

GAZETTE NOTICE NO. 26 OF 2019

[901483/1]

The Securities Act
(Act No. 41 of 2016)

The Securities (Green Bonds) Guidelines, 2019

IN EXERCISE of the powers contained in section 211 of the Securities Act, 2016, the following Guidelines are hereby made:

PART A
INTRODUCTION

1 *Title*

These Guidelines may be cited as the Securities (Green Bonds) Guidelines, 2019.

2 *Application*

2.1 These Guidelines shall apply to all issuers of bonds in Zambia labelled green based on the criteria prescribed within these Guidelines.

2.2 In case of any doubt, it is advised that direction or clarification be sought from the Securities and Exchange Commission.

3 *Interpretation*

In these Guidelines, unless the context otherwise requires—

“Act” means the Securities Act No. 41 of 2016 and any subsequent amendments;

“Aggregated portfolio basis” means the percentage of proceeds allocated to certain project categories due to a large number of underlying projects;

“Bond” means a debt security or instrument issued by a body to which these Guidelines apply, to secure the repayment of money borrowed by such body;

“Certification” means certifying a Green Bond against a recognized external green standard or label.

“Eligible projects” means project categories that contribute to environmental objectives including but not limited to climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation, and pollution prevention and control. Refer to Appendix I for examples of eligible projects;

“Green Bond” means a fixed income or debt security instrument, either unlisted or listed on a securities exchange, approved by the SEC, whose proceeds are used to finance or refinance new or existing projects that generate climate or other environmental benefits that conform to green guidelines and standards;

“Green Bond Scoring/Rating” means the assessment by a qualified third party, such as a specialised research provider or rating agency, according to an established scoring/rating methodology;

“Green guidelines and standards” means guidelines and standards including—

(a) Green Bond Principles (GBP), as may be amended, issued and governed by the International Capital Markets Association;

(b) Green Bond Standards such as the Climate Bonds Standard, as may be amended, issued and governed by the Climate Bonds Initiative;

(c) Government policies and guidelines such as the Zambia National Policy on Climate Change (2016), National Policy on Wetlands (2018 – 2028) and Zambia’s Second National Biodiversity Strategy and Action Plan (2015 – 2025), among other Government policies; or

(d) any other standard acceptable to the SEC;

“Greenwashing” means the superficial or insincere display of concern for the environment including—

(a) mislabelling of a bond as green; or

(b) the overstatement of the environmental benefits of a project that the proceeds of the Green Bond will fund; or

(c) any other form of misrepresentation with respect to a bond being labelled green

“Independent External Reviewer” means an entity, independent of an issuer, its directors, senior management and advisers, compliant with the International Capital Markets Association’s Guidelines for External Reviewers or accredited under the Climate Bonds Standards and Certification Scheme, or any other professional body acceptable to the SEC, and a securities exchange, in the case of a listed Green Bond, appointed by the issuer to confirm the green status of the Green Bond;

“Issuer” means a corporate entity, Government or sub national government entity that issues or proposes to issue a green bond;

“Misrepresentation” shall have the same meaning assigned to it under the Act;

“Performance indicators and metrics” means qualitative performance measures which may be based on parameters including electricity generation, electricity connections made, greenhouse gas emissions reduced or avoided, increases in forest cover, number of people provided with access to clean power, decreased water use, and reduction in the number of cars; and

“Prospectus” shall have the same meaning assigned to it under the Act; and

“SEC” means the Securities and Exchange Commission.

“Second Party Opinion” means an assessment of the alignment of the Green Bond with the Green Bond Principles by an expert independent from the Issuer.

“Verification” means an independent verification of the alignment of the Green Bond with the internal or external standards or claims made by the issuer.

PART B
PROCEDURES

4 *Procedure for Issuance of a Green Bond*

4.1 An issuer of a Green Bond shall comply with the requirements in these Guidelines in addition to the relevant provisions of the Securities (Registration of Securities) Rules as amended from time to time.

5 *Procedure for Listing a Green Bond*

- 5.1 The procedure for listing of Green Bonds shall be in accordance with the provisions of the rules of a SEC-licensed securities exchange, as amended from time to time.

