detail the organisation structure and internal control procedures which the applicant has adopted or proposes to adopt in the conduct of its business.

4. Set out name and address of each person who directly or indirectly exercises or has power to exercise a controlling influence over the management and policies of the applicant other than those shown as directors.

5. Is any director or secretary of the applicant a director of any other corporation?

Using an annexure, answer "Yes" or "No" for each person; if "Yes", give details of:

- (a) names of corporation;
- (b) places of incorporation; and
- (c) dates of appointment.

(For questions 6 and 7 answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.)

6. Has the applicant or any director or secretary of the applicant within the past 10 years-

Answer

- (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities or acting as an investment adviser?
- (b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?
- (c) been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?

7. Has any director or secretary of the applicant within the past 10 years-

Answer

- (a) been a member or partner in a member firm of any securities exchange?
- (b) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?
- (c) been refused membership of any securities exchange?
- (d) been known by any name other than the name or names shown in this application?
- (e) been convicted of any offence other than a traffic offence in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction?
- (f) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Zambia or elsewhere? (If "Yes", using an annexure, give full

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PART 2

MISCELLANEOUS

1. We are aware of the provisions of section *thirty* of the Act relating to fraudulent applications.
2. We declare that all information given in this application and in the attached annexures (if any) are true and correct.

Dated this.....day of.....19.....

*Signature..... Signature.....

.....
(Name of Director) (Name of Director/Secretary)**

*This application is to be signed by two directors or a director and the secretary of the applicant.

**Delete whichever is inapplicable.

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Form 5

(Section 21 (1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION FOR RENEWAL OF DEALER'S LICENCE OR INVESTMENT ADVISER'S LICENCE

The Laws of Zambia

Application is hereby made for the renewal of:

A Dealer's/An Investment Adviser's* licence and the following statements are made in respect of the applicant:

1. (a) Applicant's name:
- (b) Expiry date of licence:
- (c) Licence No.:

2. Where the applicant is a company to complete the following: (Answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.)

- | (a) Since the last application- | Answer |
|---|--------|
| (i) Has there been a change in the shareholders of the applicant? | |
| (ii) Has there been a change in the applicant's directors, secretary, senior management personnel or external auditor? | |
| (iii) Has the applicant been convicted of any offence other than a traffic offence in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction? | |
| (iv) Have any of the applicant's directors been a director of any company other than those referred to in the last application? | |
| (v) Has the applicant taken any disciplinary action against any of its representatives? | |
| (vi) Has the applicant received any complaint? | |
| (vii) Has the applicant undertaken to conduct any material new business activity, and if so, state the nature of the activity? | |
- (b) Please furnish details of any other event which has occurred which is likely to have a significant effect on the applicant's business during the currency of the licence, if granted (including any legal claim against the applicant).

3. Where the applicant is an individual please complete the following:

(Answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.)

- | Since the last application has the applicant- | Answer |
|--|--------|
| (a) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange? | |
| (b) been convicted of any offence other than a traffic offence in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction? | |
| (c) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Zambia elsewhere? (If "Yes", using an annexure, give full details, including whether judgement is unsatisfied.) | |
| (d) been declared bankrupt or compounded with or made an assignment for the benefit of his creditors, in Zambia or elsewhere? | |
| (e) been engaged in the management of any company other than those referred to in the last application? | |
| (f) been refused a fidelity or surety bond in Zambia or elsewhere? | |
| (g) undertaken to conduct any material new business activity, and, if so, state the nature of the activity? | |
| (h) been disciplined by any professional body or other membership body? | |

4. I am/We are* aware of the provisions of section *thirty* of the Act relating to fraudulent applications.

5. I/We* declare that all information given in this application and in the attached annexure (if any) are true and correct.

Dated this.....day of.....19.....

**Signature.....

.....
(Name of Applicant/Director/Secretary*)

*Delete whichever is inapplicable.

**Where the applicant is a body corporate, this application is to be signed by a director or secretary of the applicant.

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Form 6

(Section 21 (1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION FOR REPRESENTATIVE'S LICENCE

Application is hereby made for:

A dealer's representative's/an investment representative's* licence and the following statements are made in respect of the application.

- | | |
|--|----------------|
| 1. (a) Applicant's name | Other names |
| (b) Residential address | Tel: No. |
| (c) Date of birth | Place of birth |
| (d) No. of years applicant has resided in Zambia | Nationality |

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- (e) Occupation for which representative's licence is sought
- (f) Full name of principal
- (g) The full address at which the business of the principal is to be carried on Tel: No.
- (h) Nature of business of the principal
- (i) Address of place at which Record under section *twenty-eight* of the Act will be kept
- (j) Present remuneration arrangement with principal: salary, commission or both
*Delete whichever is inapplicable.
- (k) Directorship in companies in Zambia or elsewhere
- (l) National Registration Card ID number

2. (Answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.) Has the applicant within the past 10 years-

Answer

- (a) been licensed or registered in any place under any law which requires licensing or registration to deal or trade in securities or act as investment adviser?
- (b) been licensed, registered, or otherwise authorised by law to carry on any trade, business or profession in any place?
- (c) been refused the right or restricted in his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?
- (d) been a shareholder in a member firm of any securities exchange?
- (e) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?
- (f) been refused membership of any securities exchange?
- (g) carried on business under any name other than the name or names shown in this application in paragraph 1 (a)?
- (h) been convicted of any offence, other than a traffic offence, in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction?
- (i) had judgement including findings in relation to fraud, misrepresentation, or dishonesty been given against him in any civil proceedings, in Zambia or elsewhere? (If "Yes" attach annexure giving full details, including whether judgement is unsatisfied.)
- (j) been refused a fidelity or surety bond, in Zambia or elsewhere?
- (k) been declared a bankrupt or compounded with or made an assignment for the benefit of his creditors in Zambia or elsewhere?
- (l) been disqualified as a director of a company, or been a director of a company that has gone into receivership or liquidation, in Zambia or elsewhere?

3. Has the applicant had any experience in performing the functions of a dealer's representative or an investment representative? (Answer "Yes" or "No") If "Yes" attach annexures giving all relevant particulars.

4. Set out below details of the applicant's employment and business activities during the previous 10 years:

Name and address of employer (if self-employed, so state)	Nature of business	Description of duties in relation to the employment or activity	Period of employment or activity (give exact dates)
---	--------------------	---	---

5. Set out below details of two persons (who shall not be related to the applicant, and neither of whom shall have any interest in the success or otherwise of this application) with whom the applicant has had regular contact over the past 5 years and of whom the Commission may enquire regarding the applicant's character and reputation:

Name	Address	Occupation
------	---------	------------

6. Does the applicant have an interest in one or more shares in any company, the shares of which are quoted on a securities exchange, the aggregate of the nominal amount of which constitutes not less than 5% of the aggregate of the nominal amount of all issued shares of the company? (Answer "Yes" or "No". If "Yes" give full details of such interest)

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Form 7

(Section 21(1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

APPLICATION FOR RENEWAL OF REPRESENTATIVE'S LICENCE

The Laws of Zambia

Application is hereby made for the renewal of:

A dealer's representative's/an investment representative's* licence and the following statements are made in respect of the application.

*Delete whichever is inapplicable.

- 1. (a) Applicant's name
- (b) Expiry date of licence Licence No.
- (c) Residential Address Telephone No.
- (d) Present remuneration arrangement with principal; salary, commission or both

2. (Answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.) Since the last application has the applicant-

- | | Answer |
|---|--------|
| (a) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange? | |
| (b) been convicted of any offence other than a traffic offence in Zambia or elsewhere or are there any proceedings now pending which may lead to such a conviction? | |
| (c) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Zambia or elsewhere? (If "Yes", using an annexure, give full details, including whether judgement is unsatisfied.) | |
| (d) been declared bankrupt or compounded with or made an assignment for the benefit of his creditors, in Zambia or elsewhere? | |
| (e) been engaged in the management of any corporation other than those referred to in the last application? | |
| (f) been a director of any corporation other than those referred to in the last application? | |
| (g) been refused a fidelity or surety bond in Zambia or elsewhere | |
| (h) been the subject of any disciplinary action taken by his firm? | |
| (i) been disciplined by any professional or other membership body? | |

- 3. I am aware of the provisions of section *thirty* of the Act relating to fraudulent applications.
- 4. I declare that all information given in this application and in the attached annexure (if any) are true and correct.

Dated this.....day of.....19.....

Signature.....

Name of Applicant.....

Note: (a) This application should be accompanied by a certificate in or to the effect of the following form:

To the Commission;

On the basis of due and diligent enquiry made of the background of the applicant named in this form who is in my direct employment or acting for or on behalf of me, and other information available, I believe him to be of good character and reputation and to have the competence and experience to perform the function of a representative.

Dated this.....day of.....19.....

Signature:.....

Name:.....

Capacity:.....

- (b) Subject to paragraph (c) of this Note, the certificate should be signed by each licensee by whom the applicant is to be employed or for or by arrangement with whom he is to act.
- (c) Where the applicant is to be employed by or to act for or by arrangement with-
 - (i) a firm, the individual partners of which are licensees-the certificate should be signed by one such partner on behalf of all the partners;
 - (ii) a licensee which is a company-by a director or the secretary of that company.

The Laws of Zambia

Form 8

(Section 28)

THE SECURITIES ACT, 1993

RECORD OF SECURITIES

Name of person having an interest:

Particulars*			Acquired		Disposed of		Balance
Date	Name of Security	Unit Price	No. of Units	Cost	No. of Units	Proceeds	in Units

*State how securities acquired or disposed of and if acquired or disposed of on the securities market, give broker's name.

The Laws of Zambia
Form 9

(Section 29 (1))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

NOTICE OF PLACE AT WHICH RECORD IS TO BE KEPT

1. Name:
2. Capacity in which section *twenty-eight* of the Act applies:
3. Residential address and telephone number of applicant:
4. Business address and telephone number:
5. Name of employer (if any):
6. Place at which record is to be kept:
7. Date of commencement of keeping record:

Dated this.....day of.....19.....

Signature:.....

Name:.....

Capacity:.....

The Laws of Zambia

Form 10

(Section 29 (3))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

NOTICE OF CHANGE OF PLACE OF BUSINESS AND CHANGE OF PLACE AT WHICH RECORD IS KEPT

1. Name of licensee:
2. Type of licence held and licence number:
3. (a) Former address of place of business:
(b) New address of place of business:
(c) Date of change of place of business:
4. (a) Former address of place at which record was kept:
(b) New address of place at which record is kept:
(c) Date of change of address of place at which record is kept:

Dated this.....day of.....19.....

Signature:.....

Name:.....

Capacity:.....

The Laws of Zambia
Form 11

(Section 29 (2))

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

NOTIFICATION OF CESSATION OF BUSINESS

1. Name of licensee:
2. Type of licence held and licence number:
3. Notice is hereby given that on the.....day of.....19....., business ceased to be carried on in Zambia by the above licensee in respect of which he was licensed to carry on business.
Dated this.....day of.....19.....

Signature:.....

Name:.....

Capacity:
.....

The Laws of Zambia
Form 12

(Section 11)

THE SECURITIES ACT, LAWS OF ZAMBIA-CAP. 354

NOTICE OF CHANGE OF REPRESENTATIVE'S PRINCIPAL AND NOTICE OF CHANGE OF PLACE AT WHICH
RECORD IS KEPT

1. Name of licensee:
 2. Type of licence held any licence number:
 3. Residential Address:
 4. Notice is hereby given that on the.....day of.....19.....the licensee will cease to be a representative of.....and that from the.....day of.....19.....the licensee will be a representative of.....whose principal place of business is at.....
 5. (a) Former address of place at which record was kept:
(b) New address of place at which record is kept:
(c) Date of change of address of place at which record is kept:
Dated this.....day of.....19.....
- Signature:.....
Name:.....

THIRD SCHEDULE

(Rule 11)

FEES	FEE UNITS
1. Application for a licence or renewal of a licence as a dealer:	20,000
2. Application for a licence or renewal of a licence as an investment advisor:	10,000
3. Application for a licence or renewal of a licence as a dealer's representative:	5,000
4. Application for a licence or renewal of a licence as an investment representative:	5,000
5. Inspection of or taking extracts from the record kept under section <i>twenty-eight</i> of the Act:	100
6. Lodgement of application for licensing a securities exchange:	100,000
7. Replacement of licence:	2,500
8. Examination of Prospectus:	10,000
9. Registration of securities-	
(a) securities issued before the commencement of the Act	one quarter of the 1% issued share capita and reserves, subject to a mimum payment of: 10,000
(b) securities issued pursuant to a prospectus in connection with a public officer	one quarter of 1% of the total capital raised, subject to a minimum payment of: 15,000
10. Authorisation of collective investment scheme:	50,000

(As amended by S.I. No. 153 of 1995 and Act No. 13 of 1994)

THE SECURITIES (REGISTRATION OF SECURITIES) RULES

ARRANGEMENT OF RULES

PART I

PRELIMINARY

Rule

1. Title
2. Interpretation
3. Application

PART II

REGISTRATION STATEMENT

4. Registration statement
5. Letter of application
6. Bankers, etc.
7. Declaration
8. Supporting documents

PART III

PROSPECTUS

9. Information to be contained in prospectus
10. False or misleading prospectus

PART IV

CONTINUING OBLIGATIONS OF ISSUERS OF REGISTERED SECURITIES

The Laws of Zambia

11. Corporate disclosure policy
12. Closure of books
13. Notice of general meeting
14. Distribution of directors' report and annual accounts
15. Information to accompany directors' report and annual accounts
16. Additional information if accounts do not give true and fair view
17. Interim reports, etc.
18. Board meetings
19. After board meetings
20. Commission to be notified of certain decisions

Rule

21. Basis of allotment
22. Winding-up and liquidation
23. Pre-emptive rights
24. Approval of documents
25. Directors' service contracts
26. Subsequent registration
27. Proxy forms
28. Equality of treatment
29. Response to inquiries
30. Variation

FIRST SCHEDULE-Information to be Provided in Letter of Application for Registration of Securities

SECOND SCHEDULE-Information to be Contained in Prospectus

THIRD SCHEDULE-Accountants Reports

FOURTH SCHEDULE-Property Valuation Reports

SECTION 32-SECURITIES (REGISTRATION OF SECURITIES) RULES

*Statutory Instrument
164 of 1993*

Rules by the Securities and Exchange Commission

PART I

PRELIMINARY

1. These Rules may be cited as the Securities (Registration of Securities) Rules. Title
2. (1) Under these Rules, unless the context otherwise requires- Interpretation
- "articles" means articles of association;
- "Chief Executive" means a person who either alone or together with one or more persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of a registered securities issuer;
- "debt securities" means debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing, and convertible debt securities;
- "convertible debt securities" means debt securities convertible into or exchangeable for equity securities or other property;
- "convertible equity securities" means equity securities convertible into or exchangeable for shares;
- "director" includes any person who occupies the position of a director, by whatever name called;
- "equity securities" means shares (including preference shares), convertible equity securities and options, warrants or similar rights to subscribe or purchase shares or convertible equity securities;
- "issuer" means a company or other legal person any of whose equity or debt securities are the subject of an application for registration or some of whose equity or debt securities are already registered;
- "new applicant" means, in the case of equity securities, an applicant for registration none of whose equity securities is already registered and, in the case of debt securities, means an applicant for registration none of whose equity or debt security is already registered;
- "profit forecast" means any numerical or verbal indication of the level of profit for a future accounting period, or for a past accounting period for which results have not been announced to the public, including forms of words which may be used in conjunction with published data to arrive at an approximate figure for future profit by an arithmetical process;
- "prospectus" means a prospectus, notice, circular, advertisement or other invitation to the public to acquire or apply for any securities;
- "registered", in relation to securities, means registered under Part V of the Act;
- "reporting accountant" means the professional accountant who is responsible for the preparation of the accountants' report required to be included in the prospectus;
- "securities" has the same meaning as in section two of the Act;
- "substantial shareholder" means, in relation to a company, a person who is entitled to exercise, or control the exercise of, ten per cent or more of the voting power at any general meeting of the company.
- (2) For the purposes of these Rules, a company is a subsidiary of another company if-

- (a) that other company-
 - (i) controls the composition of the board of directors of the first-mentioned company;
 - (ii) controls more than half of the voting power of the first-mentioned company; or
 - (iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

(3) In these Rules, references to the certification of a document are references to its certification as a true copy or extract (as the case may be) by a director, the secretary or other authorised officer of the issuer or by a member of the issuer's auditors or solicitors.

3. (1) These Rules apply to all securities that are required to be registered under Part V of the Act. Application

(2) The requirements of these Rules are not exhaustive in that an applicant for the registration of securities may be required by the Commission to supply such further documents and information as the Commission may require in any particular case or class of case.

PART II

REGISTRATION STATEMENT

4. A registration statement for the purposes of section *thirty-two* of the Act shall consist of the following: Registration statement

- (a) a formal letter of application to the Commission signed by a duly authorised officer of the issuer whose securities are the subject of the application for registration, and which complies with the requirements of rules *five*, *six* and *seven*;
- (b) the various supporting documents specified in rule *eight*; and
- (c) in the case of a public offer, a prospectus that complies with the content requirements set out in Part III.

5. A formal letter of application for registration shall, in substantially the order given in the First Schedule to these Rules, embody the information indicated in that Schedule. Letter of application

- 6.** The application shall also contain- Bankers, etc.
- (a) the names and addresses of the issuer's principal bankers, authorised legal or other representatives; and
 - (b) the name, address and professional qualifications of the issuer's auditors.
- 7.** A letter of application must include a declaration, stated to be to the best of the issuer's knowledge, information and belief- Declaration
- (a) where a prospectus is required, that all information required to be included in the prospectus pursuant to Part III has been included; and
 - (b) that there are no other facts bearing on the issuer's application for registration which, in the issuer's opinion, should be disclosed to the Commission.
- 8.** In support of its letter of application for registration the applicant must lodge with the Commission at the same time the following documents: Supporting documents
- (a) a certified copy of its certificate of incorporation;
 - (b) a certified copy of its articles and all amendments to date;
 - (c) the annual report and accounts for each of the three completed financial years of the issuer and its subsidiaries, if any, immediately preceding the application or such shorter period as may be accepted by the Commission;
 - (d) a certified copy of-
 - (i) the resolution of the issuer in general meeting authorising the issue of all securities for which registration is sought; and
 - (ii) the resolution(s) of the board of directors authorising the issue and allotment of such securities, the making of the application for registration, and approving and authorising the issue of the prospectus is (where a prospectus is required).
 - (e) a certified copy of any resolution of the issuer in general meeting or of the board of directors authorising any alterations in the share capital of the company, or any mergers or amalgamations, within the period of five years preceding the date of the application for registration; and
 - (f) in addition, in the case of debt securities, a copy of the trust deed or other document securing or constituting the debt securities; and
 - (g) such other documentation as may be required by the Commission.

PART III

PROSPECTUS

- 9.** Where a prospectus is required, the prospectus shall contain the specific items of information specified in section A of the Second Schedule to these Rules with regard to equity securities, and in section B of that Schedule with regard to debt securities. Information to be contained in prospectus

10. If a prospectus issued for the purposes of Part V of the Act is false or misleading in a material particular, each of the directors of the issuer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five million kwacha or to imprisonment for a term not exceeding three years or to both.

False or misleading prospectus

PART IV

CONTINUING OBLIGATIONS OF ISSUERS OF REGISTERED SECURITIES

11. Generally and apart from compliance with all the specific requirements of this Part, the issuer shall keep the Commission, members of the issuer and other holders of its registered securities informed as soon as reasonably practicable of any information relating to the issuer and its subsidiaries, if any, that-

Corporate disclosure policy

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and its subsidiaries, if any;
- (b) is necessary to avoid the establishment of a false market in its securities; and
- (c) might reasonably be expected materially to affect market activity in the price of its securities.

12. The issuer shall publish in at least two newspapers circulating throughout Zambia notice of the closure of its register of members at least fourteen calendar days before such closure.

Closure of books

13. The issuer shall publish in at least two newspapers circulating throughout Zambia notice of every general meeting not less than fourteen calendar days before such meeting.

Notice of general meeting

14. The issuer shall send to every member of the issuer a copy of the directors' report and its annual accounts (which must be prepared in accordance with the requirements of the Act), not less than twenty-one calendar days before the date of the issuer's annual general meeting.

Distribution of director's report and annual accounts

15. The issuer shall include in its directors' report and accounts-

Information to accompany directors' report and annual accounts

- (a) a description of the principal activities of the issuer and its subsidiaries, if any, and, where two or more such activities are so described, a statement giving in respect of each such activity the turnover;
- (b) a geographical analysis of consolidated turnover; and of its subsidiaries outside Zambia;
- (c) a statement showing-

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- (i) the name of every subsidiary, its principal country of operation, its country of incorporation and its main business; and
- (ii) particulars of the issued share capital and debt securities of every subsidiary:

Provided that if, in the opinion of the directors of the issuer, the number of them is such that compliance with this paragraph would result in particulars of excessive length being given, compliance with this paragraph shall not be required except in the case of subsidiaries carrying on a business the results of the carrying on of which, in the opinion of the directors, materially affected the amount of the profit or loss of the issuer and its subsidiaries, if any, or the amount of the assets of the issuer and its subsidiaries, if any;

- (d) a statement as at the end of the relevant financial year showing-
 - (i) the interests of each director and chief executive of the issuer in the equity or debt securities of the issuer or any subsidiary; and
 - (ii) the details of any right to subscribe for equity or debt securities of the issuer granted to any director or chief executive of the issuer, and of the exercise of any such right;
- (e) the statement required by paragraph (d) must-
 - (i) distinguish between beneficial and non-beneficial interests; and
 - (ii) specify the company in which securities are held, the class to which those securities belong and the number of such securities held;
- (f) in the event of operating results shown by the accounts for the period under review differing materially from any published forecast made by the issuer, an explanation of the difference;
- (g) a statement by the directors as to the reasons for any significant departure from applicable standard accounting practices in Zambia;
- (h) a statement as at the end of the financial year showing as regards, first bank loans and overdrafts and, secondly, other borrowings of the issuer and its subsidiaries, if any, the aggregate amounts repayable-
 - (i) on demand or within a period not exceeding one year;
 - (ii) within a period of more than one year but not exceeding two years;
 - (iii) within a period of more than two years but not exceeding five years;

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- (iv) within a period of more than five years;
- (i) in respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries, if any, during the year;
- (j) a statement as to the period unexpired of any service contract, which is not determinable by the employer within one year without payment of compensation, (other than any statutory compensation), of any director proposed for election at the forthcoming annual general meeting or, if there are no service contracts, a statement of that fact;
- (k) summary particulars of any contract of significance subsisting during or at the end of the financial year in which a director of the issuer is or was materially interested, either directly or indirectly, or, if there has been no such contract, a statement of that fact;
- (l) summary particulars of any contract of significance between the issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries;
- (m) summary particulars of any contract of significance for the provision of services to the issuer and its subsidiaries, if any, by a controlling shareholder or any of its subsidiaries;
- (n) summary particulars of any arrangement under which a director has waived or agreed to waive any emoluments;
- (o) summary particulars of any arrangement under which a shareholder has waived or agreed to waive any dividends;
- (q) a summary, in the form of a comparative table, of the results and of the assets and liabilities of the issuer and its subsidiaries, if any, for the last five financial years, with any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another.

16. If the relevant annual accounts do not give a true and fair view of the state of affairs and profit and loss of the issuer of the issuer and its subsidiaries, if any, more detailed and/or additional information must be provided.

Additional information if accounts do not give true and fair view

17 (1) The issuer shall prepare in respect of the first six months of each financial year of the issuer, unless that financial year is of six months or less, an interim report containing at least the information required by subrule (2) and, not later than four months after the end of that period of six months, the issuer shall-

Interim reports etc.

- (a) publish in the newspapers an announcement containing the information required by subrule (2) to be contained in the interim report, the day after approval by or on behalf of the board;
- (b) supply the Commission immediately on publication with the names of the relevant newspapers and the date of the publication; and
- (c) as soon as reasonably practicable after such publication, send to every member a copy of the interim report.

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(2) Each interim report referred to in subrule (1) shall contain at least the following information stated in respect of the issuer and its subsidiaries, if any, and such information must be published in the newspapers in accordance with subrule (1) (i)-

- (a) turnover;
- (b) profit (or loss) before taxation and extraordinary items, including the share of the profit (or loss) of associated companies with separate disclosure of any items included therein which are exceptional because of size and incidence;
- (c) taxation on profits (Zambia and overseas) in each case indicating basis of computation with separate disclosure of the taxation on share of associated companies' profits;
- (d) profit (or loss) attributable to minority interests;
- (e) profit (or loss) attributable to shareholders before extraordinary items;
- (f) extraordinary items (net of taxation);
- (g) profit (or loss) attributable to shareholders;
- (h) amount of dividend paid or proposed on each class of share (with particulars of each such class) and amounts absorbed thereby (or an appropriate negative statement);
- (i) transfers to and from reserves;
- (j) earnings per share calculated on the basis of profits before extraordinary items; and
- (k) comparative figures of the matters specified in paragraphs (a) to (j) inclusive for the corresponding previous period.

