



**THE SECURITIES ACT  
GUIDELINES ON MINIMUM FIT AND PROPER  
REQUIREMENTS OF COMPETENCE AND CAPABILITY FOR  
APPLICANTS FOR REPRESENTATIVES LICENSES  
(Sections 21(3), 22(2) and 79)**

**GUIDELINE NO. 1 OF 2015**

**DMSD**

**17 DECEMBER 2015**

This document contains the Representatives' Fit and Proper Guidelines and set out the minimum requirements on the obligations of licensee institutions, in the first instance, to assess and determine, in part, the fitness and propriety of persons being appointed as their representatives.

**GUIDELINES ON MINIMUM FIT AND PROPER REQUIREMENTS OF COMPETENCE AND CAPABILITY FOR APPLICANTS FOR REPRESENTATIVES LICENSES**

**THE SECURITIES ACT**

**GUIDELINES ON MINIMUM FIT AND PROPER REQUIREMENTS OF COMPETENCE AND CAPABILITY FOR APPLICANTS FOR REPRESENTATIVES LICENSES**

(Section 21 (3), 22 (2) & 79)

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# GUIDELINES ON MINIMUM FIT AND PROPER REQUIREMENTS OF COMPETENCE AND CAPABILITY FOR APPLICANTS FOR REPRESENTATIVES LICENSES

IN EXERCISE of the powers contained in section *seventy-nine* of the Securities Act, Cap. 354 of the Laws of Zambia, the following Guidelines are hereby made:

## PART A: PRELIMINARY

### 1. Title

- 1.1 These Guidelines may be cited as the Guidelines on Minimum Fit and Proper Requirements of Competence and Capability for Applicants for Representatives Licenses (hereinafter referred to as the “Representatives’ Fit and Proper Guidelines”).

### 2. Application

- 2.1 These guidelines shall apply to all persons applying for a licence to the Commission. The guidelines are in addition to and not in derogation of any other guidelines issued by the Commission or any requirements provided for under the Securities Act or any Rules made thereunder.
- 2.2 A person who is employed as or acts as a Representative of a Dealer or Investment Advisor shall apply to the Commission for a Representative’s Licence in the prescribed form and manner.

### 3. Key Definitions

- 3.1 For the purposes of these guidelines,

**“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; and includes key persons that are accountable or responsible for the management and oversight of a Dealer or an Investment Adviser. These comprise, but are not limited to:

- (i) chief executive officers (CEOs);
- (ii) Directors;
- (iii) any person performing a senior management function who has primary or significant responsibility for the management and performance of significant business activities of the dealer or investment adviser; and
- (iv) any person who has primary or significant responsibility for key control functions;

**“representative’s licence”** means a licence under Part IV of the Securities Act authorising the licensee to be employed as or act as the representative of a licensed dealer or licensed investment adviser;

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

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**“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

**“politically connected person” or “Politically exposed person” means:**

- (a) An individual who holds, or has held, public office, and includes:
  - i. a Head of State or Government;
  - ii. a Minister;
  - iii. a Deputy Minister;
  - iv. a politician;
  - v. a political party official;
  - vi. a judicial official or other senior official of a quasi-judicial body;
  - vii. a military official
  - viii. a member of an administrative, management or supervisory body of a State owned enterprise;
- (b) an individual who is, or has been, entrusted with a public function by a state, public body or a local or international organization;
- (c) an immediate family member of a person referred to in paragraph (a);
- (d) a close associate of a person referred to paragraph (a);

**“act”** means the Securities Act, Cap. 354 of the Laws of Zambia

3.2 All other meanings as contained in the Act will also apply in these guidelines

### **4. Rationale**

4.1 Representatives of dealers and investment Adviser institutions have a responsibility to provide information that influences the financial position and future direction of the Capital Markets. Also they are entrusted with the important responsibility to help investors make rational financial decisions. As such, persons in these positions should have the necessary qualifications, competences and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective as well as professional manner. Furthermore, the expectations of the suitability of persons to hold the title of representative are an extension of good corporate governance and are also aimed at ensuring that intermediaries

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(dealers and advisory institutions) in the Capital Markets space are managed by persons of integrity, credibility and competency.