PART C

INDEPENDENT EXTERNAL REVIEWER

6 *Appointment and eligibility as an Independent Reviewer*

- 6.1 An issuer shall appoint an Independent Reviewer to carry out a pre-issuance review.

- 6.2 Independent external reviews may vary in scope and broadly shall be one of the following types:

- 6.2.1 Second Party Opinion
- 6.2.2 Verification
- 6.2.3 Certification
- 6.2.4 Green Bond Scoring/Rating

- 6.3 An issuer shall confirm to investors, the SEC, and a Securities Exchange where the issuance is intended to be listed, that the issuance is eligible to be classified as green pursuant to applicable green guidelines and standards.

- 6.4 An Independent Reviewer appointed under paragraph 6.1 shall be an entity—

- (a) specialising in assessing the framework of the Green Bond's environmental objectives, with sufficient environmental, financial and market-specific expertise to perform a comprehensive assessment of the use of proceeds;
- (b) independent of the issuer, its directors, senior management and advisors;
- (c) compliant with the International Capital Markets Association's Guidelines for External Reviewers, or accredited under the Climate Standards and Certification Scheme, or any industry body acceptable to the SEC, and to a Securities Exchange, in the case of a listed Green Bond; and
- (d) with significant and appropriate expertise needed for providing independent reviews on green bonds.

PART D

PROSPECTUS AND MANDATORY DISCLOSURES

- 7.1 An issuer shall prepare a Prospectus which shall comply with the requirements of the Securities (Registration of Securities) Rules.

- 7.2 The Prospectus described under paragraph 7.1 shall include a report from the Independent Reviewer, which report shall include a statement by the Reviewer confirming whether the proposed issuance can be classified as green pursuant to the green bond guidelines and standards.

- 7.3 The report in paragraph 7.2 shall contain the following particulars—

- (a) a statement on the environmental or other green objectives of the proposed Green Bond and the process to determine project eligibility and related eligibility criteria;
- (b) a statement of the systems, policies and processes to be used for the management, allocation and reporting of the Green Bond funds and investments; and
- (c) a statement to confirm that the proposed Green Bond issuance can be classified as green.

8 *Disclosure on Use and Management of Proceeds*

- 8.1 Prior to the issuance of a Green Bond, the issuer must disclose to investors, in the Prospectus, the use of proceeds and the process for managing the proceeds from the Green Bond.

- 8.2 The proceeds of Green Bonds may only be used in the funding of eligible green projects.

- 8.3 Where an eligible project also has social co-benefits, the use of proceeds should be determined and disclosed by the issuer based on its primary objectives for the underlying projects prior to the issuance.

- 8.4 An issuer shall disclose to investors in the prospectus, the intended types of temporary placement for the balance of the unallocated proceeds of the Green Bond.

9 *Disclosure on Project Selection Process*

- 9.1 Where applicable, an issuer shall, in the Prospectus, provide criteria on how the issuer will select eligible projects.

- 9.2 The Criteria in 9.1 shall for all intents and purposes uphold the principles of these Guidelines and shall not in any way be the basis for circumventing any of the provisions contained in these Guidelines.

10 *Submission of the Application for Registration*

- 10.1 A proposed issuer shall submit the Application for Registration and all supporting documents to the SEC through its Broker/Dealer.

- 10.2 The SEC shall, after receipt of full and final documents under paragraph 10.1, undertake a review of the Application for Registration, the Prospectus and other supporting documents with a view of satisfying itself that the proposed issuer has complied with all laws and requirements relating to the issuance of a Green Bond.

- 10.3 The Commission shall, within 90 calendar days of receipt of the documents submitted under paragraph 10.1, approve or reject the application for registration.

- 10.4 The SEC shall, where it approves the application for registration, notify the issuer in writing of the registration.

- 10.5 The SEC shall, where it rejects the application for registration, notify the issuer in writing and state the changes the issuer is required to make to the application in order to comply with these Rules.

- 10.6 The registration shall be subject to the payment of the prescribed fees.

