



**SECURITIES AND EXCHANGE COMMISSION**  
*Protecting Investors in the Capital Markets*

## **GUIDANCE NOTE**

**No. 1 of 2017**

### **MINIMUM COMPLAINTS HANDLING PROCEDURES FOR CAPITAL MARKETS LICENSEES IN ZAMBIA**

**Directorate of Market Supervision and Development**

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# SECURITIES AND EXCHANGE COMMISSION

## GUIDANCE NOTE ON MINIMUM COMPLAINTS HANDLING PROCEDURES

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## PREAMBLE

- 1.1 Inspections findings over the past years reveal that the regulatory framework for internal complaints handling is incomplete in the capital markets. Whilst the industry has a broad requirement for regulated entities to put in place complaints procedures (in particular Rule 30 of Securities (Conduct of business) Rules, Statutory Instrument No. 168 of 1993 (hereinafter referred to as “the Rules”), there are no specific rules compelling entities to have written internal complaints handling procedures as well as make them available in writing to their customers. Similarly, there are no rules requiring that the function of handling complaints is designated to a senior person responsible for complaints handling.
- 1.2 Although, SEC requires licensees to establish a complaints register and has requested for this information during inspections, there are no minimum procedural requirements (e.g. time limits) and no clear requirements to submit complaints statistics to SEC. The lack of rules has resulted in substantial differences in internal complaints handling practices and it is likely that the information provided may be incomplete in most cases. Overall, our observation is that there are few complaints captured. The foregoing, may suggest that consumers do not fully understand some financial products and services nor are they fully aware of their rights, including the right to complain where established by a law or contract. In addition, it is noted that information about complaints handling is often not comprehensively disclosed, thus leaving consumers not fully aware of their rights.
- 1.3 In a bid to improve the regulatory framework in the Zambian capital markets with respect to internal complaints procedures, the SEC intends to issue regulations to cover requirements for regulated entities to ensure every licensee implements the following:
- Written policy on internal complaints handling procedures; including the requirement to handle complaints fairly and keep complainants informed on progress in their complaints
  - A final response to clear description of the outcome written in plain language, with an adequate reasoning provided regarding why such outcome was reached.
  - All complaints should be solved within precise time limits, registered in a central database maintained by the financial institution concerned and regularly assessed by the top management as well as reported to the Securities and Exchange Commission (SEC) periodically.
- 1.4 As precursor to the regulations on internal complaints procedures and pursuant to section 212 of the Act, the SEC wishes to provide the following guidance note on recommended minimum standards that should be implemented by each regulated entity with respect to its complaint handling. The foregoing and therefore this guidance note further draws on good international practices such as the World Bank’s Good Practices for Financial Consumer Protection and the international standard ISO 10002 Quality Management – Customer

Satisfaction – Guidelines for Complaints Handling in Organizations, as well as relevant experiences from multiple countries.

## 2. RATIONALE

- 2.1 Section 9(2)(g) of the Securities Act, No. 41 of 2016 (hereinafter referred to as “the Act”) mandates the SEC “*promote and encourage high standards of investor protection and integrity among members of securities exchanges, capital markets operators, clearing and settlement agencies, self-regulatory organisations and other participants in the capital markets;*”. Furthermore the Act mandates the Commission under Section 9(2)(k) “*take all reasonable steps to safeguard the interest of persons who invest in securities and guard against illegal and improper practices as provided in this Act*”.
- 2.2 Rule 30 of the Securities (Conduct of Business) Rules, Statutory Instrument No. 168 of 1993 states that “*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*”.
- 2.3 Therefore, pursuant to the Act and the Rules, it is mandatory for licensees to put in place an adequate internal dispute resolution system (herein after referred to as complaints handling system”) which takes into account the following eight (8) pillars of consumer protection:
- ✓ Equitable and fair treatment of consumers
  - ✓ Disclosure and transparency
  - ✓ Responsible business conduct
  - ✓ Protection of consumer data and privacy
  - ✓ Protection against frauds
  - ✓ Promotion of competition
  - ✓ Fair and equitable complaints handling and redress
  - ✓ Financial education and awareness

