

Securities and Exchange (Investor Protection Fund) Rules, 2017

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

*Title*

1. These rules may be cited as the Securities and Exchange (Investor Protection Fund) Rules, 2017.

*Interpretations*

2. In these rules—

“the Act” means the Securities and Exchange Act [*Chapter 24:25*];

“Board” means the Investor Protection Fund Board established by section 86C(1) of the Act;

“Board member” means a member of the Board appointed in terms of subsection (3) or (5) of section 86C of the Act;

“Commission” means the Securities and Exchange Commission of Zimbabwe established in terms of section 3 of the Act;

“contributor” means any person who, or institution which in terms of section 86G of the Act, is required to pay contributions to the Fund;

“Fund” means the Investor Protection Fund established by section 86B(1) of the Act;

“malpractice” means—

- (a) theft, fraud, forgery, breach of trust or other dishonest conduct on the part of a contributor; or
- (b) a wrongful breach by a contributor of any provision of the Act or of any rules made under the Act;

“protected investor” means —

- (a) the holder of a security which is dealt with by a contributor; or
- (b) a person for whom a contributor holds a security; or
- (c) a person who has a right, whether vested contingent, to obtain a security from a participating firm.

*Board meetings*

3. (1) The Board shall meet for the dispatch of its business and adjourn, close and otherwise regulate its meetings and procedures as it deems fit:

Provided that the Board shall meet at least four times in each calendar year.

(2) The Chairperson of the Board—

- (a) may on his or her initiative and at any time; or
- (b) shall at the request in writing of not fewer than two members;

convene a special meeting of the Board, which meeting shall be convened at a date not sooner than seven days nor later than 30 days after receipt of such request.

(3) The Chairperson shall preside at meetings of the board save that if the Chairperson is absent from a meeting of the Board, the members present shall elect one of their number to preside at that meeting as chairperson.

(4) Two thirds of the members shall form a quorum at any meeting of the Board.

(5) All acts or matters authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on each question before the Board:

Provided that—

- (i) in the event of an equality of votes, the Chairperson or person presiding shall have a casting vote in addition to his or her deliberative vote;
- (ii) no member shall take part in consideration or discussion of, or vote on, any question before the Board which relates to his or her vacation of office as a member or where he or she holds interests.

(7) Any proposal circulated among all members of the Board and agreed to by a majority shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that any such proposal be placed before the Board, this subsection shall not apply to the proposal.

#### *Committees of Board*

4. (1) For the better exercise of its functions, the Board shall establish one or more committees and shall fix the functions of each committee:

Provided that the vesting of a function in a committee shall not prevent the Board itself from exercising that function and the Board may amend the functions of a committee or amend or rescind any decision of a committee.

(2) On establishing a committee, the Board shall appoint members of the committee and in so doing, may appoint persons who are not members of the Board.

(3) The chairperson of a committee of the board may at any time and place convene a meeting of that committee.

(4) Subject to this section, subsections (2) to (7) of section 3 shall apply, *mutatis mutandis*, to Committees and their members as they apply to the Board and its members.

*Minutes of proceedings of Board and committees*

5. (1) The chairperson of the Board shall ensure that minutes of all proceedings are taken and decisions made at any meeting of the Board or of a committee are recorded in the books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all the purposes as prima facie proof of the proceedings of, and decisions taken at, that meeting.

(3) The Board shall ensure that copies of all minutes of its meetings and of the meetings of the committees of the Board are submitted to the Commission, for its information after having been signed in terms of subsection (2).

*Allowances and remuneration for Board members*

6. Members of the Board or of a committee of the Board shall be paid retainer fees and sitting allowances at such rates as shall be fixed from time to time by a committee in which such function is vested and approved by the Minister.

*Delegation*

7. The Board may delegate to any person, committee or corporate body such powers and functions under these rules as it thinks fit:

Provided that the delegation of functions shall not preclude the Board itself from exercising such delegated functions and the Board may amend or rescind any decision of the committee in the exercise of that function.

*Payment contributions*

8. All contributions received shall be paid into an account held by the Fund in any bank or building society selected by the Board.

*Fund administrator*

9. (1) The Board may appoint, on such terms and conditions as it thinks fit, a fund administrator, for the proper management of the Fund.

(2) The Board may at any time vary the terms and conditions of such appointment or revoke the appointment and appoint a new Fund administrator.

*Investment managers*

10. (1) The Board may appoint one or more qualified entities as an investment manager of the Fund, on such terms and conditions as it thinks fit.

(2) An investment manager shall control and manage the assets of the Fund which are assigned to it in accordance with any directions given by the Board.

(3) The Board may at any time alter the terms and conditions of the appointment of an Investment Manager or revoke the appointment and appoint a new manager.

