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The Securities Act
(Act No. 41 of 2016)

The Securities (Substantial Shareholder Vetting) Guidelines, 2024

1.0 *Title*

1.1. These Guidelines may be cited as the Securities (Substantial Shareholder Vetting) Guidelines, 2024.

2.0 *Application*

2.1 These Guidelines are issued pursuant to Section 9(2)(v) of the Securities Act, No. 41 of 2016 and provide guidance to the Commission with respect to vetting of—

2.1.1 substantial shareholders;

2.1.2 the substantial shareholder's source of funds; and

2.1.3 the beneficial owner of a company whose securities are registered, or which is authorised or licensed under this Act.

2.2 Clause 2.1.3 shall only apply to beneficial owners who are substantial shareholders.

2.3 For purposes of these Guidelines, the threshold for substantial shareholders specified under the Act shall apply to the beneficial owners that are subject to vetting.

2.4 In the case of any doubt on the application of these Guidelines, the Commission should be consulted.

3.0 *Interpretation*

In these Guidelines, unless the context otherwise requires —

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

“Applicant” means an applicant for a licence, registration of securities, authorisation or recognition, as the case may be;

“Close Associate” has the meaning assigned to the word under the Financial Intelligence Centre Act;

“Beneficial Owner” means a natural person who has voting rights or owns shares in a company including the ultimate owner of securities held in a company or securities account, excluding a nominee;

“Board” has the meaning assigned to the word under the Act;

“Capital Market Operator” has the meaning assigned to the word under the Act;

“Commission” has the meaning assigned to the word under the Act;

“FATF” means the Financial Action Task Force, an international standard setting body for anti-money laundering and countering the financing of terrorism and proliferation;

“Issuer” has the meaning assigned to the word under the Act; and

“Substantial Shareholder” means a person who is the beneficial owner of, or is in a position to exert control over, not less than fifteen percent of the shares of a body corporate.

4.0 *Effective Date*

These Guidelines shall come into effect on the date they are approved by the Board.

5.0 *Context*

5.1 Criminals use or attempt to use the financial system to achieve the purposes. To this end, they would want to obtain control of and become the beneficial owner of existing entities, or establish new entities that operate in the financial services sector, including the capital markets, in order to perpetuate criminal activity.

- 5.2 The Financial Action Task Force has come up with international standards that require that criminals and their associates do not hold or become a beneficial owner of, a significant or controlling interest or hold a management function in a financial institution. To this end, regulators are required to perform a gatekeeping function by vetting substantial shareholders of entities operating in the financial markets to ensure that criminals or their associates do not participate in the financial services sector.
- 5.3 The Securities Act of 2016 (as amended) has also included enabling provisions that require the Commission to come up with Guidelines that set the criteria for the vetting of persons that—
- 5.3.1 wish to participate in the capital markets as licensees or are substantial shareholders in the said entities; or
- 5.3.2 are substantial shareholders in entities whose securities are registered, or which are authorised in accordance with the Act.
- 5.4 The criteria in these Guidelines are merely a guide and the Commission may be required to apply different or additional criteria depending on the circumstances of each case.

6.0 *Legal Basis for Guidelines*

- 6.1 Section 9 of the Securities Act provides the legal basis for the issuance of the Guidelines that set the criteria for the vetting of beneficial owners that are substantial shareholders as well as their source of funds. Section 9 states as follows:

“9. (1) *The Commission shall create and promote conditions in the capital market aimed at ensuring an orderly growth, integrity and development of the capital markets.*

(2) *Notwithstanding the generality of subsection (1), the Commission shall —*

- (v) *vet a substantial shareholder in accordance with the vetting criteria contained in guidelines issued by the Commission, including the substantial shareholder's source of funds, and the beneficial owner of a company whose securities are registered, or which is authorised or licensed under this Act.*

- 6.2 In addition, section 211 of the Securities Act provides for the issuance of Guidelines and states as follows:

“211. (1) *The Commission may publish, in the Government Gazette and a daily newspaper of general circulation in Zambia, and in any other manner it considers appropriate, such codes and guidelines as it considers necessary for providing guidance —*

- (a) *for the furtherance of any of its regulatory objectives; and*
- (b) *in relation to any matter relating to the functions of the Commission or operation, compliance and enforcement of this Act or rules or regulations made in accordance with this Act.*

(2) *A code, guideline, directive or guidance notes issued by the Commission, in accordance with this Act, shall be complied with, failure to which the Commission may impose an administrative penalty as provided in this Part.”*

- 6.3 These statutory provisions empower the Commission to provide the vetting criteria, through the issuance of these Guidelines, for substantial shareholders and beneficial owners meeting the threshold set under the Act as well as their source of funds.