(3) Where the accounting information given in an interim report has not been audited that fact must be stated. If the accounting information contained in an interim report has been audited by the issuer's auditor, his report thereon including any qualifications must be set out in the interim report.

(4) Any preliminary announcement of results for the full year must also contain the information required by subrule (2).

- 18.** The issuer shall inform the Commission at least three clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year or other period is to be approved for publication. Board meetings
- 19.** The issuer shall inform the Commission immediately after approval by or on behalf of the board of- After board meetings
- (a) any decision to declare, recommend or pay any dividend or to make any other distribution on its listed securities and the rate and amount thereof;
 - (b) any decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
 - (c) any preliminary announcement of profits or losses for any year, half-year or other period;
 - (d) any proposed change in the capital structure, including any redemption of its listed securities; and
 - (e) any decision to change the general character or nature of the business of the issuer or issuer and its subsidiaries, if any.
- 20.** The issuer shall inform the Commission immediately of any decisions made in regard to- Commission to be notified of certain decisions
- (a) any proposed alteration of the issuer's articles;
 - (b) any change in the rights attaching to any class of listed securities and any change in the rights attaching to any shares into which any listed debt securities are convertible or exchangeable; and
 - (c) any changes in its secretary, auditors or registered address.
- 21.** The issuer shall inform the Commission of the basis of allotment of securities offered to the public for subscription or sale or an open offer and of the results of any rights issue and, if applicable, of the basis of any acceptance of excess applications, not later than the morning of the business day next after the allotment letters or other relevant documents of title are posted. Basis of allotment
- 22.** (1) The issuer shall inform the Commission on the happening of any of the following events as soon as the same shall come to the attention of the issuer- Winding-up and liquidation
- (a) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator in respect of the issuer, its holding company or any major subsidiary;
 - (b) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up;

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- (c) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets which in aggregate value represents an amount in excess of 15 per cent of the consolidated net tangible assets of the issuer and its subsidiaries, if any; or
- (d) the making of any judgement, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of any portion of its assets which in aggregate value represents an amount in excess of 15 per cent of the consolidated net tangible assets of the issuer and its subsidiaries, if any.

(2) For the purposes of subrule (1), a "major subsidiary" means a subsidiary representing 15 per cent or more of the consolidated net tangible assets or pre-tax trading profits of the issuer and its subsidiaries, if any.

23. (1) Except in the circumstances mentioned in subrule (3) the directors of the issuer shall obtain the consent of shareholders in general meeting prior to- Pre-emptive rights

- (a) allotting, issuing or granting-
 - (i) shares;
 - (ii) securities convertible into shares; and
 - (iii) options, warrants or similar rights to subscribe for any shares or for such convertible securities; and
- (b) any major subsidiary of the issuer making any such allotment, issue or grant so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary.

(2) Notwithstanding subrule (3) (b), the directors of the issuer shall obtain consent of the shareholders in general meeting prior to allotting any voting shares if such allotment would effectively alter the control of the issuer.

(3) No such consent as is referred to in subrule (1) shall be required-

- (a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer, and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings; or

- (b) if, but only to that extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of shares allotted or agreed to be allotted must not exceed ten per cent of the existing issued share capital of the issuer.

(4) A general mandate given under subrule (3) (b) shall only continue in force until-

- (a) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions; or

- (b) revoked or varied by ordinary resolution of the shareholders in general meeting,

which occurs first.

(5) For the purposes of subrule (1) (b) a "major subsidiary" has the same meaning as in subrule (2) of rule *twenty-two*.

24. In Addition to the specific requirements set out in these Rules, the issuer shall submit to the Commission, for approval-

Approval of documents

- (a) copies of drafts, before they are issued, of any announcements or advertisements relating to the issue of new or further securities (other than pursuant to a capitalisation issue or a scrip dividend scheme) or any announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its registered securities (including a suspension of dealings);
- (b) copies of drafts, before they are issued, of any documents issued in connection with takeovers, mergers or offers;
- (c) copies of drafts, before they are issued, of any proposed amendments to its articles.

25. The issuer shall procure that no service contract of ten years or longer duration shall be granted by the issuer or any of its subsidiaries to any director or proposed director of the issuer or to any director or proposed director of any subsidiary without the prior approval of the shareholders of the issuer in a general meeting at which the relevant director did not vote on the matter.

Directors' service contracts

26. The issuer shall apply for the registration of any further securities which are of the same class as securities already registered, prior to their issue, and shall not issue such securities unless it has applied for the registration of those securities.

Subsequent registration

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- 27.** The issuer shall send with the notice convening a meeting of holders of registered securities to all persons entitled to vote at the meeting proxy forms, with the provision for two-way voting on all resolutions intended to be proposed thereat. Proxy forms
- 28.** The issuer shall ensure equality of treatment for all holders of securities of the same class who are in the same position. Equality of treatment
- 29.** The issuer shall respond promptly to any queries made of the issuer by the Commission concerning unusual movements in the price or trading volume of its registered securities or any other matters by giving such relevant information as is available to the issuer or, if appropriate, by issuing a statement to the effect that the issuer is not aware of any matter or development that is or may be relevant to the unusual price movement or trading volume of its registered securities and shall respond promptly to any inquiries made of the issuer by the Commission. Response to inquiries
- 30.** The Commission shall be entitled to require the publication of further information by, and impose additional requirements on, the issuer, where it considers that circumstances so justify, but will allow representations by the issuer before imposing any additional requirements on it which are not imposed on registered issuers generally. Variation

FIRST SCHEDULE

(Rule 5)

INFORMATION TO BE PROVIDED IN LETTER OF APPLICATION FOR REGISTRATION OF
SECURITIES

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(1) *Title page*

- (a) the name of the applicant and the date of incorporation;
- (b) the address of the principal registered office and the address of each office at which a securities register is kept;
- (c) the date of application and a formal request for the registration of the securities in respect of which application is made, specifying the amount, class and par value and whether they are to be fully paid;
- (d) the estimated market value of the applicant (or total capitalisation, in the case of debt securities); and
- (e) the estimated market capitalisation (or nominal amount in the case of debt securities) for which registration is sought.

(2) *Capitalisation*

A list in tabular form of-

- (a) the designation or title of each class of security;
- (b) the number of securities authorised;
- (c) the number of securities issued;
- (d) the par value;
- (e) the amount paid up;
- (f) the names of directors and officers of the issuer and their respective shareholdings;
- (g) so far as is known, or can be ascertained after reasonable inquiry, the names of substantial shareholders of the issuer and their respective shareholdings.

(3) *History and Nature of Business*

A short introductory paragraph describing the general nature of the business and products of the applicant. A brief history of the issuer from inception to the date of application. A description of the business now carried on by the issuer and its subsidiaries, including principal goods and services, main markets and main sources of supply, and volume of output for the preceding three financial years and for the current financial year to the latest date available (either in physical terms or at constant prices).

(4) *Summary of earnings*

A summary of earnings, on a consolidated basis if the applicant has subsidiaries, for the last three financial years, showing sales, earnings before charges for depreciation, interest and income tax, the amount of each of those charges, net income before extraordinary items, extraordinary items, net income and earnings per share.

(5) *Tabulation of Balance Sheet*

A tabulation of its balance sheet for each of the last three financial years (on a consolidated basis if the company has subsidiaries). The tabulation should include a statement of the net tangible assets per share for each of the three financial years.

(6) *Employees*

A statement as to the total number of persons regularly employed and, if subject to seasonal fluctuations, the maximum and minimum numbers employed during the preceding twelve months.

(7) *Subsidiaries*

A tabular list of all subsidiaries showing in respect of each such company-

- (a) the name of the company;
- (b) a brief statement of the nature of its business and its relationship to the operations of the entire enterprise; and
- (c) capital share issues by classes, showing the par value, amount authorised, amount issued and the amount owned by the holding company.

(8) *Dividend record*

State the number of consecutive years in which dividends have been paid. State the amount of dividend (per share and in the aggregate) paid by the applicant (and its subsidiaries) for each of the three preceding years. Indicate whether dividends have been paid on a quarterly, semi-annual or annual basis. State the record date, payment date and the date of declaration with respect to each dividend paid during the past two years.

(9) *Properties*

SECOND SCHEDULE

(Rule 9)

INFORMATION TO BE CONTAINED IN PROSPECTUS

SECTION A-Equity Securities

GENERAL INFORMATION ABOUT THE ISSUER, ITS ADVISERS AND THE PROSPECTUS

1. (1) The full name, and address of the registered office, of the issuer.
- (2) A statement as follows-

"The directors collectively and individually accept full responsibility for the accuracy of the information contained in this prospectus and confirm, having made all reasonable inquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading."
- (3) The names and addresses of the issuer's principal bankers, sponsor, authorised representative, stockbroker, solicitors and registrars and of the solicitors to the issue.
- (4) The name, address and professional qualifications of the issuer's auditors.
- (5) The date of incorporation.
- (6) The provisions, or a sufficient summary of the provisions, of the articles with regard to-
 - (a) any power enabling a director to vote on a proposal, arrangement or contract in which he is materially interested;
 - (b) any power enabling the directors to vote remuneration (including pension or other benefits) to themselves or any members of their body and any other provision as to the remuneration of the directors;
 - (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied;
 - (d) retirement or non-retirement of directors under an age limit;
 - (e) directors' qualification shares;
 - (f) changes in capital;
 - (g) any time limit after which entitlement to dividend lapses and an indication of the party in whose favour the time limit operates; and
 - (h) arrangements for transfer of the securities and (where permitted) any restrictions on their free transferability.
- (7) Where the prospectus includes a statement purporting to be made by an expert, a statement-
 - (a) specifying the qualifications of such expert and whether such expert has any shareholding in the issuer or any group to which the issuer belongs or the right (whether legally enforceable or not) to subscribe for or to nominate persons to subscribe for securities in the issuer or any such member and, if so, a full description thereof;
 - (b) that the expert has given and has not withdrawn his written consent, prior to the issue of the prospectus, to the issue of the prospectus with the expert's statement included in the form and context in which it is in fact included; and
 - (c) of the date on which the expert's statement was made and whether or not it was made by the expert for incorporation in the prospectus.

STATEMENT THAT APPLICATION MADE

The Laws of Zambia

2. A statement that application has been made to the Commission for registration of the securities.

INFORMATION ABOUT THE SECURITIES FOR WHICH REGISTRATION SOUGHT

3. (1) The nature and amount of the issue including the number of securities which have been or will be created and issued and a full description of, including a summary of the terms attaching to, the securities for which listing is sought.

(2) The following information, so far as is appropriate, concerning the terms and conditions of the issue of the securities in respect of which the application for registration is made-

- (a) the total amount of the issue and the number of securities offered, where applicable, by category;
- (b) the issue price or offer price of each security, stating the nominal value of each security;
- (c) the methods of payment of the issue or offer price, particularly as regards the paying-up of securities which are not fully paid;
- (d) the procedure for the exercise of any right of pre-emption and the transferability of subscription rights;
- (e) the period during which the issue or offer of securities will remain open after issue of the prospectus, the date and time of opening of the subscription list, and the names of the receiving bankers;
- (f) the methods of and the time limits for delivery of the securities;
- (g) the names, addresses and description of the persons underwriting the issue for the issuer; and
- (h) in the case of an offer for sale of securities, the names, addresses and descriptions of the vendor(s) of the securities or, if there are more than ten vendors, such details of the ten principal vendors and a statement of the number of other vendors and particulars of any beneficial interest possessed by any director of the issuer in any securities so offered for sale.

PROFITS COVER

4. Where registration is sought for securities with a fixed income, particulars of the profits cover for payments in respect of bonds, preference shares or other fixed income securities.

NET TANGIBLE ASSETS

5. A statement of the net tangible asset backing for each class of security for which registration is sought, after making allowance for any new securities to be issued, as detailed in the prospectus.

INFORMATION ABOUT THE ISSUER'S CAPITAL

6. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(2) The amount of any outstanding convertible debt securities and particulars of the conditions governing, and the procedures for conversion, exchange or subscription of, such securities.

VOTING RIGHTS

The Laws of Zambia

7. (1) The voting rights of shareholders.

(2) If there is more than one class of share, the rights of each class of share as regards voting, dividend, capital, redemption, and the creation or issue of further shares ranking in priority to or *pari passu* with each class other than the lowest ranking equity.

(3) a summary of the consent necessary for the variation of such rights.

ALTERATIONS IN CAPITAL

8. Particulars of any alterations in the capital of the issuer or any member of a group to which the issuer belongs within the two years immediately preceding the issue of the prospectus, including-

- (a) where any such capital has been issued or is proposed to be issued as fully or partly paid up otherwise than in cash, particulars of the consideration for which the same has been or is proposed to be issued and in the latter case the extent to which they are so paid up; and
- (b) where any such capital has been issued or is proposed to be issued for cash, particulars of the price and terms upon which the same has been or is proposed to be issued, details of any discounts or other special terms granted and (if not already fully paid) the dates when any instalments are payable with the amount of all calls or instalments in arrear, or an appropriate negative statement.

PARTICULARS OF ANY CAPITAL UNDER OPTION

9. Particulars of any capital of the issuer or any member of a group to which the issuer belongs which is under option, including the consideration for which the option was or will be granted and the price and duration of the option, and the name and address of the grantee, or an appropriate negative statement:

Provided that where options have been granted or agreed to be granted to all members or debenture holders or to any class thereof, or to employees under a share scheme, it shall be sufficient, so far as the names and addresses are concerned, to record that fact without giving the names and addresses of the grantees.

GENERAL INFORMATION ABOUT ACTIVITIES OF THE ISSUER AND ITS SUBSIDIARIES, IF ANY

The Laws of Zambia

10. (1) A brief history and the general nature of the business of the issuer and its subsidiaries, if any, and, in cases where two or more activities are carried on which are material in terms of profits or losses, assets employed or any other factor, such figures and explanation as are necessary to demonstrate the relative importance of each such activity and details of the main categories of products sold and/or services performed and an indication of any significant new products and/or activities.

(2) If the issuer and its subsidiaries, if any, trade outside Zambia a statement showing a geographical analysis of its trading operations, and where a material proportion of the assets of the issuer and its subsidiaries, if any, are situated outside Zambia, a statement giving the best practicable indication of the amount and situation of such assets and the amount of assets situated in Zambia.

(3) If the issuer is a member of a group, a brief description of that group covering the issuer's position within that group and, if a subsidiary, the names of and the number of shares held (directly or indirectly) by each holding company of the issuer.

(4) Particulars of any licences, concessions, trade marks, patents or other intellectual or industrial property rights which are material in relation to the business of the issuer and its subsidiaries, if any, and, where such factors are of fundamental importance to the business or profitability of the issuer and its subsidiaries, if any, a statement regarding the extent to which the issuer and its subsidiaries, if any, are dependent on such factors.

(5) Information concerning the policy of the issuer and its subsidiaries, if any, on the research and development of new products and processes over the past five financial years where significant.

(6) Particulars of any interruptions in the business of the issuer and its subsidiaries, if any, which may have or have had a significant effect on the financial position in the last twelve months.

(7) The number of people employed by the issuer and its subsidiaries, if any, and changes therein in the last financial year, if such changes are material in the context of the group with, if possible, a breakdown of persons employed by main categories of activity.

(8) Particulars, including location, of the principal investments (if any), including such investments as new plant, factories and research and development, being made or planned by the issuer and its subsidiaries, if any.

PARTICULARS OF SUBSIDIARIES, ETC.

11. (1) In regard to every subsidiary company the whole of, or a substantial proportion of, whose capital is held or intended to be held (either directly or indirectly) by the issuer, or whose profits or assets make or will make a material contribution to the figures in the accountants' report or the next published accounts, particulars of the name, date and country of incorporation, general nature of business, issued capital and the proportion thereof held or intended to be held.

(2) In regard to the issuer and its subsidiaries, if any, particulars of the location of the principal establishments.

FINANCIAL INFORMATION ABOUT THE ISSUER AND ITS SUBSIDIARIES, IF ANY

The Laws of Zambia

12. (1) A report by the reporting accountants prepared in accordance with the Third Schedule to these Rules.

(2) A statement of whether or not the accountants' report is qualified by the reporting accountants and if so, such qualifications must be produced in full and the reasons for such qualifications given.

Details of Indebtedness

13. A statement as at the most recent practicable date, which must be stated, of the following on a consolidated basis-

- (a) the total amount of any debt securities of the issuer and its subsidiaries, if any, issued and outstanding, and authorised or otherwise created but unissued, and term loans, distinguishing between guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties) and unsecured, or an appropriate negative statement;
- (b) the total amount of all other borrowings or indebtedness in the nature of borrowing of the issuer and its subsidiaries, if any, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debt, or an appropriate negative statement;
- (c) all mortgages and charges of the issuer and its subsidiaries, if any, or an appropriate negative statement; and
- (d) the total amount of any contingent liabilities or guarantees of the issuer and its subsidiaries, if any, or an appropriate negative statement.

TURNOVER, ETC.

14. A statement showing the sales turnover figures or gross trading income of the issuer and its subsidiaries, if any, during the three financial years immediately preceding the issue of the prospectus which should contain an explanation of the method used for computation of such turnover or income and a reasonable breakdown between the more important trading activities.

FINANCIAL AND TRADING PROSPECTS

15. (1) General information on the trend of the business of the issuer and its subsidiaries, if any, since the date to which the latest audited accounts of the issuer were made up.

(2) A statement as to the financial and trading prospects of the issuer and its subsidiaries, if any for at least the current financial year, together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

(3) Where a profit forecast appears in the prospectus the principal assumptions, including commercial assumptions, upon which it is based, must be stated and the accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants and their report must be set out.

(4) The reporting accountant, financial adviser or sponsor, in the case of a new applicant, must report in addition that they have satisfied themselves that the forecast has been stated by the directors after due and careful inquiry, and such report must be set out.

SUFFICIENCY OF WORKING CAPITAL

16. A statement by the directors that in their opinion the working capital available to the issuer and its subsidiaries, if any, is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.

MATERIAL ADVERSE CHANGES

The Laws of Zambia

17. A statement by the directors of any material adverse change in the financial or trading position of the issuer and its subsidiaries, if any, since the end of the period reported on in the accountants' report, or an appropriate negative statement.

VALUATION REPORTS

18. In the case of a property investment or development company, or where property interests account for more than thirty per cent of the net asset value of the issuer, a valuation report on the issuer's interests in land or buildings prepared in accordance with the Fourth Schedule to these Rules.

LITIGATION

19. Particulars of any litigation or claims of material importance pending or threatened against the issuer or any member of a group to which the issuer belongs, or an appropriate negative statement.

INFORMATION ABOUT THE ISSUER'S MANAGEMENT

20. The full name, nationality, residential or business address and description (being his qualifications or area of expertise or responsibility) of every director or proposed director.

SECRETARY

21. The full name and professional qualification, if any, of the secretary of the issuer.

REGISTERED OFFICE

22. The address of the registered office and, if different, the head office and transfer office.

DIRECTORS' INTERESTS

23. (1) A statement showing the interests (distinguishing between beneficial and non-beneficial interests) of each director and chief executive of the issuer in the equity or debt securities of the issuer or any associated corporation.

(2) A statement showing the name, so far as is known to any director or chief executive of the issuer, of each person, other than a director or chief executive of the issuer, who is, directly or indirectly, interested in ten per cent or more of the nominal value of any class of share capital carrying rights to vote in all circumstances at general meetings of the issuer or any member of a group to which the issuer belongs, and the amount of each person's interest in such securities, together with particulars of any options in respect of such capital, or, if there are no such interests, an appropriate negative statement.

DIRECTORS' CONTRACTS

The Laws of Zambia

24. (1) Particulars of directors' existing or proposed service contracts with the issuer or any member of a group to which the issuer belongs (excluding contracts expiring or determinable by the employer within one year without payment of compensation), or an appropriate negative statement.

(2) The aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by the issuer or any member of a group to which the issuer belongs in respect of the last completed financial year under any description whatsoever.

(3) An estimate of the aggregate remuneration payable to, and benefits in kind receivable by, the directors or any proposed directors of the issuer by the issuer or any member of a group to which the issuer belongs in respect of the current financial year under the arrangements in force at the date of the prospectus.

DIRECTORS' INTERESTS IN CONTRACTS

25. Full particulars of any contract or arrangement subsisting at the date of the prospectus in which a director of the issuer is materially interested and which is significant in relation to the business of the issuer and its subsidiaries, if any, or an appropriate negative statement.

USE OF PROCEEDS

26. In the case of issue of new shares, an estimate of the net proceeds of the issue and details of the intended use of such proceeds.

MATERIAL CONTRACTS

27. The dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer or any member of a group to which the issuer belongs within the two years immediately preceding the issue of the prospectus together with a summary of the principal contents of such contracts and particulars of any consideration passing to or from any member of a group to which the issuer belongs.

DOCUMENTS FOR INSPECTION

28. Details of a reasonable period of time, being not less than fourteen calendar days, during which, and a place in Zambia at which, the following documents, or copies thereof, where applicable may be inspected-

- (a) the articles of incorporation of the issuer;
- (b) each contract disclosed pursuant to paragraphs twenty-four and thirty-seven and or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (c) all reports, letters or other documents, balance sheets, valuations and statements by any expert any part of which is extracted or referred to in the prospectus;
- (d) a written statement signed by the reporting accountants setting out the adjustment made by them in arriving at the figures shown in their report and giving the reasons therefor;
- (e) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiaries for each of the two financial years immediately preceding the issue of the prospectus.

SECTION B-DEBT SECURITIES

GENERAL INFORMATION ABOUT THE ISSUER, ITS ADVISERS AND THE PROSPECTUS

The Laws of Zambia

29. (1) The full name and nationality of the issuer.

(2) A statement as follows-

"The directors collectively and individually accept full responsibility for the accuracy of the information contained in this prospectus and confirm, having made all reasonable inquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading."

(3) The names and addresses of the issuer's principal bankers, sponsor, authorised representative, stockbroker, solicitors and registrars and of the solicitors to the issue.

(4) The name, address and professional qualifications of the issuer's auditors;

(5) The date of incorporation;

(6) Where the prospectus includes a statement purporting to be made by an expert, a statement-

(a) specifying the qualifications of such expert and whether such expert has any shareholding in the issuer or any member of a group to which the issuer belongs or the right (whether legally enforceable or not) to subscribe for or to nominate persons to subscribe for securities in the issuer or any member of a group to which the issuer belongs and, if so, a full description thereof;

(b) that the expert has given and has not withdrawn his written consent, prior to the issue of the prospectus, to the issue of the prospectus with the expert's statement included in the form and context in which it is in fact included; and

(c) of the date on which the expert's statement was made and whether or not it was made by the expert for incorporation in the prospectus.

STATEMENT THAT APPLICATION MADE

30. A statement that application has been made to the Commission for the registration of the securities.

ESTIMATED EXPENSES OF ISSUE

31. The estimated amount of the expenses of the issue and of the application for listing and by whom the same are payable.

ESTIMATED NET PROCEEDS OF ISSUE

32. An estimate of the net proceeds of the issue and a statement as to how such proceeds are intended to be applied.

TERMS AND CONDITIONS OF ISSUE

The Laws of Zambia

- 33.** A description of or the text of the terms and conditions of the issue containing-
- (a) the nominal amount of the issue or if this amount is not fixed, a statement to that effect, the nature and number of the debt securities and the denomination(s);
 - (b) a summary of the rights conferred upon holders and particulars of the security;
 - (c) except in the case of continuous issues, the issue price (or if different, offer price) and redemption prices and the nominal interests rate and if floating, how is it calculated; if several interest rates are provided for, an indication of the conditions for changes in the rate; if in any issue a discount is allowed or a premium is payable, a statement describing this; if any expenses of the issue are specifically charged to subscribers or purchasers, a statement describing this;
 - (d) details of the method of payment of the issue price (or if different, the offer price) including a description of any instalment arrangement;
 - (e) details of the arrangements for the amortisation or early redemption of the issue, including procedures to be adopted;
 - (f) the names and addresses of the paying agent(s) and any registrar and transfer agent(s) for the debt securities in Zambia;
 - (g) details of the arrangements for transfer of the securities (if not in bearer form);
 - (h) details of the following time limits:
 - (i) final repayment date and early repayment dates, specifying whether exercisable at the issuer's or the holder's option;
 - (ii) the date from which interest accrues and the interest payments fall due;
 - (iii) prescription period for claims for payment of interest and repayment of principal; and
 - (iv) procedures and time limits for delivery of the debt securities, whether there will be temporary documents of title and, if so, the procedures for the delivery and exchange thereof; and
 - (i) except in the case of continuous issues, an indication of yield and the method whereby that yield is calculated should also be described in summary form.