## 3. PURPOSE FOR THIS GUIDANCE NOTE

- 3.1 This guidance note has been prepared to guide capital markets licensees in handling consumer complaints and understanding the SEC’s expectations. The guidance note therefore provides the minimum standards in the capital markets that ensure a level playing field, thereby ensuring equal protection of consumer rights by licensees. At the same time, these standards will promote consumer awareness as a result of transparent complaint handling procedures thereby helping consumers understand and assert their rights.
- 3.2 Institution of an effective complaints handling system is beneficial for all key stakeholders:
- ✓ For Investors:
    - Provides an effective tool to assert rights

- Creates leverage against power-imbalances and information asymmetry
- ✓ For Licensees:
  - Provides a source of information about satisfaction of their clients and failures in provision of their products and services
  - Provides opportunity to improve
  - Serves as a Client Relationship Management tool
- ✓ For the Regulator:
  - Provides a source of information
  - Provides basis for policy (macro/micro-level intervention)

#### 4. KEY DEFINITIONS

4.1 A complaint is:

- ✓ An expression of dissatisfaction with a product or service not being delivered with an expected standard or with expected/or agreed on features (breach); and/or
- ✓ An expression of dissatisfaction with conduct of the financial institution that has allegedly breached a legal obligation (breach); and
- ✓ With the objective to agree on the resolution of the perceived shortcoming or damage (action).

#### 5. RECOMMENDED APPROACH

The following is a recommended approach to establish an effective complaints handling system

##### 5.1 ADOPTION OF COMPLAINTS HANDLING POLICY

- 5.1.1 Every licensee must have a written internal complaints handling policy and establish a complaints handling function (i.e. clearly defined responsibility for implementation of the complaints handling policy). The policy must:
- ✓ Be approved by the top management body of the institution
  - ✓ Reflect specifics of the institution and its operations (internal organisation, marketing strategy, client segment, etc)
  - ✓ Specify the top management body member(s) assigned with the responsibility to oversee the complaints handling policy
  - ✓ Specify the reporting structure and frequency of reporting
- 5.1.2 The policy should consider and clearly articulate the following 6 critical factors of success:
- ✓ Disclosure
  - ✓ Submission
  - ✓ Processing
  - ✓ Response
  - ✓ Analysis
  - ✓ Feedback

5.1.3 The policy should deal with a potential conflict of interest – e.g. a complaint should not be handled by a person directly or indirectly interested in the resolution of that particular complaint (for instance, a spouse of the dealer/representative/staff against whom the complaint has been filed).  
**[Refer to Annex I - Complaints Handling Step By Step]**

## 5.2 **DISCLOSURE REQUIREMENTS**

5.2.1 Every licensee must ensure that it discloses its complaints handling policy/process in all promotional materials, if possible, addressed to consumers. [Please note that the content of the material may differ based on media used]

5.2.2 The information to be disclosed should include, to the extent possible:

- ✓ How to file a complaint and contact information
- ✓ Plain language description of the complaints handling process (guidance and time limits, applicable)
- ✓ Information about appeals options or other ways the complainant may pursue his/her complaint if not satisfied, including option of escalating to SEC if exhausted internal options and client is still not satisfied

## 5.3 **COMPLAINTS SUBMISSION**

5.3.1 Every licensee, must specify the standard communication channels, e.g. email, telephone, post, in person, both at all must be specified in the complaints policy.

5.3.2 Ensure that there are no artificial barriers imposed to prevent consumers from complaining, such as the requirement that complaints should be filed on a specific form. Further, as many communication channels as possible should be available to complainants.

5.3.3 Each complaint received must be acknowledged in writing

## 5.4 **SINGLE COMPLAINTS DATABASE**

5.4.1 All received complaints should be:

- ✓ Electronically recorded in a single central database
- ✓ Be given a unique tracking number (to be included in all correspondence with the complainant);
- ✓ Kept in record for at least 5 years.