- 6.4 The Commission may, subject to such conditions as the Commission may consider necessary, delegate to any other person, the powers and functions conferred on the Commission by these Guidelines or the Act.

7.0 *Purpose*

- 7.1 The purpose of these Guidelines is to give the Commission guidance on the criteria for the vetting of substantial shareholders laundering, terrorist financing or other serious offences.

8.0 *Scope*

- 8.1 These Guidelines apply to a substantial shareholder, beneficial owner or associate of a capital markets operator that meets the threshold and criteria for a substantial shareholder specified under the Act.

- 8.2 These Guidelines shall also apply to a substantial shareholder, beneficial owner or associate of other participants in the capital markets including persons that are participating under the Sandbox regulatory framework as long as they meet the threshold and criteria for a substantial shareholder specified under the Act.

9.0 *Vetting of Substantial Shareholder*

9.1 *Vetting of Licensees*

- 9.1.1 Where a person makes an application to the Commission to be licensed as a Securities Exchange, Clearing and Settlement Agency, Credit Rating Agency, Dealer, Investment Advisor, or other type of licensee, the Commission shall vet the applicant, its directors, senior management and substantial shareholders. In addition, the appointment of directors and senior management of an applicant for a licence shall be subject to the Commission's approval as required under the Act.

- 9.1.2 In order to undertake the vetting function, the Commission shall require the applicant to submit the following details of the directors, senior management and substantial shareholders of the applicant:
- 9.1.2.1 the names and nationality of the person;
 - 9.1.2.2 certified copies of the identification documents of the person;
 - 9.1.2.3 proof of the residential address of the person;
 - 9.1.2.4 the occupation of the person;
 - 9.1.2.5 the sources of funding used to invest in the applicant by the shareholder;
 - 9.1.2.6 the curriculum vitae of the person; and
- 9.1.2 where the applicant is a foreign national or a Zambian national that is not ordinarily resident within the Republic, a police clearance certificate or report from the country of residence whose validity shall not be more than six (06) months old.
- 9.1.3 Where the substantial shareholder is a corporate entity, the applicant shall provide details of the beneficial owners of the corporate entity and submit the information specified under clause 9.1.2 with respect to each beneficial owner. In the case of complex structures with respective shareholders being corporates, the applicant shall provide details of all the substantial shareholders in each corporate at every layer until the ultimate beneficial owners are identified and their details provided as specified under clause 9.1.2.
- 9.1.4 The Commission may require an applicant to submit additional information the Commission may need to properly undertake the vetting function.
- 9.1.5 The Commission shall, on receipt of the information specified under clause 9.1.2, undertake a vetting process on the applicant by conducting background and security checks with law enforcement agencies, regulatory authorities both locally and across all jurisdictions relevant to the applicant to ascertain the fitness and probity of the substantial shareholders that are beneficial owners. The Commission may, in making a determination on the fitness and probity of the persons being vetted, also engage third parties where this may be required such as financial institutions, the companies registry, employers (including former employers) and professional membership bodies.
- 9.1.6 Considering that the security and background checks are outside the control of the Commission and in light of the limited timeframes within which decisions ought to be made relating to an application for a licence, the Commission may conditionally issue the licence.
- 9.1.7 Where the Commission subsequently receives a negative report on the fitness and probity of a particular beneficial owner who is a substantial shareholder, the Commission may issue a directive to the entity, for the entity to remove, from the entity, the beneficial owners or substantial shareholders that are found not to be fit and proper and provide a timeline within which this directive ought to be complied with.
- 9.1.8 Where an entity does not comply with the Commission's directive, the Commission may impose an administrative penalty in accordance with the Securities Act and commence the show cause process for the revocation of the licence of the entity whose substantial shareholder(s) is (are) not fit and proper.
- 9.1.9 Subject to clause 9.1.10, where an entity who has been issued with a license by the Commission intends to subsequently make any changes to the composition of its directors, senior management or substantial shareholders, the entity shall submit, to the Commission, the details specified under clause 9.1.2 prior to the changes being effected for purposes of vetting of the persons so proposed to be changed.
- 9.1.10 In the case of changes to the substantial shareholders of a licensee that is listed on a securities exchange that are as a result of a market trade on the exchange and the trade results in a change in substantial shareholding, the entity shall notify the Commission of the change within ten days of the change being made. At the point of notifying the Commission, the entity shall also submit the details specified under clause 9.1.2 for purposes of vetting of the substantial shareholder(s).
- 9.1.11 Where the vetting of a substantial shareholder results in a negative report on the fitness and probity of the person, the process specified under clause 9.1.7 and 9.1.8 shall apply.
- 9.2.2.9 Where a broker neglects or fails to comply with the Commission's directive, the Commission may impose an administrative penalty in accordance with the Securities Act.
- 9.2.3 *Obligations of substantial shareholders*
- 9.2.3.1 The Securities Act places reporting obligations on a substantial shareholder. In line with section 157 of the Act, once the securities of an issuer are registered, a substantial shareholder of the issuer shall notify the issuer of the acquisition of further securities in the company or the disposal of securities as a result of which the person ceases to be a substantial shareholder in the company.