PART E
INDEPENDENT EXTERNAL REVIEWER

11 *Continuous Reporting Obligations*

11.1 The issuer of a Green Bond shall be required to comply with the continuing obligations and reporting requirements as prescribed in the Act and the Securities (Registration of Securities) Rules.

11.2 As per the Securities (Registration of Securities) Rules, the issuer of a Green Bond shall provide to investors and the SEC a director's report and annual accounts, not less than twenty-one calendar days before the date of the issuer's annual general meeting.

11.3 In addition to the requirements in paragraph 11.2, an issuer of a Green Bond shall be required to include in its director's report and annual accounts, a comprehensive Green Bond Report providing the following:

- (a) a brief description of the projects and the amounts disbursed, including the percentage of proceeds that have been allocated to different project types and to financing and refinancing of such projects,
- (b) where confidentiality agreements or competition considerations, or a large number of underlying projects limit the amount of detail that can be disclosed, the information shall be presented to the investors, in generic terms or on an aggregated portfolio basis, except that the SEC may request an issuer to provide detailed information for regulatory purposes;
- (c) the expected impact of the projects and assets;
- (d) the qualitative performance indicators, and where feasible, quantitative performance measures of the impact of the projects;
- (e) the methodology and underlying assumptions used to prepare performance indicators and metrics; and
- (f) a statement by the Reviewer that the issuance still meets the requirements for being classified as green pursuant to the green bond guidelines and standards.

11.4 The Green Bond Report prepared in accordance with 11.3 shall be reviewed and confirmed by an Independent External Reviewer.

11.5 In the case of listed issuers, the Green Bond Report along with the director's report and the annual accounts shall be publicly available on a website designated by the issuer at the time of the issuance of the Green Bond.

11.6 The proceeds of the Green Bond shall be monitored and tracked by the issuer in an appropriate manner on a daily, weekly, monthly, or quarterly basis or within any other period as the issuer may provide and attest to by a formal internal process linked to the issuer's lending and investment operations for eligible green projects.

11.7 At all times prior to a Green Bond maturing, the balance of the tracked proceeds shall be periodically adjusted to match allocations to eligible green projects made during that period.

11.8 The issuer's management of proceeds shall be confirmed by an auditor, or other third party, to verify the issuer's internal tracking method and the allocation of funds from the proceeds of the Green Bond.

PART F
BREACHES

12 *Breach of Green Requirements by an Issuer of Green Bonds*

12.1 Where an issuer of a Green Bond contravenes any of the requirements of these Guidelines or any other relevant laws or rules, the SEC will inform the issuer about the provision that has been breached and shall, in addition to any other action that the SEC may take, require the issuer to take remedial steps to rectify the breach, subject to a time frame approved by the SEC.

12.2 Where the issuer fails to take any remedial steps to rectify the breach, the SEC may direct the issuer to remove the green label on the Green Bond.

12.3 The SEC may, in the interest of the investors, take any other enforcement action it may consider fit against the issuer for the breach or any other act of non-compliance with the securities laws and regulations.

13 *Suspension of a Green Bond*

13.1 Any action to suspend the trading of a Green Bond shall be undertaken subject to the provisions of the Securities Act and/or the exchange rules.

13.2 Where the SEC or an Independent Reviewer's report determines that there has been greenwashing or the Green Bond has ceased to meet the prescribed eligibility requirements, the SEC may require an issuer to remove the green label from a registered Green Bond.

13.3 Where greenwashing has occurred, the SEC shall institute investigations to determine whether the action by the issuer to greenwash the bond constitutes a fraud on, or misrepresentation to investors and shall apply the applicable law on fraud and misrepresentation.

13.4 The SEC may institute investigations and if warranted suspend trading of a Green Bond, where it has reasonable cause to believe, either on its own motion or as a result of a complaint or other information received, that an issuer has breached any provision of the Securities Act or these Guidelines.

PART G
REVIEWS

14 *Review and updating of these Guidelines*

14.1 The SEC shall from time to time issue updates to these Guidelines

P. K. CHITALU,
Chief Executive Officer
Securities and Exchange Commission