5.4.2 The structure of the central database should be harmonized across all licensees and should be as provided for in **Annex 2 – Complaints Database Return**

## 5.5 **RESPONSE TIME**

5.5.1 Specific time limits are necessary. The SEC recommends the following:

- ✓ Acknowledgement of receipt of complaint – within 3 working days
- ✓ Investigation of complaint – within 5 working days from receipt of complaint
- ✓ Response to complainant – within 7 working days from receipt of complainant

5.5.2 Reasonable time limits should be adopted including the following rules:

- ✓ Time when the institution waits for further requested information do not count into the time limit;

- ✓ Under extraordinary circumstances, the time limits mentioned under 5.5.1 may be extended as long as the extended period is approved by a senior manager and specifically flagged in the complaints database;
- ✓ The complainant must be promptly informed about the longer resolution time and the financial institution should provide an estimate on how much more time will be needed to resolve the complaint.

## 5.6 CONSISTENCY

### 5.6.1 Complaints must be handled consistently:

- ✓ Complaints handling staff needs to be trained across the institution
- ✓ The complaints management function responsible for complaints handling should focus on consistency as one of his key goals
- ✓ Consistency should also be evaluated by internal auditors or a compliance officer (when established)

## 5.7 RESPONDING TO COMPLAINTS - COMMUNICATION

### 5.7.1 Written form required:

- ✓ Refusal of the complaint – including explanation in plain language so that the client understands the reasons of the decision
- ✓ Compensation offered – where relevant, must be quantified in monetary terms so that the consumer may clearly understand the value of the proposal, include clear instructions for action the customer needs to take to accept or refuse the proposal, and the customer should be given a reasonable time (at least 10 working days) to decide on the proposal

## 5.8 ANALYSING COMPLAINTS

5.8.1 Each financial institution should be required to analyse received complaints and their root causes at least twice a year. (See 5.8.6 below)

5.8.2 The report must also propose changes to business processes to limit the number of the typical complaints

5.8.3 The report and the recommendations should be presented to the top management (board)

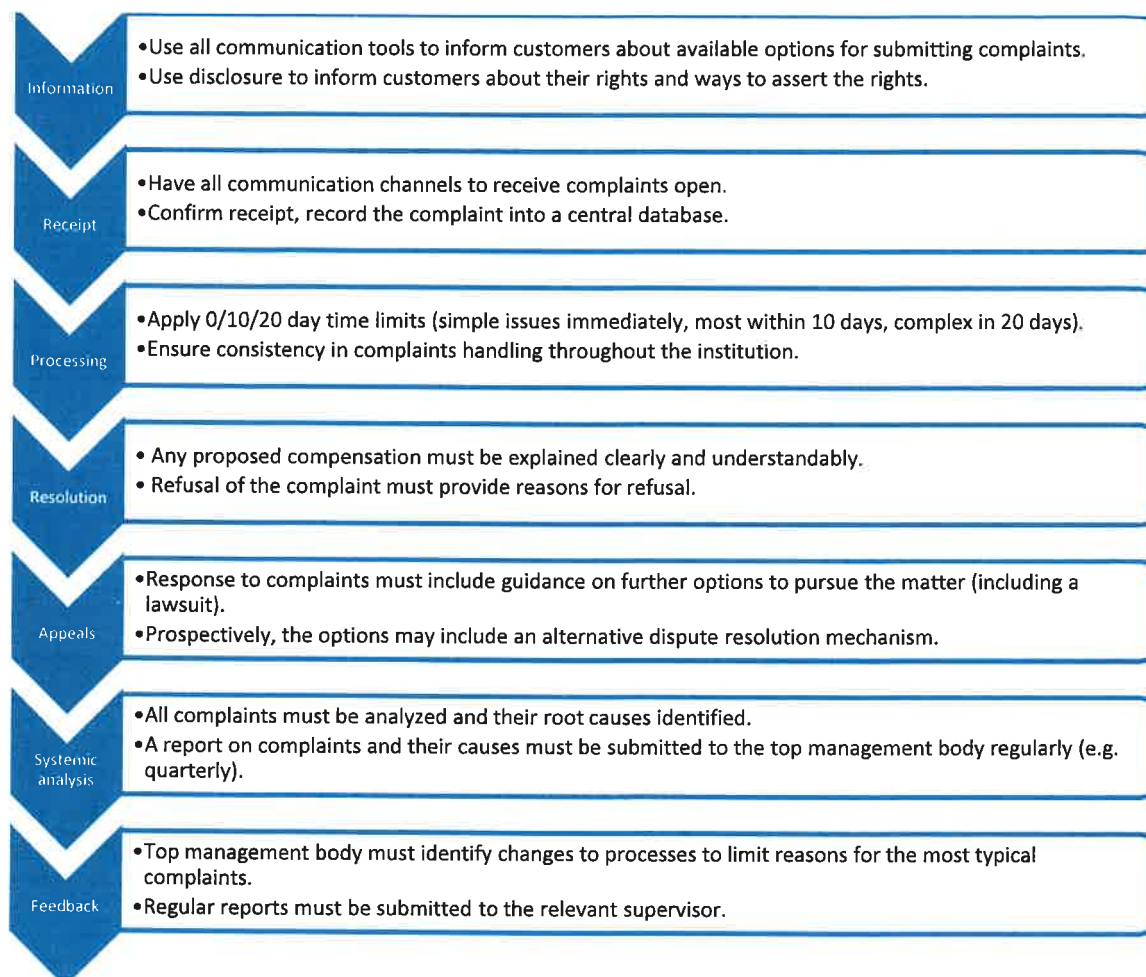
5.8.4 The report and the board's resolution should be provided to the internal auditors/complaints officers who should follow up on the board's decision. Also, the follow up on board's decisions should be reported back to the board to enable them check implementation status.