*Custodian*

11. (1) The Board shall appoint a qualified entity as custodian on such terms and conditions as it thinks fit, and shall place all documents of title to any of the assets held by the Fund or records, papers or documents of the Fund in safe custody with the custodian.

(2) The Board may at any time alter the terms and conditions of the appointment of the custodian or revoke the appointment and appoint a new custodian.

*Application for compensation*

12. (1) An eligible protected investor who wishes to make a claim for compensation in terms of section 86H of the Act shall lodge an application for compensation with the office nominated by the Board from time to time.

(2) An application for compensation in terms of subsection (1) shall be made in the form prescribed by the Board.

(3) In the event of the insolvency of a contributor, the Board shall publish notice of the insolvency in at least two newspapers with national circulation and shall send a claim form to each customer of the contributor based on the records of the contributor.

(4) A protected investor must submit a claim form to the Board duly completed by the deadline specified on the form and if he or she fails to do so, the Board may—

- (a) extend the time within which a protected investor can file the claim;
- (b) direct that he or she shall not be paid any compensation.

*Maximum amount of compensation*

13. Where the total amount payable to protected investors in respect of the malpractice or insolvency of a contributor exceeds ten per centum (10%) of the total amount held by the Fund at the time the payments become due, the amount payable to each protected investor shall be reduced proportionately so that the total amount of the compensation paid does not exceed ten per centum (10%) of the assets of the Fund.

*Investigations by the Board*

14. When the Board receives information that a contributor may be guilty of malpractice or is likely to become insolvent it shall immediately forward the matter to the Commission for the purposes of investigation in terms of the Act in order to establish whether or not the contributor is guilty of malpractice or is likely to become insolvent.

*Determination of applications for compensation*

15. (1) On receipt of an application for compensation from a protected investor the Board shall require from the protected investor proof of the loss he or she has suffered and that the loss is a direct consequence of malpractice on the part of the contributor or of the insolvency of the contributor.

(2) When the Board receives the proof required in terms of subsection (1) it shall submit its finding to the Commission for further investigation and shall inform the contributor that it must respond to the allegations made by the protected investor and to any question or request of the Commission.

(3) When the Board—

- (a) receives sufficient evidence from the Commission and the protected investor to establish the loss that has been sustained and that the loss was a direct consequence of malpractice on the part of the contributor or the insolvency of the contributor; and
- (b) considered any response received from the Commission and the contributor;

it shall assess the amount of the compensation due to the protected investor and, subject to the provisions of subsection (4), shall make the payment within three months.

(4) Where the Board has received two or more applications from protected investors claiming compensation due to malpractice on the part of a contributor or the insolvency of a contributor, no payment of compensation shall be made to the protected investors until the total number of protected investors in relation to the malpractice or insolvency of the contributor has been considered and the Board has determined the amount of the compensation payable to each protected investor in relation to the malpractice or insolvency of the contributor.

*Rejection of application*

16. (1) An application for compensation shall be rejected by the Board if—

- (a) it is not duly made within twelve months after malpractice or insolvency of the contributor, unless the protected investor provides a reasonable explanation of the circumstances as to why the application was made after the twelve month period has expired; or
- (b) the protected investor has any responsibility for, or has directly or indirectly profited from, events relating to

- the business of the contributor which resulted in its financial difficulties; or
- (c) the claim is found to contain any inaccuracy or omission unless the inaccuracy or omission is not material or is shown by the protected investor to be wholly innocent.
- (2) The Board may postpone paying compensation where—
- (a) it considers that the protected investor should first exhaust his or her rights against the contributor or any third party, or make and pursue an application for compensation to any other person; or
  - (b) the protected investor has been indicted with an offence arising out of or in relation to any business of the contributor and it appears that the protected investor benefited from its involvement and the court has not yet delivered its judgement.

#### *Expenses*

17. The expense relating to the management and administration of the Fund, including but not limited to the remuneration of Board members, committee members, a Fund Administrator, or an Investment Manager, costs of audits and actuarial investigations, investment expenses, indemnity and fidelity insurance, consultancy services, brokerage fees, stamps, taxes and advice in respect of the investment of the Fund's assets and advice in relation to the management of the Fund, shall be borne by the Fund.

#### *Transfer of the Investor Protection Levies*

18. The Commission shall transfer to the Fund the balance held by it in respect of Investor Protection Levies it has received.

#### *Promotion of public interest objectives*

19. The Board may, with the approval of the Minister, use monies for purposes other than compensation to investors and administration of the Fund, to promote investor awareness and to assist investors in litigation and to do anything necessary for the furtherance of investor protection initiatives.



*Investments of moneys of the Fund*

20. Any moneys in the Fund which are not immediately required for the purpose of the Fund shall be invested in Zimbabwe in such a manner as the Board may determine.

*Borrowings*

21. The aggregate sum owing by the Fund at any one time in respect of money borrowed by it shall not exceed the average annual net income received during the preceding three years.