- 4.2 These Representatives' Fit and Proper Guidelines set out the requirements on the obligations of licensee institutions, in the first instance, to assess and determine, in part, the **fitness** and **propriety** of persons being appointed as their representatives. Furthermore, it sets out the criteria to be used by the Commission in assessing and determining, in part, an applicant's fitness and propriety.
- 4.3 The minimum criteria outlined in these guidelines is under three sub-heads, being:
- Qualifications
  - Experience
  - Referees

### **PART B: FIT AND PROPER CRITERIA**

#### **5. Overview of key considerations**

- 5.1 For the purpose of establishing whether a person is fit and proper to be a representative, a dealer or an investment adviser shall have regard to the person's:
- i. **Probity, personal integrity and reputation** - person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness
  - ii. **Competence and capability** - person must have the necessary skills, experience, ability and commitment to carry out the role
  - iii. **Financial integrity** - person must manage his debts or financial affairs prudently.
- 5.2 The assessment of the above criteria shall have regard to the considerations set out in paragraphs 6, 7 and 8 of these Guidelines.
- 5.3 A dealer or investment adviser shall also ensure that the person is not disqualified to hold a Representative's licence pursuant to section 24 of the Act.
- 5.4 In determining whether a person meets the fit and proper requirements, the considerations set out under these guidelines should be assessed individually (according to their relative importance) as well as on a cumulative basis. Failure to meet one indicator may not, on its own, necessarily mean failure to meet the fit and proper criteria. Dealers and investment advisers should consider the specific circumstances surrounding a person's failure to meet specific indicators, including the lapse of time since the occurrence of events and the significance of the event from the perspective of potential risks posed to the dealer or investment adviser. This process will involve a good measure of judgment, which must be exercised objectively and always in the best interests of the dealer or investment adviser and the sound conduct of the dealer's or investment adviser's business. Considerations relevant to the assessment of the fitness and propriety of representatives may vary depending on the degree of their influence and responsibilities in the affairs of the dealer or investment adviser. For example, a dealer or investment adviser should consider whether there have been material changes in the nature or scope of the responsibilities assumed

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by an individual which would call for higher standards of competence or judgment in order to properly perform the duties associated with the said position, or which may give rise to new conflicts that could impair the individual's performance in the position. Similarly, circumstances which warrant an individual to be considered as fit and proper may differ between positions and institutions.

### **6. Probity, Personal Integrity and Reputation**

- 6.1 Probity, personal integrity and reputation are values that are demonstrated over time. These attributes demand a disciplined and on-going commitment to high ethical standards
- 6.2 In assessing a person's level of probity, integrity and reputation to act as a representative, a dealer or investment adviser should consider matters including, but not limited to the following:
- i. whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;
  - ii. whether the person has contravened any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
  - iii. whether the person has contravened any of the requirements and standards of a securities exchange, regulatory body, professional body, government or its agencies;
  - iv. whether the person, or any business in which he has a controlling interest or exercises significant influence, has been investigated, disciplined, suspended or reprimanded by a securities exchange, regulatory or professional body, a court or tribunal, whether publicly or privately;
  - v. whether the person has been engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
  - vi. whether the person has been dismissed, asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
  - vii. whether the person has been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a license to conduct any trade, business or profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;
  - viii. whether the person has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation while the person was connected with that business;
  - ix. whether the person has been a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Zambia, or of any licensed institution, the license of which has been revoked under any written law;

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- x. whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
- xi. whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities and failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements/obligations and whistle blowing procedures;
- xii. whether a person has contributed significantly to the failure of an organisation or a business unit;
- xiii. whether the person has at any time shown strong objection or a lack of willingness to maintain effective internal control systems and risk management practices; and
- xiv. whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a key responsible person which would be disadvantageous to the a dealer or investment adviser or the dealer or investment adviser's interest;

### **7. Competence and Capability**

- 7.1 Competence and capability are demonstrated by a person who possesses the relevant qualifications, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role as a key responsible person in the relevant capacity effectively
- 7.2 In assessing a person's competence and capability, the Commission will consider matters including, but not limited to the following:
- i. whether the person has the appropriate qualification, training and skills;
  - ii. whether the person has satisfactory practical experience or expertise in the nature of the business being conducted; and
  - iii. whether the person has attributes indicating satisfactory commitment to effectively fulfill the role and responsibilities of the position and in the case of directors, having regard to their other commitments.