LEGAL INFORMATION

- 34.** The following legal information:
- (a) an indication of the resolutions, authorisation and approvals by virtue of which debt securities have been or will be created and/or issued and of the number of debt securities which have been or will be created and/or issued, if predetermined;
 - (b) the nature and scope of the guarantees, sureties, and commitments (if any) intended to ensure that the issue will be duly serviced with regard to both the principal of and the interest on the debt securities and an indication of the places where the public may have access to copies of such guarantees, sureties and commitments;
 - (c) details of the trustee, fiscal agent or any other representative for the debt securities holders as a whole, the name and function or description and head office of such representative of the debt securities holders, the conditions under which the representative may be replaced together with an indication of where the public may inspect copies of the documents detailing how the representative is to act;
 - (d) a description of any subordination of the issue to other debts of the issuer already incurred or to be incurred;
 - (e) an indication of any legislation under which the debt securities have been created, the governing law and of the competent courts in the event of litigation;
 - (f) details of any restrictions on the free transferability of the debt securities (e.g. provisions requiring transfers to be approved); and
 - (g) details of any material guarantees or covenants relating to borrowings.

ALTERATIONS IN CAPITAL

The Laws of Zambia

35. Particulars of any alterations in the capital of the issuer or any member of a group to which the issuer belongs within the two years immediately preceding the issue of the prospectus, including-

- (a) where any such capital has been issued or is proposed to be issued as fully or partly paid up otherwise than in cash, particulars of the consideration for which the same has been or is proposed to be issued and in the latter case the extent to which they are so paid up, and
- (b) where any such capital has been issued or is proposed to be issued for cash, particulars of the price and terms upon which the same has been or is proposed to be issued, details of any discounts or other special terms granted and (if not already fully paid) the dates when any instalments are payable with the amount of all calls or instalments in arrear, or an appropriate negative statement.

PARTICULARS OF ANY CAPITAL UNDER OPTION

36. Particulars of any capital of the issuer or any member of a group to which the issuer belongs which is under option, including the consideration for which the option was or will be granted and the price and duration of the option, and the name and address of the grantee, or an appropriate negative statement:

Provided that where options have been granted or agreed to be granted to all the members or debenture holders or to any class thereof, or to employees under a share scheme, it shall be sufficient, so far as the names and addresses are concerned, to record that fact without giving the names and addresses of the grantees.

OWN SHARES

37. Number, book value and nominal value or, in the absence of a nominal value, the accounting par value of any of its own shares which the issuer or any of its subsidiaries (being a company) has acquired and is holding, if such shares do not appear as a separate item in the balance sheet.

GENERAL INFORMATION ABOUT ACTIVITIES OF THE ISSUER AND ITS SUBSIDIARIES, IF ANY

The Laws of Zambia

38. (1) The general nature of the business of the issuer and its subsidiaries, if any, and, in cases where two or more activities are carried on which are material in terms of profits or losses, assets employed or any other factor, such figures and explanation as are necessary to demonstrate the relative importance of each such activity and details of the main categories of products sold and/or services performed and an indication of any significant new products and/or activities. If the issuer and its subsidiaries, if any, trade outside Zambia a statement showing a geographical analysis of its trading operations. Where a material proportion of the assets of the issuer and its subsidiaries, if any, are situated outside Zambia, a statement giving the best practicable indication of the amount and situation of such assets and the amount of the assets situated in Zambia.

(2) If the issuer is a member of a group, a brief description of that group covering the issuer's position within that group and, if a subsidiary, the names of and the number of shares held (directly or indirectly) by each holding company of the issuer.

(3) Particulars of any licences, concessions, trade marks, patents or other intellectual or industrial property rights which are material in relation to business of the issuer and its subsidiaries, if any and, where such factors are of fundamental importance to the business or profitability of the issuer and its subsidiaries, if any, a statement regarding the extent to which the issuer and its subsidiaries, if any, are dependent on such factors.

(4) Information concerning the policy of the issuer and its subsidiaries, if any, on the research and development of new products and processes over the past three financial years where significant.

(5) particulars of any interruptions in the business of the issuer and its subsidiaries, if any, which may have or had a significant effect on the financial position in the last twelve months.

(6) The number of people employed by the issuer and its subsidiaries, if any, and changes therein in the last financial year, if such changes are material in the context of the issuer and its subsidiaries, if any, with, if possible, a breakdown of persons employed by main categories of activity.

(7) Particulars, including location, of the principal investments (if any), including such investments as new plant, factories and research and development, being made or planned by the issuer and its subsidiaries, if any.

PARTICULARS OF MATERIAL SUBSIDIARIES

39. (1) In regard to every material subsidiary, particulars of the name, date and country of incorporation, general nature of business, issued capital and the proportion held or intended to be held by the issuer.

(2) In regard to the issuer and every material subsidiary, particulars of the location of the principal establishments.

FINANCIAL INFORMATION ABOUT THE ISSUER AND ITS SUBSIDIARIES, IF ANY, AND PROSPECTS

40. A consolidated capitalisation statement and indebtedness statement for the issuer made up to a recent date acceptable to the Commission (normally not earlier than three months prior to the issue of the prospectus) giving information on short, medium and long-term debt (distinguishing between actual and contingent liabilities and including details of any debt securities issued and, if appropriate, the terms and conditions of any conversion, exchange or subscription rights) and shareholders' equity (including an indication of authorised and issued share capital by class, if appropriate, and the amount paid-up) duly adjusted to reflect the issue of the debt securities for which registration is sought accompanied by particulars of any material changes since that date, or an appropriate negative statement.

41. A statement showing the sales turnover figures or gross trading income of the issuer and its subsidiaries, if any, during the three financial years immediately preceding the issue of the prospectus which should contain an explanation of the method used for computation of such turnover or income and a reasonable breakdown between the more important trading activities.

FINANCIAL AND TRADING PROSPECTS

The Laws of Zambia

42. (1) General information on the trend of the business of the issuer and its subsidiaries, if any, since the date to which the latest audited accounts of the issuer were made up.

(2) A statement as to the financial and trading prospects of the issuer and its subsidiaries, if any, for at least the current financial year, together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public and which could materially affect the profits.

(3) Where a forecast appears in the prospectus the principal assumptions, including commercial assumptions, upon which it is based, must be stated, the accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants and their report must be set out. The reporting accountants, in the case of a new applicant, must report in addition that they have satisfied themselves that the forecast has been stated by the directors after due and careful inquiry, and such report must be set out.

(4) Particulars of the profits cover for interest payments and of the net tangible assets.

ACCOUNTANTS' REPORTS

43. (1) A report by the reporting accountants prepared in accordance with the Third Schedule to these Rules. If more than nine months have elapsed since the date to which the latest published audited accounts of the issuer were made up, an interim financial statement covering at least the first six months must be included in the prospectus or appended to it. If the interim financial statement is unaudited, this fact must be stated.

(2) A statement of whether or not the accountants' report is qualified by the reporting accountants and if so, such qualification must be produced in full and the reasons for such qualification given.

MATERIAL ADVERSE CHANGES

44. A statement by the directors of any material adverse change in the financial or trading position of the issuer and its subsidiaries, if any, since the end of the period reported on in the accountants' report, or an appropriate negative statement.

VALUATION REPORTS

45. In the case of a property investment or development company, or where property interests account for more than thirty per cent of the net asset value of the issuer, a valuation report on the issuer's interests in land or buildings prepared in accordance with the Fourth Schedule to these Rules.

LITIGATION

46. Particulars of any litigation or claims of material importance pending or threatened against the issuer or any member of a group to which the issuer belongs, or an appropriate negative statement.

INFORMATION ABOUT THE ISSUER'S MANAGEMENT

47. The full name, residential or business address and description (being his qualifications or area of expertise or responsibility) of every director or proposed director.

SECRETARY

The Laws of Zambia

48. The full name and professional qualification, if any, of the secretary of the issuer.

REGISTERED OFFICE

49. The address of the registered office and, if different, the head office and transfer office.

DIRECTORS' INTERESTS

50. (1) A statement showing the interests (distinguishing between beneficial and non-beneficial interests) of each director and chief executive of the issuer in the equity or debt securities of the issuer or any associated corporation

(2) A statement showing the name, so far as is known to any director or chief executive of the issuer, of each person, other than a director or chief executive of the issuer, who is, directly or indirectly, interested in ten per cent or more of the nominal value of any class of share capital carrying rights to vote in all circumstances at general meetings of the issuer or any member of a group to which the issuer belongs and the amount of each person's interest in such securities, together with particulars of any options in respect of such capital, or, if there are no such interests, an appropriate negative statement.

DIRECTORS' INTERESTS IN CONTRACTS

51. Full particulars of any contract or arrangement subsisting at the date of the prospectus in which a director of the issuer is materially interested and which is significant in relation to the business of the issuer and its subsidiaries, if any, or an appropriate negative statement.

CONTRACTS PERTAINING TO THE ISSUE

52. The dates of and parties to all documents pertaining to the issue entered into by the issuer or any member of a group to which the issue belongs within the two years immediately preceding the issue of the prospectus, together with a summary of the principal contents of such contracts.

AVAILABILITY OF REPORTS

53. Details of where annual and any interim reports are available and how often interim reports are published.

DOCUMENTS FOR INSPECTION

The Laws of Zambia

54. Details of a reasonable period of time (being not less than fourteen calendar days) during which, and a place in Zambia at which, the following documents (or copies thereof) where applicable may be inspected-

- (a) the articles of the issuer;
- (b) any trust deed, fiscal agency agreement or other document constituting the debt securities;
- (c) all reports, letters or other documents, balance sheets, valuations and statements by any expert a part of which is extracted or referred to in the prospectus;
- (d) a written statement signed by the reporting accountants setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor;
- (e) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiaries for each of the two financial years immediately preceding the issue of the prospectus.

THIRD SCHEDULE

(Second Schedule, paras. 12, 42)

ACCOUNTS REPORTS

PRELIMINARY

1. This Schedule sets out the detailed requirements for accountants' reports on the profits and losses, assets and liabilities of, and other financial information on, an issuer which must be contained in a prospectus.

REPORTING ACCOUNTANTS

2. Accountants' reports must be prepared by professional accountants who are qualified for appointment as auditors of a company and who are independent of the issuer.

BASIC CONTENTS

The Laws of Zambia

3. An accountants' report must include-

Three year history of results

(1) The results of the issuer or, if the issuer is a holding company, the consolidated results of the issuer and its subsidiaries in respect of each of the three financial years immediately preceding the issue of the prospectus or such shorter period as may be acceptable to the Commission.

(2) The results of any business or subsidiary acquired, agreed to be acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (on the same basis, where the subsidiary is itself a holding company, as in (1) above) in respect of each of the three financial years immediately preceding the issue of the prospectus or in respect of each of the financial years since commencement of such business or the incorporation of such subsidiary (as the case may be) if this occurred less than three years prior to such issue, or such shorter period as may be acceptable to the Commission.

(3) The report on results under paragraph (1) and (2) must disclose separately the following information-

- (a) turnover;
- (b) profit (or loss) before taxation and extraordinary items, including the share of the profit (or loss) of associated companies, with separate disclosure of any items included therein which are exceptional because of size or incidence;
- (c) taxation on profits (Zambian and foreign) in each case indicating the basis of computation, with separate disclosure of the taxation on its shares of associated companies' profits;
- (d) profit (or loss) attributable to minority interests;
- (e) profit (or loss) attributable to shareholders before extraordinary items;
- (f) extraordinary items (net of taxation);
- (g) profit (or loss) attributable to shareholders; and
- (h) rates of dividend paid or proposed on each class of shares (with particulars of each such class) and amounts absorbed thereby and any waivers of dividend except that the accountants' report need not disclose this information if the accountants' report relates to an issue of debt securities.

ASSETS AND LIABILITIES

(4) The assets and liabilities (including contingent liabilities) of the issuer and, if the issuer is itself a holding company, the consolidated assets and liabilities of the issuer and its subsidiaries in each case as at the date to which the latest audited accounts of the issuer have been made up.

(5) The assets and liabilities (including contingent liabilities) of any business or subsidiary acquired, agreed to be acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (on the same basis, where the subsidiary is itself a holding company, as in (3) above) in each case as at the date to which the latest audited accounts of such business or subsidiary (as the case may be) have been made up.

OTHER MATTERS

The Laws of Zambia

(6) The earnings per share and the basis of computation in respect of each of the financial years referred to in (1) and (2) above except that the accountants' report need not include this information if, in the opinion of the reporting accountants, such information is not meaningful having regard to the purpose of the accountants' report or if the accountants' report relates to an issue of debt securities.

(7) Transfers to and from any reserves arising on-

- (a) consolidation or acquisition (i.e. the write off of good will/establishment of a capital reserve);
- (b) the revaluation of assets; or
- (c) the translation of accounts denominated in foreign currencies, if those transfers are not reflected in the results of each of the financial years referred to in (1) and (2) above.

(8) A statement of the indebtedness as at the end of the period reported on showing, as regards bank loans and overdrafts and separately as regards other borrowings of the issuer (or of the issuer and its subsidiaries, including any company which will become a subsidiary by reason of any acquisition falling within paragraphs (2) and (4) of item three, the aggregate amounts repayable-

- (a) on demand or within a period not exceeding one year;
- (b) within a period of more than one year but not exceeding two years;
- (c) within a period of more than two years but not exceeding five years.

(9) The details of the principal accounting policies which have been applied in respect of the period reported on.

(10) A statement of any significant subsequent events which have occurred to any business or company or within any group covered by the accountants' report since the end of the period reported on or, if there are not such events, a statement of that fact.

(11) Any capital commitments.

(12) Any other matters which appear to the reporting accountants to be relevant having regard to the purpose of the accountants' report.

4. In all cases the accountants' report must-

- (a) state whether or not the accounts for the period reported on have been audited and, if so, by whom; and
- (b) state whether or not any audited accounts have been made up since the end of the last financial period reported on;
- (c) express an opinion as to whether or not the relevant information given, for the purposes of the accountants' report, a true and fair view of the results for the period reported on and of the assets and liabilities at the end of that period;
- (d) state that it has been prepared in accordance with item six below.
- (e) name the reporting accountants; and
- (f) be dated.

DISCLOSURE

5. The information to be disclosed in respect of items three and four must conform to the accounting standards and guidelines formulated by an accounting body approved by the Commission.

ACCOUNTING STANDARDS

6. The financial history of results and the statement of assets and liabilities included in the accountants' report must be drawn up in conformity with accounting standards and guidelines formulated by an accounting body approved by the Commission.

7. Any significant departure from such accounting standards must be disclosed and explained and, if it is both relevant and practical, the financial effects of such departure quantified.

8. The relevant standards will be those current in relation to the last financial year reported on and, wherever possible, appropriate adjustments should be made to show profits for all periods in accordance with such standard.

STATEMENT OF ADJUSTMENTS

9. (1) In preparing the accountants' report, the reporting accountants (if any) as are in their opinion appropriate for the purposes of the accountants' report and state therein that all adjustments considered necessary have been made, or (where appropriate) that no adjustments were considered necessary. Where adjustments are made, a written statement (the statement of adjustments) must be made available for public inspection, and should be signed by the reporting accountants (see subparagraph (d) of paragraph twenty-eight and subparagraph (d) of paragraph fifty-four of the Second Schedule).

(2) The statement of adjustments must set out, for each of the years reported upon, each adjustment made and be sufficiently detailed so as to reconcile the figures in the accountants' report with the corresponding figures in the audited accounts and must give the reasons therefor.

OTHER REPORTS

10. Where the reporting accountants refer to reports, confirmations or opinions of valuers, accountants or other experts, the names, addresses and professional qualifications of such other persons or firms should be stated in the report. In any case, the prospectus will be required to include a statement that such other persons or firms have given and have not withdrawn their written consent to its issue with the inclusion of such references in the form and context in which they are included.

QUALIFIED REPORTS

11. Where the reporting accountants qualify their accountants' report, they should refer to all material matters about which they have reservations. All reasons for the qualifications should be given and its effect quantified if this is both relevant and practical. A qualified accountants' report in respect of a new applicant may be acceptable where the qualification does not relate to a matter of significance to investors but will not be acceptable where the qualification does relate to a matter of significance to investors.

12. It is emphasised that these requirements are not exhaustive and that further information may be required or the required information varied, by the Commission where it considers it necessary. In cases of doubt or difficulty the reporting accountants should consult the Commission through the issuer's authorised representative.

FOURTH SCHEDULE

(Second Schedule, paras. 18, 45)

PROPERTY VALUATION REPORTS

PRELIMINARY

1. Valuations of and information on all the issuer's interests in land or buildings ("properties") are required to be included in a prospectus issued by a new applicant.

BASIC CONTENTS

The Laws of Zambia

2. Valuation reports shall contain all material details of the basis of valuation, which must be prepared in conformity with the standards and guidelines adopted or approved by the Surveyors' Institute of Zambia.

3. A valuation report shall contain the following information:

(1) a description of each property including-

- (a) an address sufficient to identify the property, which should generally include the postal address and such further designation as is registered with the appropriate government authorities in the jurisdiction in which the property is located;
- (b) a brief description (e.g. whether land or building, approximate area, etc.);
- (c) the existing use (e.g. shops, offices, factories, residential etc.);
- (d) the ground rent;
- (e) a summary of the terms of tenants' leases or underleases (including repairing obligations, where material);
- (f) the approximate age of buildings;
- (g) the terms of tenure;
- (h) the terms of any intra-group lease granted by a holding company to a subsidiary on property occupied by the group (identifying the properties);
- (i) the capital value in existing state at the effective date as at which the property was valued;
- (j) the current planning or zoning use;
- (k) the options or rights of pre-emption concerning or affecting the property; and
- (l) any other matters which may materially affect the value.

(2) Where the property is not in the process of being developed, details of rentals of the property including-

- (a) the existing monthly rental if the property is wholly or partly let together with the amount and a description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtainable, on the basis that the property were available to let on the effective date as at which the property was valued;
- (b) a summary of any rent review provisions, where material; and
- (c) the amount of vacant space, where material.

(3) Where the property is in the process of being developed the following additional details, where available-

- (a) details of development potential and whether architectural plans have been approved or planning consent has been obtained and whether any conditions have been imposed in respect of such approval;
- (b) any material restrictions on development including building covenants and time limits for completion of the development;
- (c) existing stage of development;
- (d) estimated completion date;
- (e) estimated cost of carrying out the development or (where part of the development has already been carried out) the estimated cost of completing the development;
- (f) estimated capital value in existing state at the effective date as at which the property was valued;
- (g) estimated capital value after completion;
- (h) any material special or general conditions affecting the development of the property;
- (i) any conditions imposed as to construction of roadways, pathways, drainage, sewage and other facilities or services for public use, if material;
- (j) any sales arrangements and/or letting arrangements existing at the effective date as at which the property was valued; and
- (k) any construction costs incurred up to the effective date as at which the property was valued.

(4) Where the property is held for future development purposes the following additional details, where available-

- (a) details of development potential and whether architectural plans have been approved or

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EFFECTIVE DATE

4. The effective date as at which the property was valued must not be more than three months before the date on which the prospectus is issued and if such effective date is not the same as the end of the last period reported on by the reporting accountants (see the Third Schedule), it will be necessary for the prospectus to include a statement reconciling the valuation figure included in the balance sheet as at the end of that period.

INDEPENDENCE OF VALUER

5. Unless dispensation is obtained from the Exchange, all valuations of properties must be prepared by an independent qualified valuer.

THE SECURITIES (ACCOUNTING AND FINANCIAL REQUIREMENTS) RULES

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Rules by the Securities and Exchange Commission

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163 of 1993

152 of 1995

PART I

PRELIMINARY

1. These Rules may be cited as the Securities (Accounting and Financial Requirements) Rules. Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"auditor", in relation to a licensee, means the person appointed by the licensee to be his auditor for the purpose of these Rules;

"customer bank account" means a bank account established for the purposes of rule *twenty-two*;

"financial year", in relation to a licensee, means-

- (a) the period of twelve months beginning with the day on which the licensee commences to carry on the business to which the licence relates; and

- (b) each subsequent period of twelve months beginning with the day following the day as at which an annual balance sheet of the licensee is prepared for the purposes of these Rules;

"licensee" means a dealer or investment adviser, as the case may be, who is licensed under Part IV of the Act, and "licensed dealer" shall be construed accordingly;

"licensed bank" means a bank registered under the Banking and Financial Services Act, or licensed or registered under any Act amending or replacing that Act;

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"money" includes any form of money, whether represented by a cheque, or other payable order, or otherwise; and

"securities exchange" means a securities exchange established and operated by a company licensed to do so under the Act.

3. These Rules apply in relation to all dealers and investment advisers who are licensed under Part IV of the Act.

Application

PART II

ACCOUNTING RECORDS

4. (1) A licensee shall, in respect of his securities business, keep accounting records which are sufficient to show and explain the licensee's transactions (whether effected on his own behalf or on behalf of others) and shall be such as to-

Duty to keep
accounting records

- (a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time;
- (b) demonstrate whether or not the licensee is at that time complying with any requirements of or made under Part V of these Rules; and
- (c) enable the licensee to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Rules.

(2) The accounting records shall in particular contain-

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- (a) entries from day to day of all sums of money received and expended by the licensee, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the licensee including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of securities by the licensee distinguishing those which are made by the licensee on his own account and those which are made by the licensee on behalf of others;
- (d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to securities which are in possession or control of the licensee;
- (e) entries from day to day of-
 - (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Rules;
 - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates;
- (f) a record of-
 - (i) balances on individual customer bank accounts;
 - (ii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
 - (iii) reconciliations made pursuant to rule *five*; and
- (g) details of all securities-
 - (i) which are the property of the licensee, showing by whom they are held and whether, if held otherwise than by the licensee himself, they are so held as collateral against loans or advances; and
 - (ii) which are not the property of the licensee but for which the licensee is accountable, showing by whom and for whom they are held distinguishing those which are deposited with a third party whether as security for loans or advances made to the licensee or any related person or for any other purpose.

5. (1) A licensee shall, at least once every two months, reconcile the balance on each customer bank account (as recorded by the licensee) with the balance on that account (as set out on the statement issued by the bank).

Reconciliation of
customer money

(2) Where a customer bank account contains the money of more than one customer a licensee shall, in addition to the reconciliation made under subrule (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the licensee).

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(3) Where any difference arises on reconciliation under subrule (1) or (2), the licensee shall correct it forthwith unless the difference arises solely as a result of timing differences between the accounting systems of the relevant bank and of the licensee.

6. The obligations under these Rules are continuing obligations and continuous performance of them is required so as to ensure that records are updated daily. Records to be up to date

7. (1) Information required by these Rules to be recorded shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced through from initiation of the order to final settlement. Audit trail

(2) All records shall be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

8. The accounting records required to be kept by a licensee shall conform with statements of standard accounting practice issued by the Zambian Institute of Certified Accountants. Conformity with accounting standards

9. A licensee shall preserve the accounting records which it is required to keep under rule *four* for six years from the date on which they are made. Retention of Records

10. Accounting records which are required to be kept under rule *four* shall, at any time during the period in which they are required to be preserved, be produced to the Commission, or to any person with the authority of the Commission, on demand at such reasonable time and place as may be specified by the Commission or that person. Inspection of records

11. Nothing in this Part (or in Part III) shall prevent a licensed securities exchange from imposing on licensees who are members of the exchange any further obligations or requirements which it thinks necessary with respect to- Exchange may impose additional requirements on members

- (a) the keeping of accounts, books and records;
- (b) the making of periodic financial reports to the exchange in the form and manner required by the exchange;
- (c) the audit of accounts; or
- (d) the information to be given in reports by auditors.

PART III

FINANCIAL STATEMENTS

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12. A licensee shall, in respect of his securities business, prepare for each of his financial years annual financial statements which shall consist of- Duty to prepare annual financial statements

- (a) a balance sheet as at the last day of the financial year;
- (b) a profit and loss account for the financial year.

13. The balance sheet shall give a true and fair view of the state of affairs of the licensee as at the end of the financial year. Balance sheet to give a true and fair view

14. The profit and loss account shall give a true and fair view of the profit and loss of the licensee for the financial year. Profit and loss account to give a true and fair view

15. (1) The financial statements of a licensee shall comply with the provisions of the Schedule (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements. Form and content of financial statements

(2) Where compliance with the provisions of the Schedule, and the other provisions of these Rules as to the matters to be included in the licensee's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of these provisions is inconsistent with the requirements to give a true and fair view, the licensee shall depart from that provision to the extent necessary to give a true and fair view.

(4) If the licensee departs under subrule (3) from any such provision, particulars of the departure, the reasons for it and its effect shall be given in a note to the financial statements.

16. (1) A licensee shall submit its annual financial statements to its auditor for audit and shall obtain an auditor's report thereon which report shall comply with the requirements of rule *eighteen*. Licensee to obtain auditor's report, etc.