5.8.5 The report and the board's resolution should also be provided to the supervisor who may use it to follow up during onsite inspection or use the data for further analytical purposes.

5.8.6 For reporting purposes to SEC, each licensee must complete *Annex 2* and file it with SEC half yearly – one for the period from 1<sup>st</sup> January to 30<sup>th</sup> June and the other for the period from 1<sup>st</sup> July to 31<sup>st</sup> December. Licensees are at liberty to adopt *Annex 2* as part of the above discussed report format.

## ANNEX I – COMPLAINTS HANDLING WORKFLOW

The following workflow diagram summarizes the proposed complaints handling system all financial institutions should implement. The individual steps correspond to the proposals explained in detail in this report.





## ANNEX 2 – COMPLAINTS DATABASE RETURN

### PART 1 – MOVEMENT IN NUMBER OF COMPLAINTS

PRODUCT/ SERVICES	Number of outstanding Complaints  at start of	Number of Complaints opened in the period	Number of Complaints closed in the period	Number of outstanding Complaints  at start of
Unit trusts/OEICs				
Funds placements				
Discretionary management services				
Stock broking services				
Investment advisory				
Fund management				
Structured products				
Derivatives				
Non-discretionary management services				
Crowdfunding / peer to peer				
Investment packaged multi products				
Other investment products/funds - Please provide details below				
<b>TOTALS</b>				

**PART 2 –COMPLAINTS CLOSED**

PRODUCT/ SERVICES	Complaints closed			Total complaints	Total complaints upheld	Total redress paid for upheld complaints	Total redress paid for complaints not upheld	Total redress paid
	within 30 days	Between 30 and 60 days	Between 60 and 90 days			ZMW	ZMW	ZMW
Unit trusts/OEICs								
Funds placements								
Discretionary management services								
Stock broking services								
Investment advisory								
Fund management								
Structured products								
Derivatives								
Non-discretionary management services								
Crowdfunding / peer to peer								
Other investment products/funds - Please provide details below								
<b>TOTALS</b>								

Dated the 15<sup>th</sup> day of February 2017



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**ACTING CHIEF EXECUTIVE OFFICER**  
 For and on behalf of the Commission Board