### **8. Financial Integrity**

- 8.1 Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently
- 8.2 In assessing a person's financial integrity, the dealer or investment adviser must consider all relevant factors, including but not limited to the following:
- i. whether the person has been and will be able to fulfill his financial obligations, whether in Zambia or elsewhere, as and when they fall due;
  - ii. whether the person has been declared bankrupt or compounded with or made an arrangement for the benefit of his creditors, in Zambia or elsewhere; and
  - iii. whether the person has been the subject of a judgment debt which is unsatisfied, either in whole or in part, whether in Zambia or elsewhere.

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8.3 The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria

### **PART C: MINIMUM CRITERIA - QUALIFICATIONS, EXPERIENCE AND REFEREES**

#### **9. Qualifications, Experience and Referees**

9.1 For the purposes of establishing whether a person meets the minimum requirements for competence and capability, the Commission will consider the criteria set out below.

9.2 In determining the applicant's competence and capability, the considerations set out under these guidelines should be assessed on cumulative basis.

#### **Qualifications**

9.3 Applicants should disclose present qualifications using the prescribed format in **Appendix I(a)**.

9.4 It is compulsory for Applicants to undertake a SEC accredited certification course (e.g. in investments, stockbroking, etc) offered by SEC approved trainers. The list of SEC accredited courses as well as trainers is attached at **Appendix I (b)** and can also be obtained from the SEC offices and/or website.

9.5 Applicants possessing qualifications other than the SEC accredited Courses may be considered on condition that the applicant complies with 9.4 above within a period as stipulated by the Commission.

9.6 Applicants should ensure that copies of certificates are submitted along with the completed application forms.

#### **Experience**

9.7 Each applicant shall be required to provide a detailed *Curriculum Vitae* (CV) of the experience of the applicant in the format attached at **Appendix II**. The CV must include sufficient detail to enable the Commission to ascertain that the person complies with the required experience requirements.

9.8 The Commission will consider an applicant's work experienced based on information provided in **Appendix II**.

#### **Referees**

9.9 Each applicant shall be required to provide two referees. The following guidelines for selection of referee should be strictly adhered to:

- must be independent and not a workmate or employer or relative to the applicant ; or any person who shall have any interest in the success or otherwise of the application.
- must be holder of a senior position (or owner/partner) of a reputable organisation



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- must have known the applicant for five (5) years or more (the referee should state how they came to know the applicant)
- must not be a politically connected person
- must be able to give an opinion as regards the applicant's:
  - Character - e.g. integrity, honesty, ethical behavior, etc
  - Competence – e.g. skills, knowledge, capabilities, etc
  - Reputation
  - Professionalism

9.10 The applicant has the responsibility to ensure that they submit names of referees that comply with paragraph 9.9 above.

Dated the 17<sup>th</sup> day of December, 2015

**BY ORDER OF THE BOARD**

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**Appendix I (a)**

(Paragraph 9.3)

<b>Institute that issued the qualification</b>	<b>Qualification</b>	<b>Year obtained</b>

**PLEASE NOTE:** If you hold a qualification that is not listed in *Appendix I(b)* and believe the course offers adequate training on Capital Markets, please feel free to present the case to SEC for consideration.

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**Appendix I (b)**  
(Paragraph 9.5, 9.7)

**SEC ACCREDITED CERTIFICATION COURSES**

No.	Name of Certification Course	Approved Training provider
1.	Investment Advisers and Stockbrokers Course	Zambia College of Pensions and Insurance Trust
2.	Chartered Institute of Securities and Investment (CISI) Certification programme Levels 1 & 2	List of approved providers will be provided by the Commission from time to time.*

\* The Commission will consider work experience that is relevant to the licence being applied for. Hence the applicant must ensure submission of a detailed CV and complete the form as per **Appendix II**. However, it shall be compulsory to undertake a SEC accredited programme (at an approved provider<sup>Note1</sup>).

Note 1: Accredited training providers will be based on the following criteria:

- Must be registered with the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA);
- Must be registered with a requisite body e.g CISI for CISI qualifications training

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**Appendix II**

(Paragraph 9.8)

**Please submit a detailed CV and in addition complete the form below. Include sufficient detail to enable the Commission to ascertain that the applicant complies with the minimum experience requirements**

<b>Dates of employment (dd/mm/yyyy – dd/mm/yyyy)</b>	<b>Name of Employer</b>	<b>Position held</b>	<b>Details of responsibilities*</b>

\* Please provide detailed information on responsibilities.