(2) A licensee shall submit his auditor's report to the Commission together with-

- (a) the annual financial statements in accordance with rule *seventeen*; and
- (b) confirmation in writing that he has complied with each and every one of these Rules with which he is required to comply and such further information or confirmation as the Commission may by rules require from time to time.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report shall when submitted by the licensee to the Commission be accompanied by a written document (signed in the case of a company, by two directors, and in the case of an individual, by the licensee) stating-

- (a) whether all the accounting records of the licensee have been made available to the auditor for the purposes of his audit;
- (b) whether all transactions undertaken by the licensee have been properly reflected and recorded in the licensee's accounting records; and
- (c) whether all other records of the licensee and related information have been made available to the auditor.

17. Each financial year a licensee shall submit his audited annual financial statements to the Commission within four months after the end of the financial year to which the annual financial statements relate.

Annual financial statements to be submitted to Commission

18. (1) The auditor's report shall be addressed to the Commission and shall state whether the annual financial statements of the licensee have been audited in accordance with approved auditing standards.

Contents of auditor's report

(2) The auditor's report shall also state whether in the opinion of the auditor-

- (a) the annual financial statements of the licensee have been properly prepared in accordance with these Rules;
- (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the licensee as at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the licensee for the financial year;
- (d) the licensee has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Rules;
- (e) the licensee has, throughout the financial year, kept customer money properly segregated in accordance with Part IV;
- (f) the balance sheet and the profit and loss account are in agreement with the licensee's accounting records;

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- (g) he has obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit;
- (h) the licensee has maintained throughout the financial year systems adequate to enable him to identify documents of title, or documents evidencing title, to securities held in safekeeping for the licensee's customers in accordance with rule *twenty-nine* of the Securities (Conduct of Business) Rules, 1993; and
- (i) the licensee was in compliance with the requirements of rule *twenty-nine* of the Securities (Conduct of Business) Rules, 1993 as at the date on which the balance sheet was prepared.

19. (1) If the auditor is of the opinion that one or more of the requirements of rule *eighteen* have not been met, he shall state that fact in his report and shall specify the relevant requirements and the respects in which they have not been met. Qualified reports

(2) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of rule *eighteen* have been met, he shall state that fact in his report and shall specify those requirements and give the reasons why he has been unable to form an opinion.

PART IV

CUSTOMER MONEY

20. This Part applies to any customer money held or received by a licensee in the course of carrying on securities business. Application

21. For the purposes of these Rules customer money is money of any currency which, in the course of carrying on securities business, a licensee holds or receives on behalf of a customer or which a licensee owes to a customer. Customer money

22. A licensee shall pay all customer money coming into his hands for or from a customer into a specially created customer bank account which is segregated from any account holding money belonging to the licensee. Duty to segregate

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23. Customer money, unless paid out to or for a customer, must be kept in an account at a licensed bank on trust for the customer. Duty to keep customer money safe

24. Customer money shall be held by the licensee on trust for the respective customers for whom that customer money is received or held according to their respective shares in it. Customer money to be held on trust

25. A licensee shall account properly and promptly for customer money and, in particular, shall ensure that- Accounting for and use of customer money

- (a) customer money and other money do not become mixed;
- (b) the licensee can at all times be sure how much customer money stands to the credit of each customer; and
- (c) money belonging to one customer is not used for another customer.

26. A licensee who receives or holds customer money shall open one or more customer bank accounts with a licensed bank. Customer bank account

27. (1) Subject to subrule (2), money may be withdrawn from a customer bank account only if- Payment only of a customer bank account

- (a) it is not customer money;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) A licensee may withdraw money from a customer bank account for or towards payment of its own fees or commission only if the fees or commissions accord with the arrangements agreed with the customer.

PART V

FINANCIAL RESOURCES

28. A licensed dealer shall provide and at all times maintain in his business as a dealer a net capital of not less than K50,000,000. Minimum net capital

(As amended by S.I. No. 152 of 1995)

The Laws of Zambia

29. A licensed dealer shall maintain at all times in his business as a dealer a liquidity margin of not less than 10 per centum of the minimum net capital requirement specified in rule *twenty-eight* as the case may be.

Minimum liquidity margin

30. If a licensed dealer becomes aware of his inability to comply with the minimum net capital or liquidity margin requirements, he shall forthwith-

Duty of licensed dealer

- (a) notify the Commission, and any securities exchange of which he is a member; and
- (b) cease dealing in securities otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when he becomes so aware.

31. (1) For the purposes of this Part-

Interpretation

"approved assets" and "ranking liabilities" means such assets and liabilities as are specified to be approved assets and ranking liabilities by the Commission by notice;

"liquid assets" means such of the approved assets as are specified as liquid assets by the Commission by notice;

"liquidity margin" means the excess of liquid assets over ranking liabilities;

"net capital" means the excess of approved assets over ranking liabilities.

(2) Where the Commission specifies any assets as approved assets or liquid assets, it may also specify the percentage of the value of the assets that may be taken into account, or the percentage of the minimum net capital or liquid assets that the assets may comprise, in computing the net capital or the liquidity margin as the case may be.

PART VI

APPOINTMENT OF AUDITORS

32. A licensee shall not commence securities business until he has appointed an auditor in accordance with these Rules.

Auditor required

33. A person shall not be qualified for appointment as the auditor of a licensee unless he is a member of the Zambia Institute of Certified Accountants and holds a valid practising certificate pursuant to sections 24 and 25 of the Accountants Act.

Qualification for appointment as auditor

34. (1) No person shall act as an auditor to a licensee if he is ineligible for appointment to the office.

Ineligibility on ground of lack of independence

(2) A person is ineligible for appointment as auditor to a licensee if he is-

- (a) a director, officer, employee, shareholder or partner of the licensee; or
- (b) a partner or employee of such a person.

(3) For the purposes of this rule an auditor of a licensee shall not be regarded as an officer or employee of the licensee.

35. A licensee shall ensure that the auditor appointed under these Rules has the powers and duties specified in rule *thirty-six* and that-

Engagement letters

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the licensee and the auditor; and
- (c) the licensee retains a copy of the engagement letter.

36. (1) An auditor shall have-

Powers and duties of auditors

- (a) a right of access at all times to the accounting and other records of the licensee and all other documents relating to his business; and
- (b) a right to require from the licensee such information and explanations as he thinks necessary for the performance of his duties as auditor.

(2) An auditor shall submit a report to the Commission on the annual financial statements in accordance with these Rules and the report shall state the matters specified in rule *eighteen*.

(3) In preparing an auditor's report for the purposes of these Rules, the auditor shall carry out such investigations as will enable him to form an opinion as to the matters required by rule *eighteen* to be stated in his report.

37. A licensee shall, within seven days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

Notification to Commission

38. (1) Where an auditor resigns or is removed by a licensee, a notice to that effect sent to the Commission under rule *thirty-seven* shall contain either-

Resignation or removal of auditors

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- (a) a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission; or
- (b) a statement signed by the auditor of such circumstances as are mentioned in (a).

(2) For the purposes of these Rules, a failure to appoint an auditor at the end of his term of office shall be deemed to be removal of that auditor.

PART VII

OFFENCES

39. Any person who contravenes any of the provisions of these Rules shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding twelve months or to both. Offences

(As amended by Act No. 13 of 1994)

SCHEDULE

(Rule 15)

FORM AND CONTENT OF FINANCIAL STATEMENTS

PART I

GENERAL RULES

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1. Subject to the provisions of this Schedule, the annual financial statements of a licensee shall-
 - (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
 - (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.
2. (1) In respect of every item shown in a licensee's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year shall also be shown.
 - (2) Where the corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.
3. In the case of a licensee who is sole proprietor, the items to be included in his financial statements prepared in accordance with these Rules shall be those which arise in the course of the securities business of that licensee.

PART 2

ACCOUNTING PRINCIPLES AND RULES

4. Subject to paragraph 6, the amounts to be included in respect of all items shown in a licensee's balance sheet and profit and loss account shall be determined in accordance with the accounting standards and guidelines as approved or accepted by the Zambia Institute of Certified Accountants which are in force from time to time and with the following rules.
5. Subject to paragraph 4, items shall be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.
6. If it appears to the licensee that there are special reasons for departing from any of the principles and rules stated above in preparing the licensee's financial statements in respect of any financial year the licensee may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the financial statements.

APPENDIX 1

BALANCE SHEET FORMAT

A. FIXED ASSETS

I. Intangible Assets

1. Development costs
2. Goodwill (1)
3. Other

II. Tangible Assets

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

III. Investments

1. Loans to and shares in group companies and connected companies
2. Other listed investments
3. Other unlisted investments

B. CURRENT ASSETS

I. Physical stocks

II. Debtors (2)

1. Trade debtors (3)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

III. Investments

IV. Cash at bank and in hand

C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

1. Bank loans and overdrafts
2. Subordinated loans (4)
3. Other debenture loans
4. Trade creditors (5)
5. Investments (short positions)
6. Income tax
7. Amount due to group and connected companies
8. Other creditors
9. Accruals and deferred income

D. NET CURRENT ASSETS (LIABILITIES)

E. TOTAL ASSETS LESS CURRENT LIABILITIES

F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

1. Bank loans and overdrafts
2. Subordinated loans (4)
3. Other debenture loans
4. Trade creditors (5)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

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APPENDIX 2

PROFIT AND LOSS ACCOUNT FORMAT

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A. DEALING

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. units in collective investment schemes
4. foreign exchange
5. other - specify

B. REVENUE

- I. Commissions on transactions in collective investment schemes
 1. authorised mutual fund and unit trust schemes
 2. other - specify
- II. Commissions on securities transactions
 1. equities
 2. debt instruments
 3. other - specify
- III. Investment management fees
- IV. Fee income in respect of financial advice
- V. Company management fees
- VI. Trustee fees
- VII. Interest and dividends
 1. investments positions
 2. loan accounts and margin accounts
 3. in respect of balances in customer bank accounts
 4. other - specify
- VIII. Dealing and settlement services
- IX. Revenue from research and consulting services
- X. Retained underwriting and placing commissions
- XI. Other revenue - specify if material

C. EXPENDITURE

- I. Commissions
 1. paid to staff
 2. paid to other investment businesses
 3. other (specify)
- II. Salaries and other employment costs (exclusive of commission)
- III. Directors' emoluments
- IV. Staff bonuses
- V. Interest charges
 1. payable to customer in respect of customer's money balances
 2. other (specify)
- VI. Establishment costs
- VII. Communications and marketing
- VIII. Office equipment and services
- IX. Provisions for losses, bad and doubtful debts
- X. Professional charges
- XI. Securities exchange and clearing house charges
- XII. Regulatory fees and expenses

SECTIONS 32, 38 AND 78-THE SECURITIES (REGISTRATION OF SECURITIES) (INVESTMENT COMPANIES) RULES

Statutory Instrument
167 of 1993

Rules by the Securities and Exchange Commission

1. These Rules may be cited as the Securities (Registration of Securities) (Investment Companies) Rules. Title
2. (1) In these Rules, unless the context otherwise requires- Interpretation
- "associate" means-
- (a) in relation to any director, chief executive or substantial shareholder (being an individual)-
 - (i) his spouse, and any child or step-child under the age of twenty-one years, of the director, chief executive or substantial shareholder or of his spouse;
 - (ii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his close relations is a beneficiary or, in the case of a discretionary trust, is a discretionary object; or
 - (iii) any company in the equity capital of which he or his close relations taken together are directly or indirectly interested so as to exercise or control the exercise of twenty per cent or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and
 - (b) in relation to a company, any other company which is its subsidiary or holding company or is a fellow subsidiary of any any such holding company or one in the equity capital of which it or such other company taken together are directly or indirectly interested so as to exercise or control the exercise of twenty per cent or more of the voting power at general meetings, or to control the composition of a majority of the board of directors;
- "chief executive" means a person who either alone or together with one or more other persons is responsible under the immediate authority of the board of directors for the conduct of business of the company;
- "connected person" in relation to a company means a director, chief executive or substantial shareholder of the company or any of its subsidiaries or an associate of any of them;
- "director" includes any person who occupies the position of a director, by whatever name called;
- "investment company" means a company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of the company;
- "substantial shareholder" means a person who is entitled to exercise, or control the exercise of, ten per cent or more of the voting power at any general meeting of a company.

(2) For the purposes of these Rules, a company is a subsidiary of another company if-

- (a) that other company-
 - (i) controls the composition of the board of directors of the first-mentioned company;
 - (ii) controls more than half of the voting power of the first-mentioned company; or
 - (iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

3. (1) Subject to clause (2), these Rules, which are additional to the requirements of the Securities (Registration of Securities) Rules 1993, apply to an investment company any of whose securities are registered, or are required to be registered, under the Act. Application

(2) These Rules apply to an investment company in respect of such of its activities as are not regulated by the provisions of the Securities (Collective Investment Schemes) Rules, 1993.

4. The following additional conditions for registration apply in respect of investment companies-
- Additional conditions for registration
- (a) the Commission must be satisfied as to the fitness and competence of the directors of an investment company and its management company or investment adviser, if any, and must be satisfied that they have had satisfactory experience in the management of investments or other appropriate business experience;
 - (b) an investment company shall have a custodian or trustee which shall be independent from the company and must be acceptable to the Commission;
 - (c) an investment company and its management must normally be bound, either in its articles of association or equivalent constitutive document or in such other manner as is acceptable to the Commission, to ensure compliance with the following requirements-
 - (i) that the investment company will not either on its own or in conjunction with any connected person take legal, or effective, management control of underlying investments and that in any event the investment company will not own or control more than thirty-five per cent (or such lower percentage as may from time to time be specified in the Takeover Code as being the level at which a general offer becomes mandatory) of the voting rights in any one company;
 - (ii) that a reasonable spread of investments will be maintained by the investment company which means generally that the value of its holding of investments issued by any one company or body shall not exceed twenty per cent of the investment company's net asset value at the time when such investment is made;
 - (iii) that, in the case of a newly formed investment company, it will not change its stated investment objectives and policies for a minimum period of three years, without shareholders' consent;
 - (iv) that shareholders' meetings are convened and conducted in a manner which is acceptable to the Commission;
 - (v) that any custodian, management company, any of their connected persons and every director of any investment company and management company is prohibited from voting their own shares at, or being part of a quorum for, any meeting to the extent that they have or any of their associates has, a material interest in the business to be conducted;

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- (vi) that the investment company's auditors are independent of the investment company, any management company and any custodian, to the same extent as that required of an auditor under the Securities (Accounting and Financial Requirements) Rules, 1993, and that, in the case of an overseas investment company, the accounts of the investment company are audited to a standard comparable to that required in Zambia and all reports conform to international accounting standards as promulgated from time to time by the International Accounting Standards Committee;
- (d) it will normally be a condition of registration that, in the case of a newly formed investment company, at the conclusion of the initial offering of shares, and in the case of an existing investment vehicle, at the time of the issue of the prospectus, no person shall control thirty-five per cent (or such lower amount as may from time to time be specified in the Takeover Code as being the level at which a general offer becomes mandatory) or more of the votes exercisable at any general meeting of the investment company.

5. In addition to the requirements of the Securities (Registration) Rules, 1993, every prospectus issued by or on behalf of an investment company no part of whose securities is already registered must contain the following:

Additional prospectus requirements where no securities registered

- (a) details of all costs and charges and in particular the fees of any management company payable from the investment company's assets which an investor would be likely to consider material, and all deductions made from money subscribed for securities;
- (b) a statement of any costs of establishing the investment company which are to be paid by the investment company together with an estimate of their size and the period over which they are to be amortised;
- (c) details of the investment objectives, including capital and income objectives, and the investment policy, including a summary of the restrictions which will be observed on the investment of the investment company's assets and the intended diversification of assets by country or region and, in the case of a newly formed investment company, a statement that such investment policy will be adhered to for at least three years following the issue of the prospectus, unless otherwise agreed by the shareholders on the investment company in general meeting; and in particular, the prospectus must disclose the extent to which it is intended to invest in options, warrants, commodities, futures contracts, unlisted securities, and precious metals and must include an appropriate negative statement if there is an intention not to invest in any such investments;
- (d) details of the principal taxes levied on the investment company's income and capital (including taxes withheld at source on distributions received by the investment company) and tax, if any, deducted on distributions to shareholders;
- (e) a summary of the borrowing powers of the investment company, if any, stating that at no time will it exceed a certain amount, and stating the circumstances under which borrowing might take place;
- (f) a statement as to whether certificates for securities will be issued in registered or bearer form, or in both forms;
- (g) the name, address and description of any management company, custodian, investment adviser, and any alternate custodian;
- (h) the full names, addresses and descriptions of every director of the investment company and every director of the management company;
- (i) a description of the relevant experience of any management company, investment adviser and the directors of the investment company;
- (j) particulars of what reports will be sent to registered shareholders and when;
- (k) a statement as to whether or not the directors of the investment company, the management company or any investment adviser, or any associate of any of those persons, is or will become entitled to receive any part of any brokerage charged to the investment company, or any re-allowance of other types on purchases charged to the investment company;
- (l) a warning that an investment in the investment company is subject to abnormal risks, if the nature of the investment policy so dictates;
- (m) a statement that the investment company will not change its stated investment objectives and policies for a minimum period of three years, without shareholders' consent;
- (n) details of the investment company's foreign exchange policy and in particular details of any foreign exchange controls or restrictions of relevance to the investment company or its investment policy or objectives;
- (o) in the case of an existing investment company, full details of all exchange-traded investments and all other investments with a value of more than five per cent of the investment company's gross assets and

6. In addition to the information required by the Securities (Registration of Securities) Rules, 1993, every prospectus issued by or on behalf of an investment company some part of whose securities is already registered must contain the information required in rule five with the exception of that required by paragraphs (b), (g), (j) and (k) of that rule.

Additional prospectus requirements where some securities already registered

7. An investment company shall, in addition to the continuing obligations imposed by the Securities (Registration of Securities) Rules, comply with the following continuing obligations:

Continuing obligations of investment companies

- (a) the annual report and accounts shall include-
 - (i) a list of all investments with a value greater than five per cent of the investment company's gross assets, and at least the ten largest investments stating, with comparative figures where relevant-
 - (aa) a brief description of the business;
 - (bb) proportion of share capital owned;
 - (cc) costs;
 - (dd) directors' valuation and, in the case of listed investments, market value;
 - (ee) dividends received during the year (indicating any abnormal dividends);
 - (ff) dividend cover or underlying earnings;
 - (gg) any extraordinary items; and
 - (hh) net assets attributable to investment;
 - (ii) an analysis of any provision for diminution in the value of investments, naming the investments against which provision has been made and stating for each investment-
 - (aa) cost;
 - (bb) provision made; and

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- (cc) book value; and
- (iii) an analysis of realised and unrealised surpluses, stating separately profits and losses as between investments which are traded on a regulated securities exchange which is recognised by the Commission and those investments which are not so traded;
- (b) the interim report and any preliminary announcement of results for the full year shall include a division of income between-
 - (i) dividend and interest received; and
 - (ii) other forms of income (which may be income of associated companies);

distinguishing where significant between underwriting income and the results of dealings by subsidiaries;

- (c) the investment company must adhere to the investment policy set out in the prospectus for at least three years following the issue of the prospectus except as sanctioned by shareholders in a general meeting of the investment company; and
- (d) the investment company must publish, in at least one leading newspaper which is published daily and circulates generally in Zambia, a statement of its net asset value as at the end of each month within fifteen days of that date.

SECTION 23-THE SECURITIES (COLLECTIVE INVESTMENT SCHEMES)

Statutory Instrument
161 of 1993

Rules by the Securities and Exchange Commission

1. These Rules may be cited as the Securities (Collective Investment Schemes) Rules. Title

2. In these Rules, unless the context otherwise requires- Interpretation

"bond scheme" means a scheme, the primary objective of which is to invest in debt securities which have a remaining term to maturity of one year or more;

"collective investment scheme" or "scheme" means a collective investment scheme as defined in section *seventy-two* of the Act;

"connected person", in relation to a company, means-

- (a) any person or company beneficially owning, directly or indirectly, twenty per cent or more of the ordinary share capital of that company or able to exercise, directly or indirectly, twenty per cent or more of the total votes in that company;
- (b) any person or company controlled by a person who meets one or both of the descriptions given in paragraph (a);

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(c) any member of the group of which that company forms part;

(d) any director or officer of that company or of any of its connected persons as defined in paragraph (a), (b) or (c);

"constitutive documents" means the principal documents governing the formation of the scheme, and includes the trust deed in the case of a unit trust and the articles of association of an investment company and all material agreements;

"distribution function" refers generally to those functions described in clause *eighty-three (a)-(d)* of the Schedule;

"eligible nominee" means a person approved by the Commission to act as a nominee;

"holder", in relation to a unit or share in a scheme, means the person who is entered in the register as the holder of that unit or share or the bearer of a bearer certificate representing that unit or share;

"investment company" has the same meaning as in section *seventy-two* of the Act;

"investment plan" means an arrangement under which an investor undertakes to make a series of contributions to a scheme of a specified minimum value over a period of time;

"offering document" means that document, or documents issued together, containing information on a scheme calculated to invite offers by the public to subscribe for or purchase units or shares in the scheme;

"open-ended investment company" has the same meaning as in section *seventy-two* of the Act;

"real estate scheme" means a collective investment scheme which invests more than twenty-five per cent of its net assets in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies);

"recognised market" means any stock exchange, over-the-counter market or other organised securities market that operates regularly, is open to the international public, and is recognised by the Commission;

"Schedule" includes the Appendices to the Schedule;

"these Rules" includes the Schedule to these Rules;

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"trustee/custodian", "trustee" or "custodian" means the entity appointed pursuant to Part I of the Schedule.

3. These Rules apply to all collective investment schemes owned by, or managed by or on behalf of, open-ended investment companies. Application of Rules

4. (1) Collective investment schemes established or to be established in Zambia or elsewhere shall comply with the provisions of the Schedule to these Rules in order to be authorised in Zambia. Schemes established in Zambia or elsewhere

(2) Collective investment schemes established or to be established outside Zambia which are to be promoted in Zambia shall in addition appoint a Zambian representative and also conform with part III of the Schedule to these Rules.

(3) An application for authorisation which seeks a waiver of any of the provisions of these Rules shall give detailed reasons as to why a waiver is sought.

5. (1) An application to the Commission for the authorisation of a collective investment scheme shall be made by a dealer or investment adviser licensed under Part IV of the Act who shall submit a written application containing the information specified in Appendix I to the Schedule to these Rules. Application to Commission for authorisation

(2) The application shall be accompanied by the following:

- (a) the scheme's offering and constitutive documents;
- (b) the scheme's latest audited report (if any) and if more recent, the latest unaudited report;
- (c) the management company's latest audited report and resumes of its directors (if required by Appendix I);
- (d) the trustee/custodian's latest audited report (if required by Appendix I);
- (e) a letter of consent to the appointment from the trustee/custodian; and
- (f) the prescribed application fee.

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(3) In addition to the documents specified in subrules (1) and (2), an application for the authorisation of a non-Zambian based scheme shall include the following:

(a) a Zambian representative agreement; and

(b) a Zambian covering Document,

in accordance with Part III of the Schedule to these Rules.

6. The Commission may authorise collective investment schemes which comply with the requirements specified in the Schedule to these Rules. Authorisation of schemes

7. (1) In so far as the Schedule to these Rules imposes continuing obligations with regard to an authorised scheme, in the event of a failure to comply with any such obligation the Commission may- Withdrawal of authorisation

(a) suspend its authorisation of the scheme for such time, or until the happening of such event, as it may determine; or

(b) withdraw its authorisation of the scheme.

(2) Where the Commission suspends or withdraws its authorisation under subrule (2), the scheme shall be taken for the purposes of the Act not be authorised.

SCHEDULE

(Rules 4-7)

PART I

STRUCTURE AND OPERATION OF A COLLECTIVE INVESTMENT SCHEME

SECTION A-ROLE OF THE TRUSTEE/CUSTODIAN

1. Every collective investment scheme for which authorisation is requested shall appoint a trustee/custodian acceptable to the Commission. Appointment of trustee/custodian

(NOTE: Scheme established under trust must have a trustee, and all other collective investment schemes must have a custodian. This Part of the Schedule lists the general obligations of the trustee/custodian, whichever is appointed. Trustees are expected to fulfil the duties imposed on them by the general law of trusts. The responsibilities of a custodian, which are the same as those of a trustee, should be reflected in a constitutive document such as a Custodian Agreement (see Appendix III))

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- 2.** A trustee/custodian shall be-
- Qualifications for appointment
- (a) a bank registered under the Banking Act, or licensed or registered under any Act amending or replacing that Act; or
 - (b) a trust company which is a subsidiary of such a bank; or
 - (c) a trust company registered under the Companies Act; or
 - (d) a banking institution or trust company incorporated outside Zambia, which has a subsidiary incorporated in Zambia, and which is acceptable to the Commission.
- 3.** A trustee/custodian shall be independently audited and have minimum issued and paid-up capital and non-distributable capital reserves of fifty million kwacha or its equivalent in foreign currency.
- Independent audit and liquidity
- 4.** The trustee/custodian shall-
- General obligations of trustee/custodian
- (a) take into his custody or under his control all the property of the scheme and hold it in trust for the holders (in the case of a unit trust) or the scheme (in the case of any other type of collective investment scheme) in accordance with the provisions of the constitutive documents; cash and registrable assets shall be registered in the name of or the order of the trustee/custodian;
 - (b) be liable for any act or omission of any agent with whom any investments in bearer form are deposited as if they were the act or omission of any nominee in relation to any investment forming part of the property of the scheme;
 - (c) take reasonable care to ensure that the sale, issue, repurchase, redemption and cancellation of units/shares effected by a collective investments scheme are carried out in accordance with the provisions of the constitutive documents;
 - (d) take reasonable care to ensure that the methods adopted by the management company in calculating the value of units or shares are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of the constitutive documents;
 - (e) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the offering or constitutive documents;
 - (f) take reasonable care to ensure that the investment and borrowing limitations set out in the constitutive documents, and the conditions under which the scheme was authorised, are complied with;
 - (g) issue a report to the holders to be included in the annual report on whether in the trustee/custodian's opinion, the management company has in all material respects managed the scheme in accordance with the provisions of the constitutive documents; if the management company has not done so, the respect in which it has not done so and the steps which the trustee/custodian has taken in respect thereof;
 - (h) take reasonable care to ensure that unit or share certificates are not issued until subscription moneys have been paid;
 - (i) ensure that any registrable investments which are held for shareholders or unit holders in the scheme are properly registered in the names of the shareholders or unit holders or, with the consent of the shareholder or unit holder, in the name of an eligible nominee; and
 - (j) where title to investments is recorded electronically, to ensure that entitlements are separately identified from those of the manager of the scheme in the records of the person maintaining records of entitlement.
- 5. (1)** The trustee/custodian shall not be entitled to retire except upon the appointment of a new trustee/custodian and subject to the prior approval of the Commission.
- Retirement of trustee/custodian
- (2)** The retirement of the trustee/custodian shall take effect at the same time as the new trustee/custodian takes up office.

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- 6.** The trustee/custodian and the management company shall not be connected persons and shall be persons who are independent of each other. Independence of trustee/custodian and the management company

SECTION B-ROLE OF THE MANAGEMENT COMPANY AND AUDITOR

- 7.** Every collective investment scheme for which authorisation is requested shall appoint a management company acceptable to the Commission, except as provided for self-managed schemes below. Appointment of the management company
- 8.** A management company shall- Requirements for management company
- (a) be engaged primarily in the business of fund management;
 - (b) have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it shall have a minimum issued and paid-up capital and capital reserves of ten million kwacha or its equivalent in foreign currency;
 - (c) not lend to a material extent; and
 - (d) maintain at all times a positive net asset position.
- 9.** The directors of the management company shall be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties. Qualifications of directors
- 10.** (1) In determining the acceptability of the management company, the Commission may also consider the qualifications and experience of persons employed by the management company. Management company employees
(2) Biographical details and an account of the professional qualifications and experience of the directors and of every person succeeding them in office shall be supplied to the Commission.
- 11.** If the management company appoints an investment adviser, the Commission may require evidence that the investment adviser is appropriately qualified for the performance of his functions. Investment adviser
- 12.** (1) The type of licence required depends on the functions performed by the management company in Zambia. Licence requirement
(2) Except as provided by subclause (3), a management company that is incorporated in Zambia shall be licensed as an investment adviser under the Act.
(3) However, should it undertake the distribution function in Zambia or otherwise deal in securities, it shall be licensed as a dealer.
- 13.** (1) Notwithstanding clause seven, a scheme could be managed by its own board of directors who are to perform the functions of a management company. Self-managed schemes
(2) In this case, references in this Schedule to the directors of a management company shall be deemed to be references to the directors of a self-managed scheme.

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- 14.** The directors of a self-managed scheme are prohibited from dealing with the scheme as principals. Directors of self-managed scheme not to deal as principal
- 15.** In addition to compliance with clause *forty-seven*, a self-managed scheme shall contain the following provisions-
- (a) that holders may convene a meeting and, by way of an ordinary resolution, remove any of the directors considered no longer fit and proper to manage the scheme's assets; and
 - (b) that the directors' fees and remuneration shall be fixed by the holders at a general meeting.
- Requirements for self-managed schemes
- 16.** A management company shall-
- (a) manage the scheme in accordance with the scheme' constitutive documents in the exclusive interest of the holders and fulfil the duties imposed on it by the general law;
 - (b) maintain or cause to be maintained the books and records of the scheme and prepare the scheme's accounts and reports, including at least two reports to be published in respect of each financial year and sent to all registered holders in accordance with clause *forty-nine*; and
 - (c) ensure that the constitutive documents are made available for inspection by the public in Zambia, free of charge at all times during normal office hours at its place of business or that of its Zambia representative and make copies of such documents available upon the payment of a reasonable fee.
- General obligations of a management company
- 17.** The management company shall be subject to removal by notice in writing from the trustee or custodian in any of the following events-
- (a) the management company goes into liquidation, becomes bankrupt or has a receiver appointed over its assets;
 - (b) for good and sufficient reason, the trustee or custodian is of the opinion and so states in writing that a change in management company is desirable in the interest of the holders; or
 - (c) in the case of a unit trust, holders representing at least fifty per cent in value of its units outstanding (excluding those held or deemed to be held by the management company), deliver to the trustee a written request to dismiss the management company.
- Retirement of a management company
- 18.** In addition, the management company shall retire-
- (a) in all other cases provided for in the constitutive documents; or
 - (b) when the Commission withdraws its approval of the management company.
- Other causes of retirement
- 19.** The Commission shall be informed by the trustee or the custodian of any decision to remove the management company. Commission to be informed of retirements
- 20.** Upon the retirement or dismissal of the management company, the trustee or the custodian shall appoint a new management company as soon as possible, subject to the approval of the Commission. Appointment of new management company
- 21.** The management company shall, at the outset and upon any vacancy, appoint an auditor for the scheme. Appointment of Auditor

The Laws of Zambia

- 22.** (1) A person shall not be qualified for appointment as auditor unless he is a member of the Zambia Institute of Certified Accountants and holds a valid practising certificate under the Accountants Act. Qualifications of auditor
(2) The auditor shall be independent of the management company and of the trustee/custodian.
- 23.** The management company shall cause the scheme's annual report to be audited by the auditor, and such report shall contain the information provided for in Appendix IV. Audit of annual report

SECTION C-OPERATIONAL REQUIREMENTS

(1) SCHEME DOCUMENTATION

- 24.** Schemes shall issue an up-to-date offering document, which shall be equivalent so far as is applicable to a prospectus issued under the Securities (Registration) Rules, 1993, and shall contain all the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and in particular shall contain the information listed in Appendix II. Matters to be disclosed in offering document
- 25.** The offering document shall be accompanied by the scheme's most recent audited annual report and accounts, together with its semi-annual report if published after the annual report. Accompaniment to offering document
- 26.** No application form may be supplied to any person not a holder unless accompanied by the offering document, except that an advertisement or report containing all the requirements of Appendix II may be allowed to incorporate an application form. Offering document accompaniment application form
- 27.** (1) If performance data or estimated yield is quoted in an offering document, advertisement or any other invitation to the public to invest, the Commission may require justification of the calculation. Inclusion performance data
(2) No forecast of the scheme's performance may be made.
(3) The publication of a prospective yield does not constitute a forecast of performance.
- 28.** (1) The constitutive documents of a scheme shall contain the information listed in Appendix III. Constitutive documents
(2) Nothing in the constitutive documents may provide that the trustee/custodian, management company or directors of the scheme be exempted from any liability to holders, imposed under the law of Zambia or the law of the scheme's place of domicile, or breaches of trust through fraud or negligence, nor may they be indemnified against such liability by holders or at holders' expense.

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- 29.** (1) The constitutive documents may be altered by the management company and trustee/custodian without consulting holders, provided that the trustee/custodian certifies in writing that in its opinion the proposed alteration-
- Constitutive documents may be altered by company
- (a) is necessary to enable compliance with fiscal or other statutory or official requirements; or
 - (b) does not materially prejudice holders' interests, does not to any material extent release the trustee/custodian, management company or any other person from any liability to holders and does not increase the costs and charges payable from the scheme property; or
 - (c) is necessary to correct a manifest error.
- (2) In all other cases no alteration may be made except by a special or extraordinary resolution of holders.

- 30.** (1) All proposed alterations or additions to the offering constitutive documents shall be submitted to the Commission for prior approval.
- Alterations to Constitutive documents to be approved by Commission
- (2) The Commission shall determine whether holders should be notified and the period of notice (if any) that should be applied before the changes are to take effect.
- (3) Such notice period shall not exceed three months unless the Commission, having regard to the merits of the case, otherwise determines.

(2) INVESTMENT PLANS

Requirements for investment plan

- 31.** If investment plans are offered-
- (a) before contracting for a plan, a prospective plan holder shall be given full details in writing of his rights and obligations, of all costs and charges levied on planholders and of the consequences of terminating his plan;
 - (b) unless he has requested to the contrary, each planholder shall be advised at least once a year of the opening balance of units, latest transaction details and closing balance of units;
 - (c) the plan shall include a direction to potential investors that they should refer to the offering document of the scheme to which they are considering linking their plan;
 - (d) an investment plan leaflet to be distributed in Zambia shall not solicit investment in schemes which have not been authorised by the Commission; and
 - (e) in respect of any increase of initial fee of investment plans up to the maximum permitted level, at least three months prior notice shall be given to holders concerned.

(3) PRICING, ISSUE AND REDEMPTION OF UNITS/SHARES

- 32.** If an initial offer is made, no investment of subscription money can be made until the conclusion of the first issue of units or shares at the initial price.
- Initial offers

- 33.** (1) Offer and redemption prices shall be calculated on the basis of the scheme's net assets value divided by the number of units or shares outstanding.
- Valuation and pricing
- (2) Such prices may be adjusted by fees and charges for management of the scheme, which shall first be charged against investment income, next against dealing profits from the issue and redemption of units or shares in the scheme, and lastly against the capital value of the investments of the fund.
- (3) The amount or method of calculating such fees and charges shall be clearly disclosed in the offering document.

The Laws of Zambia

- 34.** The value of investments not listed or quoted on a recognised market shall be determined on a regular basis by a professional person approved by the trustee/custodian as qualified to value such investments. Valuation of unquoted securities
- 35.** (1) There shall be at least one regular dealing day per month. Dealing
(2) Any price offer which the management company or the distribution company quotes or publishes shall be the maximum price payable on purchase and any redemption price shall be the net price receivable on redemption.
- 36.** The maximum interval between the receipt of a properly documented request for redemption of units or shares and the payment of the redemption money to the holder may not exceed one calendar month. Redemptions to be prompt
- 37.** Where a scheme deals at a known price and where, based on information available, the price exceeds or falls short of the current value of the underlying assets by more than two per cent, the management company shall defer dealing and calculate a new price as soon as possible. Changes to dealing
- 38.** A permanent change in the method of dealing may only be made after one month's notice to holders. Notice of change in method of dealing
- 39.** A temporary change may only be made- Temporary changes
- (a) in exceptional circumstances, having regard to the interests of holders;
 - (b) if the possibility of a change and the circumstances in which it can be made have been fully disclosed in the offering document; and
 - (c) with the approval of the trustee/custodian.
- 40.** Suspension of dealings may be provided for only in exceptional circumstances, having regard to the interests of holders. Suspension and deferral of dealings
- 41.** (1) The management company or the Zambia representative shall immediately notify the Commission if dealing in units or share ceases or is suspended. Commission to be notified of cessation or suspension
(2) The fact that dealing is suspended shall be published immediately following such decision and at least once a month during the period of suspension, in the newspaper in which the scheme's prices are normally published.
- 42.** Where redemption requests on any one dealing day exceed ten per cent of the total number of units or shares in issue, redemption requests in excess of ten per cent may be deferred to the next dealing day. Deferral of redemptions

(4) TRANSACTIONS WITH CONNECTED PERSONS

The Laws of Zambia

43. No person shall be allowed to enter on behalf of the scheme into underwriting or sub-underwriting contracts without the prior consent of the trustee/custodian and unless the scheme or the management company provides in writing that all commissions and fees payable to the management company under such contracts and all investments acquired pursuant to such contracts shall form part of the scheme's assets.

Underwriting contracts

44. If cash forming part of the scheme's assets is deposited with the trustee/custodian, the management company, the investment adviser or with any connected person of these companies (being an institution authorised to accept deposits), interest shall be received on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term.

Interest on deposits

45. (1) All transactions carried out by or on behalf of the scheme shall be at arm's length.
(2) In particular, any transactions between the scheme and the management company, investment adviser, the directors of the scheme or any of their connected persons as principal may only be made with the prior consent of the trustee/custodian.
(3) All such transactions shall be disclosed in the scheme's annual report.

Transaction to be at arm's length

46. (1) No single connected dealer shall account for fifty per cent or more of the scheme's transactions in value in any one financial year of the scheme.
(2) The Commission may consider each case on its merits and may permit the fifty per cent to be exceeded if the connected dealer offers advantages to the scheme not available elsewhere.
(3) The annual report shall disclose that one dealer accounted for fifty per cent or more of the scheme's transactions in value in any one financial year.
(5) MEETINGS

Diversity of dealers

The Laws of Zambia

- 47.** A scheme shall arrange to conduct general meetings of holders as follows-
- Requirements for meetings
- (a) holders shall be able to appoint proxies;
 - (b) votes shall be proportionate to the number of units or shares held, or to the value of units or shares held where there are accumulation units or shares.
 - (c) The quorum for meetings at which a special or extraordinary resolution is to be considered shall be the holders of twenty-five per cent of the units or shares in issue, and ten per cent if only an ordinary resolution is to be considered;
 - (d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned for not less than fifteen days. The quorum at an adjourned meeting shall be those persons present in person or by proxy;
 - (e) if the possibility exists of a conflict of interests between different classes of holder there shall be provisions for class meetings;
 - (f) an Extraordinary General Meeting shall be called for the following purposes-
 - (i) to modify, alter or add to the constitutive documents, except as provided in clause *twenty-nine*;
 - (ii) to terminate the scheme (unless the means of termination of the scheme are stipulated in the constitutive documents, in which case termination shall be effected in accordance with the provisions of the constitutive documents);
 - (iii) to increase the maximum fees paid to the management company, trustee/custodian or directors of the scheme; or
 - (iv) to impose other types of fee.
 - (g) where bearer units are in issue, proper provision shall be made for notification to bearer holders in Zambia of the timing and agenda of forthcoming meetings and voting arrangements;
 - (h) the directors of the scheme, the trustee/custodian, the management company, investment adviser and their connected persons are prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be conducted;
 - (i) an ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting; and
 - (j) a special or extraordinary resolution may only be passed by seventy-five per cent or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting.

(6) MEMBERS REGISTER

- 48. (1)** A scheme shall maintain a register of holders.
- Maintenance of register
- (2) The Commission shall be advised on request of the address where the register is kept.
 - (3) The register may be formed, in whole or in part, of records maintained by a securities depository approved by the Commission.

(7) REPORTING REQUIREMENTS

- 49. (1)** At least two reports shall be published in respect of each financial year.
- Report to holders
- (2) Annual reports shall be published and distributed to holders within four months of the end of the the scheme's financial year and interim reports shall be published and distributed to holders within two months of the end of the period they cover.

- 50.** Notification to holders shall be made in respect of any changes to the offering or constitutive documents as determined by the Commission pursuant to clause *thirty*.
- Notice of changes to documents

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51. (1) The scheme's latest available offer and redemption prices or net asset value shall be published at least once a month in at least one leading Zambia daily newspaper. Reports on prices and asset values

(2) If dealing is suspended, notice of this fact shall be published in accordance with clause *forty-one*.

52. Subsequent to the authorisation of the scheme, all financial reports produced by or for the scheme, its management company and trustee/custodian shall be filed with the Commission. Reporting to Commission

53. The management company shall supply to the Commission, upon request, all information relevant to the scheme's financial reports and accounts. Commission may require further information

54. The management company shall notify the Commission as soon as possible of any change to the data in the application form. Changes to data in application form

(8) FEES

55. The level/basis of calculation of all costs and charges payable from the scheme's property shall be clearly stated, with percentages expressed on a per annum basis (see Appendix II). Statement as to costs and charges

56. Commission to sales agents in respect of dealing in units or shares of the scheme shall not be payable from the scheme's property. Sales agents commission

57. In respect of any increase of the management fee up to the maximum level permitted under the scheme, at least three months prior notice shall be given to all holders. Notice of increase of management fee

(9) ADVERTISING AND PUBLIC ANNOUNCEMENTS

58. (1) Advertisements and other invitations to the public in Zambia to invest in a scheme, including public announcements, shall be submitted to the Commission for approval prior to their issue or publication in Zambia. Commission to approve advertisements

(2) Any publication submitted for approval which concerns the trustee shall be accompanied by its written consent.

(3) The approval so granted may be varied or withdrawn by the Commission as it deems fit.

(4) Once authorised, the advertisement may be used for a maximum period of six months, provided there are no material changes in that period to the scheme or to the advertisement itself.

(5) Unless the Commission disapproves submitted material within fourteen calendar days of its submission, the Commission shall be deemed to have approved it.

59. (1) If a scheme is described as having been authorised by the Commission it shall be stated that, in giving this authorisation, the Commission does not take responsibility for the financial soundness of the scheme or for the correctness of any statements made or opinions expressed in this regard. Statements as to authorisation of scheme

(2) Such a statement shall comply with the requirements of clause *sixty-two*.

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- 60.** Advertisements and other invitations to the public in Zambia shall not refer to any scheme which has not obtained authorisation from the Commission. Mention of unauthorised schemes
- 61.** Advertisements shall include a warning statement that- Warning statements
- (a) the price of units or shares, and the income from them (if the scheme pays a dividend), may go down as well as up; and
- (b) Investors are reminded that in certain circumstances their right to redeem their units or shares may be suspended.
- 62.** (1) Warning statements shall be printed in type of the same size as the rest of the text in the advertisement. Format of warning statements
- (2) Notwithstanding subclause (1), they may be in smaller text if printed in bold type or prominently outlined.
- (3) In all cases the warning shall be capable of being read with reasonable ease by anyone scanning the advertisement.
- PART II**
- INVESTMENT OF A COLLECTIVE INVESTMENT SCHEME**
- (NOTE: this Part sets out the core requirements of the investment limitations and prohibitions of a collective investment scheme.)
- 63.** The value of a scheme's holding of securities issued by any single issuer may not exceed twenty per cent at book value nor twenty-five per cent at market value. Spread of investments
- 64.** A scheme may not hold more than ten per cent of any class of security issued by any single issuer. Class of securities
- 65.** The value of a scheme's holding of securities not listed or quoted on a recognised market may not exceed fifteen per cent of its total net asset value. Unlisted securities
- 66.** (1) Clauses *sixty-three* and *sixty-four* shall not apply to Government securities. Government securities
- (2) Up to thirty per cent of a scheme's total net asset value may be invested in Government Securities of the same issue.
- 67.** A scheme may not enter into any financial futures contracts save in respect of currencies for hedging purposes. Futures and commodities
- 68.** The only physical commodities that may be held by a Scheme are gold, silver, platinum and copper which may not exceed in aggregate twenty per cent of its total net asset value. Commodities

The Laws of Zambia

- 69.** (1) The value of a scheme's holding of units or shares in other collective investment schemes may not in aggregate exceed ten per cent of its total net value. Investment in other schemes
(2) In addition, such scheme's objective may not be to invest primarily in any investment prohibited by this Chapter and where such scheme's objective is to invest primarily in investments restricted by this Chapter, such holdings may not be in contravention of the relevant limitation.
- 70.** (1) Notwithstanding clause *sixty-nine*, a scheme may invest all of its assets in a single collective investment scheme and be authorised as a feeder fund. Feeder funds
(2) In such a case-
- (a) the underlying scheme shall be authorised by the Commission;
 - (b) the offering document shall state that the scheme is a feeder fund into the underlying scheme; and
 - (c) the borrowing of the feeder fund may not exceed ten per cent of its total net asset value and shall be restricted to facilitating redemptions or defraying operating expenses.
- 71.** No increase in the overall total of initial charges, management company's annual fee or any other costs and charges borne by the holders or by the scheme shall result, if the schemes in which a scheme invests are managed by the same management company or by a connected person of that company. Limitation on overall costs and charges
- 72.** (1) A real estate scheme shall not, at any time after the commencement of these Rules, be operated as an open-ended scheme, except as provided by clause (2). Restriction on real estate investments
(2) A real estate scheme that was operated, immediately before the commencement of these Rules, as an open-ended scheme may continue to be so operated for a period of six months after the commencement of these rules.
(3) A real estate scheme shall comply with the following additional requirements:
- (a) the provisions of Part IV; and
 - (b) the provisions of Appendix V.
- 73.** A scheme may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person without the prior written consent of the trustee/custodian. Limitations on making loans
- 74.** A scheme may not acquire any asset which involves the assumption of any liability which is unlimited. Unlimited liability
- 75.** A scheme may not invest in any security of any class in any company or body if any director or officer of the management company owns more than one-half of one percent of the total nominal amount of all issued securities of that class, or, collectively the directors and officers of the management company own more than five per cent of those securities. Limitations on securities in which directors/officers have interests
- 76.** The portfolio of a scheme may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the scheme's portfolio. Limitations on nil-paid/partly paid securities
- 77.** A scheme may not borrow. Borrowing prohibition

The Laws of Zambia

78. (1) The provisions of this Part shall not, unless the contrary is provided, apply to an umbrella fund as if it were a single scheme, but shall apply to each subfund of the umbrella fund as if each such separate part were a single scheme. Applicability of restrictions to umbrella funds

(2) Notwithstanding subclause (1), clause *sixty-four* shall apply so that the total collective investment by the sub-funds in any class of security issued by any one issuer shall not exceed ten per cent of that class.

79. If the investment limits in this Part are breached, the management company shall take as a priority objective all such steps as are necessary within a reasonable period of time to remedy the situation, taking due account of the interests of the holders. Breach of investment limits

80. If the name of the scheme indicates a particular objective, geographic region or market, the scheme shall invest at least seventy per cent of its non-cash assets in securities and other investments to reflect the particular objective or geographic region or market the scheme represents. Name of scheme

PART III

ADDITIONAL REQUIREMENTS FOR NON-ZAMBIA BASED SCHEMES

SECTION A-APPOINTMENT OF A ZAMBIA REPRESENTATIVE

81. A scheme shall be required to appoint a representative in Zambia if its management company is not incorporated and does not have a place of business in Zambia. When representative to be appointed

82. If a representative is appointed, the scheme has to maintain the representative throughout the period it is authorised in Zambia. Maintenance of representative

The Laws of Zambia

- 83.** (1) The representative is not required to take responsibility for the acts and omissions of the management company or in the case of the scheme being a company, the directors of the scheme. Functions of a representative
- (2) It shall however, be authorised on behalf of the scheme and the management company to-
- (a) receive applications and money for units or shares from persons in Zambia;
 - (b) issue receipts in respect of the application moneys received in accordance with paragraph (a);
 - (c) issue contract notes to the applicants in accordance with the terms of the scheme;
 - (d) receive redemption notices, transfer instructions and conversion notices from holders for immediate transmission to the management company or the scheme;
 - (e) accept any notices or correspondence, including service of process, which holders may wish to serve on the scheme, trustee/custodian or the management company;
 - (f) notify the Commission immediately if redemption of units or shares ceases, or is suspended;
 - (g) make available for public inspection in Zambia, free of charge, and offer for sale at a reasonable price to holders, all constitutive documents of the scheme;
 - (h) provide holders with information on the scheme including the scheme's financial reports and sales literature;
 - (i) deliver to the Commission, if it so requests, all accounts and records relating to the sale and redemption of units or shares of the scheme in Zambia; and
 - (j) represent the scheme and the management company in relation to all matters in which any holder normally resident in Zambia has a pecuniary interest or which relates to units or shares sold in Zambia.
- 84.** The distribution function of the representative amounts to dealing in securities, and therefore the representative shall be licensed as a dealer under the Act. Criteria for appointment
- 85.** The representative shall be properly appointed to represent the scheme and the management company. Representative to be duly authorised
- 86.** The representative shall provide the Commission with a written undertaking that it will perform the duties required of a representative under this Schedule. Written undertaking
- 87.** Should the representative retire or be dismissed, it shall be replaced as soon as possible, by another representative whose appointment is subject to the approval of the Commission. Retirement and replacement of the representative
- 88.** (1) Details of all contracts between the representative, the scheme and or the management company shall be supplied to the Commission. Zambia representative agreement
- (2) Any subsequent amendments of these contracts shall be notified to the Commission.

SECTION B-ADMINISTRATIVE REQUIREMENTS

- 89.** (1) The zambia covering document of a scheme shall contain the information required in Appendix II. Zambia covering document
- (2) A scheme that is not based in Zambia may supplement the information contained in the overseas offering document with a Zambia covering document supplied with the overseas offering document.

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90. Where investment plans are offered, the provisions of clause *thirty-one* shall be complied with. Investment plans

SECTION C-REPORTING, FEES AND ADVERTISING

91. A scheme shall in all cases comply with the requirements of clauses *forty-nine* to *sixty-two*, which provide for the continuing obligations of all schemes with respect to reporting, fees, advertising and public announcements in Zambia. Continuing obligations

SECTION D-JURISDICTION

92. Nothing in the constitutive documents may exclude the jurisdiction of the courts of Zambia to entertain an action concerning the scheme. Jurisdiction not capable of exclusion

PART IV

ADDITIONAL REQUIREMENTS FOR REAL ESTATE COLLECTIVE INVESTMENT SCHEMES

93. In addition to the documents specified in rule *five*, an application for authorisation of a real estate scheme shall be accompanied by a property valuation report. Application to Commission for authorisation
94. In addition to the requirements of clause *twenty-four*, the offering documents for a real estate scheme shall include a property valuation report which shall contain the information listed in Appendix V. Offering document
95. The valuation of real estate assets shall be determined quarterly by an independent professional person approved by the trustee/custodian as qualified to value real estate. Valuation of real estate agents
96. The maximum interval between the receipt of a properly documented request for redemption of units or shares in a real estate scheme shall not exceed twelve calendar months. Redemption
97. Deferment of payment beyond one calendar month shall be subject to the approval of the Commission which shall only be given if the scheme's cash resources cannot be maintained at an adequate level by orderly disposal of real estate assets. Deferment of redemptions
98. If payment is deferred and the properties being sold realise less than the price upon which the redemption request was based, the redemption payment shall be scaled down proportionately so that there is equitable treatment of the continuing holders of the shares or units and those who have sold. Apportionment of losses

The Laws of Zambia

- 99.** Advertisements shall include a warning statement that- Warning statements
- (a) the price of units or shares, and the income from them (if the scheme pays a dividend), may go down as well as up;
 - (b) investors are reminded that in certain circumstances their right to their units or shares may be suspended; and
 - (c) money for redemption of units or shares may not be paid for twelve months and may not be paid in full.
- 100.** A real estate scheme may invest up to a maximum of eighty per cent of its net asset value in any type of real estate provided that at all times a minimum of twenty per cent of its net asset value shall be invested in cash or government treasury bills. Restriction on investments

APPENDIX I

INFORMATION TO BE CONTAINED IN THE APPLICATION FOR AUTHORISATION

General details of the scheme

1. Name of the scheme.
2. Names of the sub-funds (if any).
3. Structure of the scheme.
4. Applicable law and the date and country of incorporation.
5. Quotation on any securities exchange and authorisation granted by other regulatory bodies.
6. Undertakings given to other regulatory bodies.
7. Launch: date and place.
8. Dealing: daily/weekly/other.
9. Valuation of assets: daily/weekly/other.
10. Pricing: forward/historic/other.
11. Investment plans to be offered in Zambia.

For each scheme or sub-fund

12. (a) Fee structure-
 - (i) level of all charges payable by investor; and
 - (ii) level/basis of calculation of all charges payable by the scheme.
- (b) For equity/bond funds-
 - (i) investment objective and borrowing powers; and
 - (ii) Currency of denomination.
- (c) Minimum initial subscription and the minimum subsequent holding.

Details of the parties to the scheme

13. The management company (Section B of Part 1 of the Schedule)-
 - (a) Name.
 - (b) Registered/business address.
 - (c) Name of the ultimate holding company.
 - (d) Previously approved by the Commission to manage authorised schemes? If no, the resumes of the directors and most recent audited financial report.

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- (e) Person(s) for contact with the Commission.
- 14.** In the case of a self-managed scheme, the resumes of the directors of the scheme and person(s) for contact.
- 15.** The trustee/custodian (Section A of Part 1 of the Schedule)-
 - (a) Name.
 - (b) Registered/business address.
 - (c) Name of the ultimate holding company.
 - (d) Previously approved by the Commission as trustee/custodian of authorised schemes? If no, names of the directors and most recent audited financial report.
- (e) Person(s) for contact with the Commission.
- 16.** The investment adviser (if any)-
 - (a) Name.
 - (b) Registered/business address.
 - (c) Name of the ultimate holding company.
- 17.** For the trustee/custodian, management company and investment adviser-
 - (a) which, if any, of these companies are connected persons.
 - (b) name anyone who holds appointments, as director or offer, with more than one of these companies.
- 18.** The Zambia representative/distribution company (Part III of the Schedule)-
 - (a) Name.
 - (b) Registered/business address.
 - (c) Name of the ultimate company.
 - (d) Person(s) for contacts with the Commission.
 - (e) If a separate distribution company is appointed in Zambia-
 - (i) name; and
 - (ii) registered/business address.
- 19.** The auditor-
 - (a) Name.
 - (b) Registered/business address.
- 20.** The principal dealer (if any)-
 - (a) Name.
 - (b) Registered/business address.
 - (c) The approximate percentage of the scheme's transactions in value of securities carried out by the principal broker within the latest financial year of the scheme.
 - (d) Whether the trustee/custodian, the directors of the scheme, the management company or the investment adviser is a connected person of the principal broker.
- 21.** Legal representatives in Zambia (if any)-
 - (a) Name.
 - (b) Person(s) for contacts with the Commission.

APPENDIX II

INFORMATION TO BE DISCLOSED IN THE OFFERING DOCUMENT

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(Note: This list is not intended to be exhaustive. The directors of the scheme or the management company are obliged to disclose any information which may be necessary for investors to make an informed judgement.)

Constitution of the scheme

1. Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

Investment objectives and restrictions

2. Details of investment objectives and policy, including summary of the investment and borrowing restrictions.

If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Operators and principals

3. The names and registered addresses of the following parties (where applicable)-

- (a) the directors of the scheme/management company and its board of directors;
- (b) the trustee/custodian;
- (c) the investment adviser;
- (d) the Zambia representative;
- (e) the Zambia distribution company, if different from (d) above;
- (f) the auditors;
- (g) the registrar; and
- (h) the lawyers to the scheme.

Characteristics of units or shares

4. Minimum investment (if any).

5. A description of the different types of units or shares, including their currency of denomination.

6. Form of certification.

7. Frequency of valuation and dealing, including dealing days.

Application and redemption procedures

8. The name(s) of the Zambia daily newspaper(s) in which prices will be published.

9. Procedure for subscribing/redeeming units or shares, and in the case of umbrella funds, conversion of units or shares.

10. The maximum interval between the request for redemption and the despatch of the redemption proceeds.

11. A summary of the circumstances in which dealing in units or shares may be deferred or suspended.

12. It shall be stated that no money should be paid to any intermediary in Zambia who is not a licensed dealer or investment adviser.

Distribution policy

13. The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

Fees and charges

14. (a) The level of all fees and charges payable by an investor, including all charges levied on subscription and redemption, and conversion (in the case of umbrella funds); and

(b) The level of all fees and charges payable by the scheme, including management fees, custodian fees and start-up expenses.

15. Disclosure of entitlement to brokerage or other transactions benefits of any connected persons to the scheme.

Taxation

16. Details of Zambian and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to holders.

Reports and accounts

APPENDIX III

REQUIRED CONTENTS OF THE CONSTITUTIVE DOCUMENTS

1. Name of scheme

2. Participating parties-

A statement to specify the participating parties including the management company, trustee/custodian, and investment adviser (if appointed).

3. For unit trusts only-

- (a) A statement that the deed is binding on each holder as if he had been a party to it and so to be bound by its provisions and authorises and requires the trustee and the management company to do as required of them by the terms of the deed.
- (b) A provision that a holder is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

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- (c) A declaration that the property of the scheme is held by the trustee on trust for the holders of the units *pari passu* according to the number of units held by each holder. (This may be modified as appropriate for schemes offering income and accumulation units).
- (d) A statement that the trustee will report to holders in accordance with paragraph (f) of clause *four* of the Schedule.
- (e) A statement that the trustee should retire in the manner as stipulated in clause *five* of the Schedule.

4. For all other collective investment schemes-

- (a) A declaration that the property of the scheme is held by the custodian on trust for the scheme.
- (b) A statement to list the obligations of the custodian as set out in clause *four* of the Schedule.
- (c) A statement that the custodian should retire in the manner as stipulated in clause *five* of the Schedule.

5. Role of management company-

- (a) a statement to list the obligations of the management company as set out in clause *sixteen* of the Schedule.
- (b) a statement that the management company should retire in the manner as stipulated in clause *seventeen* of the Schedule.

6. Investment and borrowing restrictions-

A statement to list the restrictions on the investment of the deposited property and the maximum borrowing limit of the scheme.

7. Valuation of property and pricing-The following requirements on valuation of property and pricing shall be stipulated-

- (a) the method of determining the value of the assets and liabilities of the property of the scheme and the net asset value accordingly;
- (b) the relationship between the prices at which the management company bids or offers units or shares and the most recent net asset value per unit or share;
- (c) the permitted spread between bid and offer prices;
- (d) the circumstances under which the relationship to asset value or the spread may change; and
- (e) the front-end load management charge to purchase units or shares and, if different, the charge to investors to re-invest the proceeds of realising a holding in the scheme.

8. Dealing, suspension and deferral of dealing-The following shall be stated-

- (a) the circumstances under which the dealing of units or shares can be deferred or suspended; and
- (b) the maximum interval between the receipt of a properly documented request for redemption of units or shares and the payment of the redemption money to the holder should not exceed one calendar month.

9. Fees and charges-The following shall be stated-

- (a) the maximum percentage of the initial charge payable to the management company out of the issue price of a unit or share;
- (b) the maximum fee payable to the management company out of the property of the scheme, expressed as an annual percentage;
- (c) fee payable to trustee/custodian;
- (d) preliminary expenses to be amortized against the property of the scheme; and
- (e) all other material fees and charges payable out of the property of the scheme.

10. Meeting-Provision shall be made as to the manner in which holders' meetings are to be conducted in accordance with clause *forty-seven* of the Schedule.

11. Transactions with connected persons-The following shall be stated-

- (a) cash forming part of the property of the scheme may be placed as deposits with the trustee/custodian, management company, the investment adviser or with any connected persons of these companies (being an institution authorised to accept deposits) so long as that institution pays interest thereon at no lower rate than is, in accordance with

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- (b) money can be borrowed from the trustee/custodian, management company, the investment adviser or any of their connected persons (being a bank) so long as that bank charges interest at no higher rate, and any fee for arranging or terminating the loan is of no greater amount than is in accordance with normal banking practice, the commercial rate for a loan of the size and nature of the loan in question negotiated at arm's length.

 - (c) any transactions between the scheme and the management company, the investment adviser, directors of the scheme or any of their connected persons as principal may only be made with the prior written consent of the trustee/custodian.
- 12.** Distribution policy and date-The approximate date(s) in the calendar year on which annual income, if any, will be distributed.
- 13.** Annual accounting period-The date in the calendar year on which the annual accounting period ends. In the case of an umbrella fund, the accounting period shall be the same for all constituent funds.
- 14.** Base currency-A statement of the base currency of the scheme.
- 15.** Modification of the constitutive documents-A statement of the means by which modification to the constitutive documents can be effected.
- 16.** Termination of scheme-A statement of the circumstances in which the scheme can be terminated.

APPENDIX IV

(Schedule, Clause 23)

CONTENTS OF FINANCIAL REPORTS

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General

1. Annual reports shall contain all the information required in this Appendix. Interim reports shall at least contain the Statement of Assets and Liabilities and the Investment Portfolio. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend shall be disclosed.
2. All reports shall contain comparative figures for the previous period except for the investment Portfolio.
3. The mention of any unauthorised schemes in the reports shall be indicated as "Not authorised in Zambia and not available to Zambian Residents".
4. The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, shall be disclosed. It is however, not mandatory to adopt the format as shown or to disclose the items in the same order.

Statement of Assets and Liabilities

5. The following shall be separately disclosed-
 - (1) total value of investments
 - (2) bank balances
 - (3) formation costs
 - (4) dividends and other receivables
 - (5) amounts receivable on subscription
 - (6) bank loans and overdrafts or other forms of borrowing
 - (7) amounts payable on redemption
 - (8) distributions payable
 - (9) total value of all assets
 - (10) total value of all liabilities
 - (11) net asset value
 - (12) number of units or shares in issue
 - (13) net asset value per unit or share

Revenue Statement

6. The following shall be separately disclosed-
 - (1) total investment income net of withholding tax, broken down by category
 - (2) total other income, broken down by category
 - (3) equalisation on issue and cancellation of units or shares
 - (4) an itemised list of various costs which have been debited to the scheme including-
 - * fees paid to the management company
 - * remuneration of the trustee/custodian
 - * amortization of formation costs
 - * directors' fee and remuneration
 - * safe custody and bank charges
 - * auditors' remuneration
 - * interest on borrowings
 - * fees paid to investment adviser, if any
 - * other amounts paid to any connected persons of the scheme
 - * legal and other professional fees
 - * any other expenses borne by the scheme
 - (5) taxes
 - (6) amounts transferred to and from the capital account
 - (7) net income to be carried forward for distribution

Distribution Statement

7. The following shall be separately disclosed-

APPENDIX V

ADDITIONAL INFORMATION TO BE DISCLOSED IN THE OFFERING DOCUMENT FOR A REAL ESTATE SCHEME

1. A description of each property, including-
 - (a) an address sufficient to identify the property;
 - (b) a brief description (e.g. whether land or building, approximate area etc.);
 - (c) existing use (e.g. shops, offices, factories, residential, etc.);
 - (d) ground rent;
 - (e) summary of terms of headleases, and underleases, (including repairing obligations where material);
 - (f) the approximate age of the buildings;
 - (g) capital value in existing state;
 - (h) current planning or zoning use;
 - (i) options or rights of pre-empting concerning the property; and
 - (j) other matters which may materially affect the value.
2. Where the property is not in the process of being developed, details of rentals of the property.
3. Where the property is being developed:
 - (a) details of development potential;
 - (b) material restrictions on development;
 - (c) existing stage of development;
 - (d) estimated completion date;
 - (e) estimated cost of completing the development;
 - (f) estimated capital value in existing state;
 - (g) estimated capital value after completion;
 - (h) material or special conditions affecting the development;
 - (i) any conditions imposed as to construction of facilities for public use;
 - (j) any sales arrangements or letting arrangements; and
 - (k) any construction costs incurred so far.
4. Where the property is held for future development the following details (where available):
 - (a) details of development potential;
 - (b) material or special conditions affecting development;
 - (c) any conditions imposed as to constructing facilities for public use.
5. A classification of the properties according to the purpose for which they are held, as follows:
 - (a) for development;
 - (b) for investment;
 - (c) for owner occupation;
 - (d) for sale.
6. Details of any agreement or proposals as to any proposed transaction regarding the property between the management company and any other member of a group to which the management company belongs.
7. The name of the valuer, his address and professional qualifications.
8. The effective date of valuation.

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SECTION 39-THE SECURITIES (TAKEOVERS AND MERGERS) RULES

Statutory Instrument
170 of 1993

Rules by the Securities and Exchange Commission

1. These Rules may be cited as the Securities (Takeovers and Mergers) Rules, Title
1993.

2. (1) In these Rules, unless the context otherwise requires-

Interpretation

"acquisition of voting rights" includes the exercise of control or direction over voting rights other than by way of a revocable proxy given for no consideration for the purpose of one meeting of shareholders only;

"acting in concert" means persons who, pursuant to an agreement or understanding, actively co-operate to obtain or consolidate control of a company through the acquisition of voting rights of the company;

"control" shall be deemed to mean a holding, or aggregate holdings, of thirty-five percent or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control;

"director" includes any person who occupies the position of a director by whatever name called;

"document" includes any announcement, advertisement or offer document issued or published by any party to an offer or possible offer in connection with such offer or possible offer;

"offer" includes-

- (a) takeover and merger transactions however effected, including schemes of arrangement which have similar commercial effect to takeovers and mergers, and offers by a parent company for shares in its subsidiary;
- (b) partial offers; and
- (c) mandatory offers;

"offer period" means the period from the date when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or (if this later) the date when such offer becomes or is declared unconditional in all respects or is declared to have lapsed;

"person" includes an individual and a company;

"rights over shares" include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him;

"these Rules" includes the general principles set out in the Second Schedule and the provisions set forth in the Third Schedule;

"securities exchange offer" means an offer in which the consideration includes securities of the offeror or any other corporate body;

"substantial shareholder" means a person who holds ten per cent or more of the voting rights of a company;

"Stock Exchange" means any securities exchange on which the offeror or offeree company is listed; and

"voting rights" means all the voting rights currently exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

(2) For the purposes of these Rules, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established-

- (a) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;

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- (b) a company with any of its directors (together with their close relatives, related trusts and companies controlled by any of the directors, their close relatives and related trusts);
- (c) a company with any of its pension funds, provident funds and employee share schemes;
- (d) a fund manager with any collective investment scheme, or other body, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (e) a financial or other professional adviser, including a dealer, with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser;
- (f) directors of a company (together with their close relatives, related trusts and companies controlled by such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- (g) partners; and
- (h) an individual with his close relatives, related trusts and companies controlled by him, his close relatives or related trusts.

(3) For the purposes of these Rules, a company shall be deemed to be an associated company of another company if one of them owns or controls twenty per cent or more of the voting rights of the other or if both are associated companies of the same company.

3. The objects of these Rules are set out in the First Schedule hereto.

Objects of Rules

4. (1) These Rules shall apply to all takeover and merger transactions affecting public companies.

Application

(2) All persons engaged in takeover or merger transactions shall observe the general principles set out in the Second Schedule hereto and shall comply with the provisions of the Third Schedule hereto.

5. Any person who contravenes any of the provisions of the Third Schedule shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten million kwacha or to imprisonment for a term not exceeding twelve months or to both.

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FIRST SCHEDULE

(Rule 3)

OBJECTS OF RULES

- 1.** (1) The primary purpose of these Rules is to afford fair treatment for shareholders who are affected by takeover and merger transactions. Spirit of the Rules
- (2) The Rules seek to achieve fair treatment by requiring equality of treatment of shareholders, requiring the disclosure of timely and adequate information to enable shareholders to make an informed decision as to the merits of an offer and ensuring that there is a fair and informed market in the shares of companies affected by takeover and merger transactions.
- (3) The Rules also provide an orderly framework within which takeovers and mergers are to be conducted.
- 2.** (1) Those who wish to take advantage of the securities markets in Zambia shall conduct themselves in matters relating to takeovers and mergers and in accordance with the Rules. Sanctions on conduct
- (2) If they do not do so they may find, by way of sanction, that the facilities of such markets are withheld.
- (3) The Rules Governing the Listing of Securities on the Lusaka Stock Exchange Limited require compliance with the Rules.
- (4) Where a breach of these Rules amounts to a contravention of any of the provisions of the Securities Act, 1993, or of subsidiary legislation made under that Act, sanctions under such provisions will apply and be enforced.
- 3.** The responsibilities provided for in the Rules apply to: Scope of Rules
- (a) directors of public companies;
- (b) persons or groups who seek to gain or consolidate control of public companies;
- (c) their professional advisers; and
- (d) those who are actively engaged in the securities market in all its aspects.
- 4.** In addition, any other persons who issue circulars or advertisements to shareholders in connection with takeovers and mergers must observe the highest standards of care and consult with the Commission prior to the release thereof. Promoters
- 5.** The role and responsibility of financial and other professional advisers is of particular importance, and it is part of their responsibility to use all reasonable efforts, subject to any relevant requirements of professional conduct, to ensure that their clients understand, and abide by, the requirements of these Rules and to cooperate to that end by responding to enquiries from the commission. Advisers
- 6.** These Rules are not concerned with the financial or commercial advantages or disadvantages of a takeover or merger, as the case may be, which are matters for the company and its shareholders. Commercial Considerations

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- 7.** (1) The provisions of these Rules are additional to the provisions of the Securities Act, 1993, and to other subsidiary legislation made under that Act. Other Rules
- (2) In particular all persons involved in takeover activities must have full regard at all times to the relevant provisions of the Securities (Advertisements) Rules, 1993, the Securities (Conduct of Business) Rules, 1993, and the Securities (Registration of Securities) Rules, 1993.
- 8.** (1) The provisions of these Rules fall into two categories. Structure of Rules
- (2) First, there are general principles of conduct contained in the Second Schedule which are to be observed in takeover and merger transactions.
- (3) Secondly, the Rules lay down in the Third Schedule a series of specific provisions.
- (4) Some of the provisions of the Third Schedule are no more than examples of the application of the general principles and the Commission will interpret them in accordance with those principles.
- (5) The Rules through the general principles, may apply to a situation not specifically covered by a provision of the Third Schedule.
- (6) The Commission may modify or relax the application of a provision of the Third Schedule in exceptional circumstances, for example, when it considers that its strict application would operate harshly.
- 9.** (1) These Rules apply to takeovers and mergers affecting public companies in Zambia. Companies to which these Rules apply
- (2) As a result, although it is generally the nature of the offeree company, the potential offeree company, or the company in which control may change or be consolidated that is relevant, there are also circumstances in which it is necessary to consider the treatment of the offeror's shareholders in order to carry out the objectives of these Rules.
- 10.** (1) These Rules are administered by the Commission. The Commission
- (2) The Commission undertakes the investigation of takeover and merger transactions and the monitoring of related dealings in connection with these Rules.
- (3) It is available for consultation and to give rulings on all matters before or during takeovers and mergers, as the case may be.
- 11.** (1) When there is any doubt as to whether a proposed course of conduct is in accordance with the general principles contained in the Second Schedule or the provisions of the Third Schedule, parties or their advisers should always consult the Commission in advance. Consulting the Commission
- (2) In this way, the parties can obtain clarification of the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of these Rules.
- (3) However, while the Commission will respond to questions respecting an interpretation of these Rules, it should not be expected to answer purely hypothetical questions, or to give provisional rulings when the parties with an interest in such rulings cannot be identified.
- 12.** (1) Any request for a ruling under these Rules shall take the form of a written submission addressed to the Commission. Requests for rulings
- (2) The submission shall be made by or on behalf of the party or parties required to make representations in support of the submission.
- (3) The submission shall be comprehensive and contain all relevant information which the Commission will require to reach a fully informed decision.

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13. (1) Subject to confidentiality considerations, it will be the policy of the Commission to publish their important rulings, and the reasons for them, so that their activities may be understood by the public. Publication of rulings

(2) All rulings will normally be announced to the parties as soon as possible.

(3) Important rulings suitable for publication will then be constituted as a written statement and will be issued as promptly as possible.

14. (1) Information given to the Commission will be treated in the strictest confidence. Co-operation with other authorities

(2) Because of the overriding importance of maintaining a fair market and suppressing improper activities, this information is available to the Commission to be held subject to its own obligations of confidentiality.

(3) Subject to those obligations, the Commission may from time to time give information received by it to other regulatory authorities, so they can discharge their own duties.

(4) Conversely, the Commission may from time to time receive information from other regulatory bodies which is relevant to a matter then current.

(5) Co-operation with other regulatory authorities is regarded as an important part of the Commission's functions.

SECOND SCHEDULE

(Rule 4)

GENERAL PRINCIPLES FOR CONDUCT OF TAKEOVERS AND MERGERS

1. (1) It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in offers. Spirit of the Rules

(2) Accordingly, persons engaged in offers should be aware that the spirit as well as the precise wording of the general principles and Rules must be observed.

(3) Moreover, the General Principles and the spirit of the Rules will apply in areas or circumstances not explicitly covered by any of the provisions of the Third Schedule.

2. A board which receives an offer, or is approached with a view to an offer being made, shall seek competent independent advice in the interests of its shareholders. Competent independent advice

3. (1) While the boards of an offeror and of an offeree company and their respective advisers and associates have a primary duty to act in the best interests of their shareholders, they must accept that there are limitations in connection with takeover and merger transactions on the manner in which the pursuit of those interests can be carried out. Limitations on director's actions

(2) Inevitably, therefore, the general principles contained in the Second Schedule and the provisions of the Third Schedule will impinge on the freedom of action of boards and persons involved in such transactions.

4. All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly. Equality of treatment

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- 5.** If control of a company changes or is acquired or is consolidated, a general offer to all other shareholders is normally required. Control
- 6.** If, after a takeover or merger transaction is reasonably in contemplation, a written offer has been made to, or shares have been purchased from one or more shareholders of, an offeree company, any subsequent general offer made by or on behalf of the same offeror, or any person acting in concert with it, to the shareholders of the same class shall not be on less favourable terms. No less favourable terms
- 7.** (1) During the course of an offer, or when an offer is in contemplation, neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not made available to all shareholders. Information to shareholders
(2) This principle does not apply to the furnishing of information in confidence by the offeree company to a bona fide potential offeror or vice versa.
- 8.** (1) An offeror shall announce an offer only after careful and responsible consideration. Announcements
(2) The same applies to making acquisitions which may lead to an obligation to make a general offer.
(3) In either case the offeror and its financial advisers shall be satisfied that it can and will continue to be able to implement the offer in full.
- 9.** (1) Shareholders shall be given sufficient information, advice and time to reach an informed decision on an offer. Sufficient information and time
(2) No relevant information shall be withheld.
(3) Documents and advertisements issued in connection with takeovers and mergers shall be prepared with the highest possible degree of care, responsibility and accuracy.
- 10.** (1) All persons concerned with takeovers and mergers shall make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of an uninformed market. Full and prompt disclosure
(2) Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.
- 11.** Rights of control shall be exercised in good faith and the oppression of minority or non-controlling shareholders is always unacceptable. Oppression of minority
- 12.** Directors shall have regard to the interests of the shareholders as a whole, and not to their own interests or those derived from personal and family relationships. Duties of directors
- 13.** At no time after a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that a bona fide offer might be imminent, may any action be taken by the board of the offeree company in relation to the affairs of the company, without the approval of shareholders in general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits. No frustration of offer by offeree board
- 14.** All parties concerned with takeovers and mergers are required to co-operate to the fullest extent with the Commission, and to provide all relevant information. Full co-operation

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THIRD SCHEDULE

(Rule 4)

SPECIFIC REQUIREMENTS FOR CONDUCT OF TAKEOVERS AND MERGERS

SECTION I-OFFERS

1. An offer shall be put forward in the first instance to the board of the offeree company or to its advisers, and before the offer is announced to the public. Offer
2. If an offer or an approach with a view to an offer being made is not made by the ultimate offeror or potential offeror, the identity of that person or the ultimate controlling shareholder must be disclosed at the outset to the board of the offeree company. Identity of offeror
3. A board which is approached is entitled to be satisfied by the offeror that the offeror will be in a position to implement the offer in full. Implementation of offer
4. (1) Absolute secrecy before an announcement of an offer or proposed offer is of vital importance.
(2) All persons who have confidential information, particularly if it is price sensitive, are required to take the greatest care to prevent a leak.
(3) This requirement is additional to the law against insider dealing. Confidentiality

SECTION II-INDEPENDENT ADVICE, INDEPENDENT COMMITTEES AND SHAREHOLDER APPROVAL

5. (1) A board which receives an offer, or is approached with a view to an offer being made, shall, in the interests of shareholders, retain an independent financial adviser to advise the board as to whether the offer is, or is not, fair and reasonable. Board of offeree company
(2) Such advice, including reasons, shall be obtained in writing and such written advice shall be made known to shareholders by including it in the offeree's circular along with the recommendation of the offeree's board regarding acceptance of the offer.
(3) If any of the directors of an offeree company is faced with a conflict of interest, the offeree board shall, if possible, establish an independent committee of the board to discharge the board's responsibilities in relation to the offer.
6. (1) If any director of an offeror which is a public company in Zambia is faced with a conflict of interest as a result of a proposed offer, the offeror's board shall, if possible, establish an independent committee to assess the proposed offer. Board of offeror company
(2) If the conflict is a material one the Commission shall be consulted to establish, having regard to, among other things, the materiality of the offer to the offeror, whether the offeror's board shall retain an independent financial adviser to advise the shareholders or independent shareholders, of the offeror, as the case may be, and whether the offer should be made conditional upon approval of the offer by a majority of the votes cast by such shareholders in attendance either in person or by proxy at a duly convened general meeting of the offeror's shareholders.

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- 7.** A person who has, or had, a connection, financial or otherwise, with the offeror or offeree company of a kind likely to create a conflict of interest will not be regarded as a suitable person to give independent advice. Persons not suited to give independent advice
- 8.** (1) A financial adviser will not normally be considered to be independent if he is considered to have a relationship with the offeror, the offeree company, or the controlling shareholder(s) of either of them, which is reasonably likely to affect the objectivity of his advice. Independent financial advisers and independent shareholders
- (2) If there are shareholders who are not independent because they have an interest in the proposed transaction other than their interest as a shareholder of the offeror or offeree company, as the case may be, the independent adviser shall endeavour to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders, i.e. those shareholders of the company who have no interest in the proposed transaction other than their interest as a shareholder of the company.
- 9.** (1) Members of an independent committee of a company's board of directors shall consist of directors of the company who have no direct or indirect interest in the offer for consideration by the independent committee other than as a shareholder of the offeree. Independent committees
- (2) For this purpose, it is presumed that employees of an offeree company that is an associated company of the offeror have an indirect interest in the offer and are therefore not independent.
- (3) The same presumption is applicable to employees, directors, agents, partners, close relatives and affiliates of any person that exercises control or direction over the business and operations of the offeree company if such person has a direct interest in the offer.
- (4) For such purpose an affiliate is a person which controls, is controlled by, or is under common control with, the person in question.
- (5) In case of doubt the Commission should be consulted.
- (6) If a committee of a board of directors is not truly independent it shall not be characterised as such.
- (7) If it is not possible to form an independent committee, responsibility for representing the interests of any independent shareholders shall reside primarily with the independent financial adviser.

SECTION III-ANNOUNCEMENTS

- 10.** An announcement is required- Offers or possible offers
- (a) when a firm intention to make an offer is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offer;
- (b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under clause *fifty-seven* (for which purpose, the announcement that an obligation has been incurred shall not be delayed while full information is being obtained-additional information can be the subject of a later supplementary announcement);
- (c) when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is undue movement in its share price, or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;
- (d) when, before an approach has been made, the offeree company is the subject of rumour and speculation or there is undue movement in its share price, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation; or
- (e) when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers).

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- 11.** (1) Before the board of the offeree company is approached, the responsibility for making an announcement can lie only with the offeror. Responsibilities of offeror and offeree for announcements
- (2) The offeror shall, therefore, keep a close watch on the offeree company's share price and volume for any signs of undue movement.
- (3) The offeror is also responsible for making an announcement once an obligation has been incurred to make a mandatory offer under clause *fifty-six*.
- (4) Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price and volume.
- 12.** (1) When an announcement is required the offeror or offeree, as the case may be, shall notify the Commission and the Stock Exchange immediately that an announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or offeree could develop prior to publication of the announcement serious consideration shall be given to requesting a suspension of trading in such shares pending publication of the announcement. Suspension of trading
- (2) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement or requesting the Stock Exchange to grant a temporary suspension of listing at any time the board thinks appropriate.
- 13.** (1) When a firm intention to make an offer is announced, the announcement must contain- Announcement of firm intention to make an offer
- (a) the terms of the offer;
- (b) the identify of the ultimate offeror or the ultimate controlling shareholder;
- (c) details of any existing holding of voting rights in the offeree company-
- (i) which the offeror owns or over which it has control or direction;
- (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
- (iii) in respect of which the offeror or any person acting in concert with him has received an irrevocable commitment to accept the offer; and
- (iv) in respect of which the offeror or any person acting in concert with him holds an option to purchase or warrants or other convertible securities;
- (d) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer or the posting of it is subject; and
- (e) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree and which might be material to the offer.
- (2) The announcement of an offer shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.
- 14.** (1) Acquisitions of voting rights of an offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a cash offer (clause *fifty-one*), to increase an offer (clause *fifty-two*) or to make a mandatory offer (clause *fifty-six*). Announcement of certain purchases
- (2) Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired and the price paid, together with the information required by clause *thirteen* (to the extent that it has not previously been announced).

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- 15.** (1) Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bonafide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting.
- (2) In particular the board must not, without such approval-
- (a) issue any shares;
 - (b) issue or grant options in respect of any unissued shares;
 - (c) create or issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for, shares of the company;
 - (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of material amount;
 - (e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
 - (f) cause the company or any subsidiary or associated company to purchase or redeem any shares in the company or provide financial assistance for any such purchase.
- (3) Where the company is under a prior contractual obligation to take any such action, or where there are other special circumstances, the Commission must be consulted at the earliest opportunity.
- (4) In appropriate circumstances the Commission may grant a waiver from the general requirement to obtain shareholders' approval.

No frustrating action

- 16.** When there has been announcement of a firm intention to make an offer, except with the consent of the Commission, the offeror must proceed with the offer unless the posting of the offer is subject to the prior fulfilment of a specific condition and that condition has not been met.

No withdrawal of an offer

- 17.** (1) Relevant information relating to the offeree, including particulars of shareholders, given by the offeree shall, on request, be furnished equally and promptly to any other bonafide potential offeror, who shall specify the questions to which it requires answers.
- (2) An offeror is not entitled, by asking in general terms, to receive all the information supplied to its competitor.

Information to offerors

SECTION IV-OBLIGATIONS OF DIRECTORS

- 18.** Except with the consent of the Commission the directors of an offeree company shall not resign until the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later.

Resignation of directors of offeree company

- 19.** When directors (and their close relatives, related trusts and companies controlled by them, their close relatives or related trusts) sell shares to a purchaser as a result of which the purchaser is required to make an offer under clause *fifty-six*, such directors must ensure that as a condition of the sale the purchaser undertakes to fulfil his obligations under that Rule.

Sale of shares by directors

SECTION V-TIMING AND CONTENT OF DOCUMENTS

- 20.** Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

Availability of information

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- 21.** (1) The offer document, which must not be dated more than three days prior to despatch, should normally be posted by or on behalf of the offeror company within twenty-one days (or, in the case of a securities exchange offer, thirty-five days) of the announcement of the terms of the offer. Offer document time limit
(2) The consent of the Commission is required if the offer document may not be posted within this period.
- 22.** The offer document submitted by the offeror to the offeree shareholders shall contain all such information as is necessary to enable offeree shareholders to reach a properly informed decision. Contents of offer document
- 23.** The offeree company shall send to its shareholders within fourteen days of the posting of the offer document a document containing all such information as it considers to be necessary to enable its shareholders to reach a properly informed decision on the offer Offeree circular
- 24.** (1) The offeree company's document must include the views of its board on the offer and the written advice of its financial adviser as to whether the offer is, or is not, fair and reasonable and the reasons therefor. Views of offeree's board and financial adviser
(2) Reference is made in this regard to clause *five*.
(3) If the offeree company's financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Commission should be consulted.
- 25.** (1) Documents subsequently sent to shareholders of the offeree company by either party must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period. Subsequent documents
(2) If there have been no such changes this must be stated.

SECTION IV-STANDARD OF CARE AND RESPONSIBILITY

- 26.** (1) Any document must be prepared with the same standard of care as if it were a prospectus. Prospectus standard
(2) This applies whether the document is issued by the company, or by an adviser on its behalf, or by any other person in relation to an offer.
(3) Those who issue any such document must ensure that it remains accurate and up to date throughout the offer period, and must notify shareholders of any material change as soon as possible.
- 27.** (1) Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Sufficient information
(2) Such information must be available to shareholders early enough to enable them to make a decision in good time.
(3) The obligation of an offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders.
- 28.** Documents shall state that all directors of the offeror, or, as appropriate, the offeree, jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading. Directors' joint and several responsibility

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- 29.** (1) If it is proposed that any director shall be excluded from such a statement, the Commission's consent is required. Commission's consent required for exclusion of directors
(2) In such cases, the exclusion and reasons for it shall be stated in the document.

SECTION VII-PROFITS FORECASTS

- 30.** (1) A profit forecast must be compiled with due care and objectivity by the directors, whose responsibility it is. Standard of care
(2) The financial advisers must report whether or not they are able to satisfy themselves that the forecast has been so compiled with such report must be set out in the relevant document.

- 31.** (1) When a profit forecast appears in any document, the assumptions, including the commercial assumptions, upon which the forecast is based must be stated in the document. Assumptions
(2) Such assumptions shall be specific rather than vague.
(3) All-embracing assumptions and those relating to the general estimates made in the profit forecast shall be avoided.
(4) Furthermore it will not normally be acceptable for assumptions to relate to matters which the directors, by virtue of their particular knowledge and experience in the business, are best able to take a view on, or over which they are able to exercise control, since such matters should be reflected directly in the profit forecast.

SECTION VIII-ASSET VALUATIONS

- 32.** When revaluations of assets of either the offeror or offeree company are made in connection with an offer, details of the revaluations or an appropriate summary thereof must be included in the offer document or other document circulated to the shareholders of the offeree company by its board. Disclosure of revaluations

- 33.** (1) The revaluations must be carried out or confirmed by an independent, professionally-qualified valuer or other expert and the basis of valuation clearly stated. Preparing revaluations
(2) The document shall include a statement that the valuer or other expert has given and not withdrawn his consent to the issue of the document with the inclusion of the valuation in the form and context in which it is included.

SECTION IX-ISSUANCE OF DOCUMENTS

- 34.** (1) Two copies of all documents must be filed with the Commission for comment prior to release or publication and must not be released or published until the Commission has confirmed that it has no further comments thereon. Filing of documents for comments
(2) The final copy of the document must be filed with the Commission and the Stock Exchange in duplicate.

- 35.** All announcements must be published as a paid announcement in at least one daily newspaper of general circulation throughout Zambia. Publication of announcements

SECTION X-OFFER TIMETABLE

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- 36.** An offer must be open for at least 21 days following the date of posting of the offer. Minimum period
- 37.** If the offer is conditional, it must specify the latest day when the offeror can declare the offer unconditional. Conditions
- 38.** (1) Where a conditional offer becomes or is declared unconditional, it shall remain open for acceptance for not less than fourteen days thereafter. Fourteen day period for acceptance
(2) In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is then unconditional, a statement may be made that the offer will remain open until further notice.
(3) In the latter case, at least fourteen days notice in writing must be given before the offer is closed to those shareholders who have not accepted the offer.
- 39.** Except with the consent of the Commission, an offer shall not be kept open after the expiry of sixty days from the date of the posting of the initial offer document unless it has previously become unconditional. Final day
- 40.** (1) If, in the course of an offer, the offeror revises its terms, all offeree shareholders, whether or not they have already accepted the offer, will be entitled to the revised terms. Revised offer
(2) A revised offer must be kept open for at least fourteen days from the date of posting written notification of the revision to shareholders.
- 41.** An acceptor shall be entitled to withdraw his acceptance after twenty-one days from the first closing date of the offer, if the offer has not by then become unconditional. Such entitlement to withdraw shall be exercisable until the offer becomes unconditional. Acceptor's right to withdraw

SECTION XI-ANNOUNCEMENT OF RESULTS OF OFFER

- 42.** (1) The offeror shall immediately inform the Commission and the Stock Exchange that an offer has been revised or extended, has expired or has become or has been declared unconditional and shall publish an announcement on the following day to that effect. Nature of announcement
(2) The announcement shall state the number of shares which it or any person acting in concert with it has or controls, the number of shares for which acceptances of the offer have been received, and the number of shares otherwise acquired by the offeror and any person acting in concert with it during the offer period.
(3) The statement must also specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers.
- 43.** (1) The Commission shall be consulted if an offeror is unable to comply with any of the requirements of clause *forty-two*. Consequences of failure to announce
(2) The Commission may require that acceptors be granted a right of withdrawal, on terms acceptable to the Commission, until the requirements of this rule can be met.

SECTION XII-RESTRICTIONS ON DEALINGS BEFORE AND DURING THE OFFER

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- 44.** (1) No dealings of any kind in the securities of the offeree company may be transacted by any person with a commercial interest who has confidential price sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Restrictions on dealings before the offer
- (2) Such restriction does not apply to an offeror, or persons acting in concert with the offeror, in respect of such dealings if such dealings are transacted for purposes of the offer unless the offeror, or a person acting in concert with the offeror, is a director or employee of the offeree company.
- (3) No such dealings may take place in the securities of the offeror except where the offer is not price sensitive in relation to those securities.
- 45.** During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Commission and following twenty-four hours public notice that such sales might be made. Restrictions on dealings during the offer
- 46.** During an offer period for an offer consisting of shares of the offeror traded on a Stock Exchange (and for which there is no cash alternative) the offeror, and persons acting in concert with him, may not engage in any purchase of the offeror's shares until the later of the date the offeror abandons its intention to conduct the offer and the date the related offer period expires. Restrictions on dealings by offeror during non-cash offers
- 47.** If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities of the offeree company by any person privy to this information may take place prior to an announcement of the position. Dealings after termination of discussion

SECTION XIII-DISCLOSURE OF DEALINGS DURING OFFER PERIOD

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48. (1) During an offer period all parties to a takeover or merger transaction and their advisers and any persons acting in concert with any of them are free to deal, subject to clauses *forty-four*, *forty-five*, *forty-six*, *forty-seven*, *fifty-two*, *fifty-three* and *fifty-four* and to the disclosures and restrictions mentioned in this clause being made and complied with by them, as follows:

Dealings in relevant securities

(a) Own account-Dealings in relevant securities by any such person for his own account during an offer period must be disclosed forthwith in writing to the Commission.

(b) Discretionary accounts-Dealings in relevant securities by any such person for discretionary accounts (but not for non-discretionary accounts) of investment clients during an offer period must be disclosed forthwith in writing to the Commission.

(c) Material trading arrangement-Dealings in relevant securities by any company having a material trading arrangement with an offeree company must be disclosed forthwith in writing to the Commission.

(2) For the purposes of this rule-

(a) dealings include the purchase and sale of securities, the exercise or conversion of rights over securities, subscriptions for securities, and redemptions or purchases by a company of its own securities;

(b) disclosure of dealings must include the following information-

(i) the total of the relevant securities in question purchased or sold, or redeemed or purchased by the company itself;

(ii) the prices paid or received;

(iii) the identity of the person(s) dealing;

(iv) if the dealing is by a person acting in concert with the offeror or the offeree company, an explanation of how that status arises;

(v) if the disclosure is made by a five per cent shareholder, a statement to that effect; and

(vi) the resultant total amount of relevant securities owned or controlled by the person(s) in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents.

49. During an offer period, if a person, or group of persons acting in concert, owns or controls (directly or indirectly) five per cent or more of any class of relevant securities, or as a result of any transaction will so own or control five per cent or more, dealings in such securities of that company by such person or persons (or any other person through whom ownership or control is derived) must be disclosed to the Commission.

Dealings by five per cent shareholders

50. If a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this rule, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

Discretionary Accounts

SECTION XIV-CASH OFFER

51. (1) Where-

When cash offer required

(a) shares of any class under offer in the offeree company have been purchased for cash by an offeror, and any person acting in concert with the offeror, during the offer period and within six months prior to its commencement and such shares carry ten per cent or more of the voting rights or the offeree company;

(b) an offeror making a non-cash offer (for which there is no cash alternative) acquires shares of the offeree for cash during the offer period and thereby becomes obligated to increase its offer pursuant to clause *fifty-two*; or

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(c) in the view of the Commission there are circumstances which render such a course necessary in order to give effect to General Principal One set forth in the Second Schedule,

the offer or revised offer, as the case may be, shall be in cash or accompanied by a cash alternative and, in the case of (a) and (c), the offer price shall not be less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within six months prior to its commencement.

(2) The consent of the Commission is required if the offeror wishes to make its offer for a price other than the highest price paid by it, or any person acting in concert with it for shares of the class that is the subject of the offer during the offer period and within six months prior to its commencement.

SECTION XV-PURCHASES AT ABOVE OFFER PRICE

52. If the offeror or any person acting in concert with its purchases securities in the offeree company in the market or otherwise during the offer period at above the offer price, then the offeror must increase the offer to not less than the highest price (excluding stamp duty and dealing costs) paid for any securities so acquired. Highest price paid

53. (1) If the offer involves a further issue of securities of a class already traded on a Stock Exchange, the current value of the offer on a given day should normally be established by reference to the average traded price of such securities traded during the immediately preceding trading period. Offers involving a further issue of listed securities
(2) If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

54. Shareholders of the offeree company must be notified in writing of the increased price at least fourteen days before the offer closes, and an announcement must be made stating the number and class of securities purchased and the price paid. Shareholder notification

55. Except with the consent of the Commission neither the offeror nor any person acting in concert with it may enter into arrangements to purchase or sell securities of the offeree company, or to accept an offer, either during an offer or when one is reasonably in contemplation if such arrangements have special conditions which are not extended to all shareholders. Special dates

SECTION XVI-MANDATORY OFFER

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- 56.** Subject to the granting of a waiver by the Commission, if-
- (a) any person acquires, whether by a series of transactions over a period of time or not, thirty-five percent or more of the voting rights of a company;
- (b) two or more persons are acting in concert, and they collectively hold less than thirty-five per cent of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to thirty-five per cent or more of the voting rights of the company;
- (c) any person holds not less than thirty-five per cent, but not more than fifty per cent, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than five per cent from the lowest percentage holding of that person in the twelve-month period ending on and inclusive of the date of the relevant acquisition; or
- (d) two or more persons are acting in concert, and they collectively hold not less than thirty-five per cent, but not more than fifty per cent, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than five per cent from the lowest collective percentage holding of such persons in the twelve-month period ending on and inclusive of the date of the relevant acquisition,
- that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this rule, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares. Offers for different classes of equity share capital must be comparable and the Commission shall be consulted in advance in such cases.
- 57.** Except with the consent of the Commission-
- (a) offers made under clause *fifty-six* must be conditional upon, and only upon, the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than fifty per cent of the voting rights; and
- (b) no acquisition or voting rights which would give rise to a requirement for an offer under clause *fifty-six* may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.
- 58.** (1) Offers made under clause *fifty-six* must, in respect of each class or equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree within the preceding six months.
- (2) The cash offer or the cash alternative must remain open after the offer has become or is declared unconditional for not less than fourteen days thereafter.
- (3) The Commission shall be consulted where there is more than one class of voting capital involved or where there are no relevant purchases within the preceding six months.
- (4) The Commission's consent is required if the offeror considers that the highest price should not apply in a particular case.
- 59.** Except with the consent of the Commission, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, nor may an offeror and persons acting in concert with it exercise offeree company voting rights, until the offer document has been posted.
- 60.** The board and officials and registrars of an offeree company shall use their best endeavours to ensure the prompt registration of transfers during an offer period so that shareholders can freely exercise their voting and other rights.

When mandatory offer required

Conditions

Consideration

Restrictions on control by offeror

Prompt registration of transfers

SECTION XVII-CONDITIONS

61. An offer must not normally be made subject to conditions which depend on judgments by the offeror or the fulfilment of which is in its hands. Subjective conditions

62. (1) Except with the consent of the Commission, all offers (other than partial offers), whether voluntary or mandatory, shall be conditional upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and persons acting in concert with it holding more than fifty per cent of the voting rights of the offeree company. Acceptance condition
(2) A voluntary offer may be made conditional on an acceptance level of shares carrying a higher percentage of the voting rights.
(3) Mandatory offers made under clause *fifty-six* shall be subject to no other conditions, whether as to minimum or maximum levels or acceptances required to be received or otherwise.
(4) It follows that the offer should be unconditional as to acceptances where the offeror and persons acting in concert with it hold more than fifty per cent of the voting rights before such offer is made.

SECTION XVIII-DELAY BEFORE SUBSEQUENT OFFER

63. (1) Except with the consent of the Commission, where an offer has been announced or posted but has not become unconditional in all respects, and has been withdrawn or has lapsed, neither the offeror nor any person who acted in concert with it in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within twelve months from the date on which such offer withdrawn or lapses either- Temporary ban

(a) make an offer for the offeree company; or

(b) acquire any voting rights of the offeree company if offeror or persons acting in concert with it would thereby become obliged under clause *fifty-six* to make an offer.

(2) The restriction in this Rule may also apply where a person, having made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offering might be made, does not announce a firm intention either to make, or not to make, an offer within a reasonable time thereafter.

64. (1) The restrictions in clause *sixty-three* also apply following a partial offer which could result in a holding of not less than thirty-five per cent of the voting rights of the offeree company whether or not the offer has become or been declared wholly unconditional. Partial offers

(2) When such an offer has become or been declared wholly unconditional, the period of twelve months runs from the date.

65. (1) Except with the consent of the Commission, if a person, together with any person acting in concert with him holds more than fifty per cent of the voting rights of a company, neither that person nor an person acting in concert with him may, within six months of the closure of any previous offer made by him to the shareholders of that company which become or was declared wholly unconditional, make a second offer to shareholders, or purchase any shares of that company at a higher price than that made available under the previous offer. Six months delay before acquisition above offer price
(2) For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.

SECTION XIX-SUBSTANTIAL ACQUISITIONS

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66. (1) Following an acquisition or disposal of shares carrying voting rights in a company, or rights over such shares, a person must disclose that acquisition or disposal and his total holding to the company not later than 9.00 a.m. on the dealing day following the date of the acquisition or disposal, if-

Disclosures

(a) as a result of the acquisition he comes to hold, with any shares or rights over shares already held by him, shares or rights over shares representing twenty per cent or more but less than thirty-five per cent of the voting rights in a company; or

(b) as a result of the acquisition or disposal his holding of shares or rights over shares already represents twenty per cent or more of the voting rights and is increased or decreased to or beyond any whole percentage figure representing twenty per cent or more but not exceeding thirty-five per cent; or

(c) as a result of a disposal his holding of shares or rights over shares decreases from one representing twenty per cent or more of the voting rights to one representing less than twenty per cent.

(2) Where two or more persons act by agreement or understanding in the acquisition by one or more of them of shares carrying voting rights in a company, or rights over such shares, their holding and acquisitions must be aggregated and treated as a holding or acquisition by one person for the purpose of this Rule.

(3) Each person acting in such manner must ensure that the obligations arising under this Rule are fulfilled.

(4) The terms of such disclosures are the same (with any necessary modifications as may be appropriate) as for clause *forty-eight*.

SECTION 3-THE SECURITIES (ACCOUNTING AND FINANCIAL REQUIREMENTS) RULES

*Statutory Instrument
171 of 1993*

RULE 31-THE SECURITIES (SPECIFICATION OF APPROVED ASSETS, LIQUID ASSETS AND RANKING LIABILITIES) NOTICE

Notice by the Securities and Exchange Commission

1. This Notice may be cited as the Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) Notice.

Title

2. In this Notice, unless the context otherwise requires-

Interpretation

"licensed bank" means a bank registered under the Banking Act or licensed or registered under any Act amending or replacing that Act;

"the Rules" means the Securities (Accounting and Financial Requirements) Rules, 1993.

3. The following assets of a licensed dealer or investment adviser, which form part of his business of dealing in securities and are beneficially owned by the dealer or investment adviser, as the case may be, are hereby specified as approved assets for the purposes of rule *thirty-one* of the Rules, to the extent of their valuation in accordance with clause *six*:

Approved assets

- (a) cash and foreign currency in hand;
- (b) money or foreign currency on account with a licensed bank;
- (c) certificates of deposit, acceptances and floating-rate notes issued by a licensed bank;
- (d) amounts receivable in the ordinary course of business of dealing in securities, but excluding amounts receivable which are due to be settled against delivery of securities and remain outstanding for more than five bank trading days;
- (e) prepaid expenses;
- (f) shares in a licensed securities exchange at nominal value;
- (g) treasury bills issued by the government;
- (h) eighty per cent by value of net investment in bonds issued by the government with a remaining term of five years or more, ninety per cent by value of those with a remaining term of less than five years but not more than one year, one hundred per cent by value of those with a remaining term of one year or less;
- (i) sixty per cent by value of net investment in shares traded on a licensed securities exchange;
- (j) sixty per cent by value of net investment in a collective investment scheme authorised under Part X of the Act;
- (k) gold bullion and coins; and
- (l) certificates representing any of the assets included in paragraph (g), (h), (i) or (j), valued consistently with the prices ascribed to those assets under this notice;
- (m) repurchase agreements with the Bank of Zambia; and
- (n) interests in immovable (real) property in Zambia, subject to a maximum value of twenty-five per cent of the requisite minimum net capital required under rule *twenty-eight* of the Rules.

4. The following approved assets of a licensed dealer or investment adviser are hereby specified as liquid assets for the purposes of rule *thirty-one* of the Rules to the extent of their valuation in accordance with clause *six*; Liquid assets

- (a) cash and foreign currency in hand;
- (b) money or foreign currency on account with a licensed bank;
- (c) certificates of deposit, acceptances and floating-rate notes issued by a licensed bank;
- (d) amounts receivable in the ordinary course of dealing in securities, but excluding amounts receivable which are due to be settled against delivery of securities and remain outstanding for more than five bank trading days;
- (e) treasury bills issued by the government;
- (f) eighty per cent by value of net investment in bonds issued by the government with a remaining term of five years or more, ninety per cent by value of those with a remaining term of less than five years but not more than one year, one hundred per cent by value of those with a remaining term of one year or less;
- (g) sixty per cent by value of net investment in shares traded on a licensed securities exchange;
- (h) sixty per cent by value of net investment in a collective investment scheme authorised under Part X of the Act;
- (i) gold bullion and coins;
- (j) certificates representing any of the assets included in paragraph (e), (f), (g) or (h), valued consistently with the prices ascribed to those assets under this notice; and
- (k) repurchase agreements with the Bank of Zambia.

5. (1) Subject to subclause (2), the following liabilities of a licensed dealer or investment adviser are hereby specified as ranking liabilities for the purposes of rule *thirty-one* of the Rules: Ranking liabilities

- (a) amounts payable in the ordinary course of business of dealing in securities;
- (b) overdrafts and loans from licensed banks or overseas banks;
- (c) accrued expenses;
- (d) tax payable or provided for, including that on current year profits;
- (e) any liability that is secured on an approved asset within the meaning of clause *three*;
- (f) all other liabilities that are regarded as liabilities under generally accepted accounting principles; and

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- (g) provision for contingent liabilities in accordance with generally accepted accounting principles.

(2) Notwithstanding subclause (1) where a licensed dealer or investment adviser in the acquisition of any fixed asset that is used in the ordinary course of business of dealing in securities, incurs any liability that is not required to be settled within twelve months, the liability shall not, to the extent of the net book value of the asset, be included as a ranking liability for the purposes of calculating the liquidity margin of the dealer or investment adviser, as the case may be.

6. Subject to subclauses (2) and (3), all approved and liquid assets shall be valued in accordance with generally accepted accounting principles.

Valuation of approved and liquid assets

(2) The following assets shall be valued at the market value of each such asset:

- (a) shares traded on a licensed securities exchange;
- (b) investment in a collective investment scheme authorised under Part X of the Act; and
- (c) gold bullion and coins.

(3) An interest in immovable (real) property shall be valued at market value by an independent valuer accepted to the Commission.

SECTION 78-THE SECURITIES (ADVERTISEMENTS) RULES

Rules by the Securities and Exchange Commission

Statutory Instrument
166 of 1993
13 of 1994

1. These Rules may be cited as the Securities (Advertisements) Rules.

Title

2. (1) In these Rules, unless the context otherwise requires-

"advertisement" includes every form of advertising, whether in a publication, brochure, handout, or letter-head, or by the display of notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematograph films or videos, or by way of sound broadcasting or television, or by the distribution of recordings or in any other manner, but shall not include dealers' circulars to customers, nor any communications between licensees or between licensees and issuers of securities;

"image advertisement" means an advertisement that does no more than-

- (a) promote public awareness of the licensee;
- (b) describe the services the licensee provides or the types of investment the licensee markets;
- (c) commend the licensee in general, but not any particular service the licensee provides or types of investment the licensee markets; or
- (d) offer to supply further information on request;

"securities advertisement" means any advertisement for or in connection with securities or securities business;

"licensee" means a person licensed under Part IV of the Act;

"promotion" means advertising, issuing a prospectus, application form or proposal form, or circulating or making available promotional material;

"prospectus" means any prospectus, notice, circular, or other document which is an offer to the public of any securities for subscription, purchase or exchange;

"Securities" has the meaning given in section two of the Act, and includes investments in collective investment schemes;

"securities business" means dealing in, or advising in relation to, securities;

"short form advertisement" means advertisement that contains the licensee's name and in respect of the business of the licensee's securities business does no more than some or all of the following:

- (a) display the licensee's address, telephone number, symbol or logogram;
- (b) describe the licensee's business and the fees charged;
- (c) contain a statement that the licensee is regulated in the conduct of the licensee's business by the Commission;
- (d) state, in relation to securities that the licensee will or may buy or sell (or arrange to buy or sell), their names, indicative prices, difference of prices from previous prices, their income and yields and their earnings (or price/earnings ratio);
- (e) state, simply as a matter of fact, and not so as to imply any offer to deal, that the licensee alone or with others named, arranged the issue of or a transaction in a particular security.

(2) For the purposes of these Rules, an advertisement issued outside Zambia shall be treated as issued in Zambia if-

- (a) it is directed to persons in Zambia; or

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- (b) it is made available to persons in Zambia as a newspaper, journal, magazine or [illegible word] published and circulating principally outside Zambia or in a sound or television broadcast transmitted principally for reception outside Zambia.

3. Subject to rule *four*, no person other than a licensee shall issue or cause to be issued a securities advertisement in Zambia. Restrictions on advertising
4. Rule *three* does not apply to an advertisement issued or caused to be issued by, and relating only to securities issued by-
- (a) the Government of Zambia or the government of any country or territory outside Zambia; or
- (b) the central bank of any country or territory. Exceptions from restrictions on advertising
5. A licensee shall not issue or cause to be issued, whether in Zambia or elsewhere, a securities advertisement unless the requirements of the Schedule to these Rules are complied with in relation to that advertisement. Advertisements to comply with Schedule
6. (1) If the Commission considers that any securities advertisement issued, caused to be issued or proposed to be issued by a licensee is misleading or is otherwise in breach of these Rules, the Commission may by notice in writing give the licensee a direction under this rule. Advertisement directions
- (2) A direction under this rule may contain all or any of the following prohibitions or requirements-
- (a) a prohibition on the issue of advertisements of a specified kind;
- (b) a requirement that advertisements of a particular description shall be modified in a specified manner;
- (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;
- (d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction;
- (e) a requirement, in respect of a particular advertisement, that a correction be published in the manner and form specified by the Commission.

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7. A copy of every securities advertisement issued or caused to be issued by a licensee shall be forwarded forthwith by the licensee to the Commission. Advertisements to be copied to the Commission

8. Any person who issues or causes to be issued in Zambia a securities advertisement the issue of which is prohibited by rule *three*, or which does not comply with rule *five* or with a direction under rule *six*, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand penalty units. Offences

(As amended by Act No. 13 of 1994)

SCHEDULE

(Rule 5)

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in an advertisement shall not be disguised either through lack of prominence in relation to the remainder of the advertisement or by the inclusion of matter calculated to minimise the significance of the statement or the other matter required to be included. Prominence of required statements

2. (1) The content of a securities advertisement and the manner of its presentation shall be such that the advertisement is not likely to be misunderstood. Advertisements to be clear and not misleading
(2) A securities advertisement shall not contain any statement, promise or forecast unless the licensee issuing it has taken all reasonable steps to ensure that each such statement, promise or forecast is not misleading in the form or context in which it appears.
(3) A securities advertisement shall not contain any statement, purporting to be a statement of fact that the licensee issuing it does not reasonably believe at the time, on the basis of evidence of which he has a record in his possession, to be true.
(4) If the securities or securities business to which an advertisement relates is available in limited quantities, or for a limited period or on special terms for a limited period, the advertisement may say so but, if that is not the case, the advertisement shall not contain any statement or matter that implies it is so.

3. (1) The terms of a securities advertisement and the manner of its presentation shall be such that it appears to be an advertisement issued with the object of promoting the securities, securities business or licensee to which it relates. Advertisements to be distinguished from other matter
(2) Where the medium in which the advertisement is carried contains or presents other matter the advertisement shall be distinguished from that other matter so that the part that is an advertisement clearly appears as such.

4. Except in the case of a short form advertisement or an image advertisement, the nature of the securities or securities business to which the advertisement relates shall be clearly described. Advertisements to identify the securities or securities business to which they relate

5. No securities advertisement shall be issued with the intention not of persuading persons who respond to the advertisement to pursue the subject matter of the advertisement but, with the intention instead, of persuading them to enter into an agreement, or use business services, of a description not mentioned in the advertisement. Promotions to be genuine

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- 6.** A securities advertisement shall not contain any matter that states or implies that the securities or securities business which is the subject of the advertisement or any matter in the advertisement has the approval of any Government department or of the Commission. Advertisements not to imply governmental approval
- 7.** A securities advertisement that states some only of the rights and obligations attaching to an investment in securities or some only of the terms and conditions of a securities agreement shall-
(a) state sufficient of them to give a fair view of the nature of the investment in securities, of the financial commitment undertaken by an investor in acquiring the investment in securities and of the risks involved; and
(b) state how a written statement of all of them can be obtained. Synopses to be fair
- 8.** A securities advertisement shall not compare or contrast one investment in securities with an alternative investment, or one securities service with an alternative securities service, unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated. Comparison with other investments or services
- 9.** (1) A securities advertisement that refers to taxation shall contain a warning that the levels and bases of taxation can change. Taxation
(2) A securities advertisement that contains any matter based on an assumed rate of taxation shall state what that rate is.
(3) A securities advertisement that refers to reliefs from taxation-
(a) shall state that the reliefs are those that currently apply; and
(b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer.
- 10.** Where a securities advertisement states that an investor who enters into an investment agreement to which the advertisement relates will be given an opportunity to cancel the agreement, the advertisement shall define the period during which the investor will have that right and the time when the period will begin. Cancellation rights
- 11.** A securities advertisement shall not contain information about the past performance of securities investments of any description unless- Past performance
(a) it is relevant to the performance of the securities investment the subject of the advertisement;
(b) except where the source of the information is the advertiser itself, the source of the information is stated;
(c) if the whole of the information is not set out-
(i) what is included is not unrepresentative, unfair or otherwise misleading; and
(ii) the exclusion of what is excluded does not have the effect of exaggerating the success of performance over the period to which the information that is included relates;
(d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities have changed;

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(e) in the case of an advertisement of units or shares in a collective investment scheme, any comparison made between the value of an investment in those units or shares at different times is on an offer to bid basis, that is to say, on the basis of what it would have cost to acquire an amount of the units at the earlier time and what a disposal of that amount of those units would have realised at the later time, and the fact that that is the basis of the comparison is stated;

(f) the period which is selected as illustrating past performance is a period of not less than three years which period must end no more than three months before the date of the issue of the advertisement; and

(g) the advertisement contains a warning that the past is not necessarily a guide to the future.

12. (1) A securities advertisement shall not contain any statement indicating the scale of the activities or the extent of the resources of a licensee, or of any group of which the licensee is a member, so as to imply that the resources available to support the performance of the licensee's obligations are greater than they are.

Indications of the scale of business activities

(2) Statements which relate to resources of members of a group other than the licensee shall clearly state that fact.

13. (1) This paragraph applies to any securities advertisement that is not a short form or image advertisement.

Risk warnings

(2) An advertisement shall contain a statement in accordance with this paragraph warning of the risks involved in acquiring or holding the securities investment the subject of the advertisement.

(3) Where the advertisement relates to a securities investment in the case of which deductions for charges and expenses are not made uniformly throughout the life of the investment but are loaded disproportionately onto the early years, the advertisement shall draw attention to that fact and that accordingly, if the investor withdraws from the investment in the early years, he may not get back the amount he has invested.

(4) Where the advertisement relates to an investment that can fluctuate in value in money terms, the statement shall draw attention to that fact and to the fact that the investor may not get back the amount he has invested.

(5) Where the advertisement offers an investment as likely to yield a high income or as suitable for an investor particularly seeking income from his investment, the statement shall draw attention to that fact that income from the investment may fluctuate in value in money terms.

(6) Where the advertisement relates to an investment denominated in a currency other than that of the country in which the advertisement is issued, the advertisement shall draw attention to the fact that changes in rates of exchange between currencies may cause the value of the investment to diminish or to increase.

(7) Where the advertisement contemplates the investor entering pay unspecified additional amounts later, the statement shall draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that investment can lose the investor more than his first payment.

(8) Where the advertisement relates to an investment that is not readily realisable-

(a) if the investment is not traded on an established securities exchange, the statement shall draw attention to the fact that there is no established market for investment so that it may be difficult for the investor to sell the investment or for him to obtain reliable information about its value or the extent of the risks to which it is exposed; or

(b) if the investment is traded on an established securities exchange but is dealt in so irregularly or infrequently-

(i) that it cannot be certain that a price of that investment will be quoted at all times; or

(ii) that it may be difficult to effect transactions at any price that may be quoted;

the statement shall draw attention to that fact.

14. A securities advertisement shall not describe a prospective investment return as being in any way guaranteed, secured, assured or promised, either expressly or impliedly, unless the advertisement has been approved in writing by the Commission prior to its issue.

Guaranteed returns

15. (1) Each securities advertisement in a publication shall state in the bottom right hand corner of the advertisement the date on which it was first issued. Dating

(2) Any securities advertisement by way of a prospectus, brochure, handout or similar marketing literature shall state the date on which it was first issued on either the front or back outside cover page.

(3) Any securities advertisement by way of a cinematograph film, video or TV broadcast shall bear the date on which it was first issued prominently at the beginning or end of the advertising material.

THE SECURITIES (COMPENSATION FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Ownership of compensation fund
4. Compensation fund to be kept in dedicated bank account
5. Accounts of compensation fund
6. Investment of compensation fund
7. Application of compensation fund
8. Claims against compensation fund
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12. Prosecution or conviction not a condition precedent to payment of compensation
13. Authority to pay claimant
14. Power of Committee to require production of securities, etc.
15. Subrogation of Commission to rights, etc., of claimant upon payment from fund
16. Payment of claims only from compensation fund
17. Provision where compensation fund insufficient to meet claims
18. Provision where claims exceed total amount payable
19. Power of Committee to enter into contracts of insurance
20. Application of insurance moneys

SECTION 27-SECURITIES (COMPENSATION FUND) REGULATIONS

Statutory Instrument
162 of 1993

Regulations by the Minister

1. These Regulations may be cited as the Securities (Compensation Fund) Regulations. Title

- 2.** In these Regulations, unless the context otherwise requires- Interpretation
- "compensation fund" and "fund" mean the compensation fund established by the Minister under section *sixty-four* of the Act;
- "Compensation Fund Committee" and "Committee" mean the Compensation Fund Committee appointed under section *sixty-five* of the Act;
- "default", in relation to the failure by a licensee to perform a legal obligation, means a default arising from-
- (a) the bankruptcy, winding up or insolvency of the licensee;
 - (b) any breach of trust committed by the licensee; or
 - (c) any defalcation, fraud or misfeasance committed by the licensee, or by any representative, director or employee thereof;
- "legal obligation" includes an obligation arising under a contract or quasi contract or under a trust (including a constructive trust);
- "Licensee" means a dealer of an investment adviser, as the case may be, licensed under Part IV of the Act;
- "prescribed" means prescribed by the Commission;
- "representative" has the same meaning as section *two* of the Act.
- 3.** The assets of the fund shall be the property of the Commission but shall be kept separate from all other property and shall be held in trust for the purposes set out in these Regulations. Ownership of compensation fund
- 4.** All moneys forming part of the fund shall, pending the investment or application thereof in accordance with these Regulations, be paid or transferred into a dedicated bank account with a registered bank in Zambia. Compensation fund to be kept in dedicated bank account
- 5.** (1) The Compensation Fund Committee shall establish and keep proper accounts of the fund and shall before 30th June, in each year cause a balance sheet in respect of such accounts to be made out as at the preceding 31st March. Accounts of compensation fund

(2) The Committee shall appoint an auditor to audit the accounts of the fund.

(3) The auditor appointed by the Committee shall regularly and fully audit the accounts of the fund and shall audit each balance sheet and cause it to be laid before the Committee not later than three months after the balance sheet was made out.

(4) The costs of audit pursuant to clause (3) shall be borne by the Commission.

6. Any moneys in the fund that are not immediately required for its purposes may be invested by the Committee in any manner in which trustees are for the time being authorised by law to invest trust funds.

Investment of
compensation fund

7. (1) Subject to these Regulations, the fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss as referred to in section *sixty-seven* of the Act from any default committed by a licensee, or by any representative director or employee thereof, in relation to any money or other property which, in the course of or in connection with the business of that licensee-

Application of
compensation fund

- (a) was entrusted to or received by the licensee, or any representative director or employee thereof, for or on behalf of any other person; or
- (b) (in the case of a licensee who, in respect of the money or other property, was either the sole trustee or trustee with any other person), was entrusted to or received by such licensee, or by any representative director or employee thereof, as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to clause (3) the total amount of compensation that may be paid out of the fund under these Regulations to all persons who suffer loss through default by a licensee, or by any representative director or employee thereof, shall not exceed in respect of that licensee the sum of one million kwacha, which shall cover-

- (a) all claims arising out of that default; and
- (b) all claims arising out of any earlier default by that licensee which have not been the subject of a determination under regulation *thirteen*.

(3) Notwithstanding clause (2), the Minister may, by order, direct the Committee to increase the total amount in such sum as he may determine, which shall be applied from the fund in respect of a particular licensee in payment to persons who suffer loss through default by that particular licensee, or by any representative, director or employee thereof:

Provided that the total amount to be so applied shall not in the case of any default exceed by more than fifty per cent the maximum sum specified in clause (2).

8. (1) Subject to these Regulations, every person who suffers pecuniary loss as provided in clause (1) of regulation *seven* shall be entitled to claim compensation from the fund and to take proceedings in the Court against the Committee to establish such claim.

Claims against
compensation fund

(2) Subject to these Regulations, the amount which any claimant shall be entitled to claim as compensation from the fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

(3) In addition to any compensation payable under these Regulations, interest shall be payable out of the fund on the amount of the compensation, less any amount attributable to costs and disbursements, at such rate as the Commission may determine, calculated from the day upon which the default was committed and continuing until the day upon which the claim is satisfied.

(4) Clause (1) does not entitle any licensee to make a claim against the fund.

9. (1) The Committee may cause to be published in a daily newspaper published and circulating generally in Zambia a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than three months after the said publication, on or before which claims for compensation from the fund, in relation to the person specified in the notice, may be made.

Notice calling for
claims against
compensation fund

(2) A claim for compensation from the fund in respect of a default shall be made in writing to the Committee-

(a) on or before the date specified in the notice, where a notice under clause (1) has been published; or

(b) within six months after the claimant became aware of the default, where no such notice has been published;

and any claim which is not so made shall be barred unless the Committee otherwise determines.

(3) No action for damages shall lie against the Committee or against any member or officer of the Committee by reason of any notice published in good faith and without malice for the purposes of this regulation.

10. (1) Where the Committee is satisfied that a claim for compensation under these Regulations is a proper claim, it shall, subject to these Regulations, make a determination allowing the claim. Power of Committee in respect of claims

(2) If the Committee is not satisfied as to the propriety of a claim for compensation, it shall make a determination disallowing the claim or, if it is satisfied as to the propriety of part of such a claim, it shall make a determination allowing the claim as to that part.

(3) The Committee after disallowing (whether wholly or partly) any claim for compensation from the fund shall serve notice of such disallowance in the prescribed form on the claimant or his legal representative.

(4) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the licensee or other person by whom it is alleged a default was committed shall be admissible to prove the commission of the default, notwithstanding that the licensee or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that licensee or person shall be available to the Committee.

11. (1) A person aggrieved by a decision of the Committee under regulation *ten* may appeal to the High Court. Appeals

(2) No appeal shall be commenced after the expiration of three months after service of notice of disallowance under clause (3) of regulation *ten*.

(3) The Court shall have and may exercise, subject to the same limitations, the same powers as the Committee in determining the claim in respect of which an appeal has been brought.

12. The Committee or, where appeal proceedings are brought, the Court, if satisfied that the default on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the default has not been convicted or prosecuted therefor or that the evidence on which the Committee or Court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the default. Prosecution or conviction not a condition precedent to payment of compensation

13. The determination of the Committee under regulation *ten* or the decision on appeal of the Court under regulation *eleven* shall be sufficient authority to the Commission to pay the claimant the amount allowed. Authority to pay claimant

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- 14.** The Committee may at any time and from time to time require any person to produce and deliver any securities, documents or statements of evidence necessary-
- (a) in order to substantiate any claim made against the fund; or
 - (b) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default, being a default which is or involves the commission of a criminal offence.
- (2) Where any claimant required to produce any securities, documents, or statements of evidence under clause (1) fails to produce them, the Committee may refuse to allow the claimant's claim until such time as he produces them.
- 15.** On payment out of the fund of any moneys in respect of any claim under these Regulations, the Commission shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the default.
- 16.** No moneys or other property belonging to the Commission, other than the fund, shall be available for the payment of any claim under these Regulations whether the claim is allowed by the Committee or, on appeal, by order of the court.
- 17.** Where the amount at credit in the fund is insufficient to pay the whole amount of all claims against it which have been allowed, the amount at credit in the fund shall, subject to clause (2), be apportioned between the claimants in such manner as the Committee thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available therein.
- 18.** (1) Where the aggregate of all claims which have been allowed in relation to default by or in connection with a licensee exceeds the total amount which may pursuant to clause (2) of regulation seven be paid under these Regulations in respect of that licensee, then the said total amount shall be apportioned between the claimants in such manner as the Committee thinks equitable.
- (2) Upon payment out of the fund of the said total amount in accordance with such apportionment, all other claims against the fund which may thereafter arise or be made in respect of the same default shall be absolutely discharged.
- 19.** (1) The Committee may in its discretion enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Zambia whereby the fund will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under these Regulations.
- (2) Any such contract may be entered into in relation to licensees generally, or in relation to any particular licensee named therein, or in relation to licensees generally with the exclusion of any particular licensee named therein.

Power of the Committee to require production of securities, etc.

Subrogation of Commission to rights, etc., of claimant upon payment from fund

Payment of claims only from compensation fund

Provision where compensation fund insufficient to meet claims

Provision where claims exceed total amount payable

Power of Committee to enter into contracts of insurance

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(3) No action shall lie against the Committee or against any member or officer of the Committee for injury alleged to have been suffered by any licensee by reason of the publication in good faith of a statement that any contract entered into under this regulation does or does not apply with respect to the licensee.

20. No claimant against the fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under these Regulations in respect of such contract, or have the right to claim in respect of any moneys paid by the insurer in accordance with any such contract.

Application of
insurance moneys

Endnotes

1 (Popup - Popup)

Date of commencement 17th December, 1993.