9.2 *Vetting of Enting of Entities with Registered Securities*

9.2.1 *General*

- 9.2.1.1 The Commission shall vet the substantial shareholders of entities that intend to register their securities with the Commission in line with the requirements of the Securities Act and the Securities (Registration of Securities) Rules, Statutory Instrument No. 164 of 1993 and subsequent amendments made thereto.
- 9.2.1.2 The purpose of the vetting is to ensure the fitness and probity of the substantial shareholders that own an entity which intends to participate in the Zambian capital markets. In addition, the vetting shall extend to the source of funds used by the substantial shareholder in acquiring the securities in the entity.
- 9.2.1.3 The Commission is also required to vet the substantial shareholders of entities with registered securities to ensure that persons are beneficial owners of, or are in a position to exert control over, not less than fifteen percent of the shares of the entity are fit and proper.

9.2.2 *Obligations of Brokers*

- 9.2.2.1 Where a broker receives instructions from a client to execute a trade for purposes of acquiring securities whether on or off the securities exchange, the broker shall request the client to submit, with the instruction, the following information:
- (a) the beneficial owners of the shares to be acquired; and
 - (b) the source of funds for the acquisition of the securities.
- 9.2.2.2 Clause 9.2.2.1 shall apply where the value of the transaction is within the threshold of a substantial shareholder or if it is below that threshold, the clause shall apply where the acquisition of the additional securities makes the client a substantial shareholder.
- 9.2.2.3 A broker who executes a trade for a client who is a substantial shareholder or where the trade has the effect of making the client a substantial shareholder, the broker shall immediately submit, to the Commission, the following information to facilitate the vetting of the client in line with the requirements of the Securities Act:
- (a) the client's name and nationality;
 - (b) certified copies of the identification documents of the client;
 - (c) proof of the residential address of the client;
 - (d) the beneficial owners of the securities being traded; and
 - (e) the occupation of the client or beneficial owner and the sources of funding used to undertake the trade.
- 9.2.2.4 Where the client is a corporate entity, the broker shall require the client to provide details of the beneficial owners of the corporate entity and submit the information specified under clause 9.2.2.3 with respect to each beneficial owner. In the case of complex structures with respective shareholders being corporates, the applicant shall provide details of all the substantial shareholders in each corporate at every layer until the ultimate beneficial owners are identified and their details provided as specified under clause 9.2.2.3
- 9.2.2.4 A broker shall ensure that the information collected on beneficial ownership is adequate, accurate and current before submitting it to the Commission for the purposes of vetting.
- 9.2.2.5 The Commission may require a broker to submit additional information the Commission may need to properly undertake the vetting function.
- 9.2.2.6 The Commission shall, on receipt of the information specified under clause 9.2.2.3, conduct background and security checks with law enforcement agencies and relevant local and international regulatory authorities to ascertain the fitness and probity of the beneficial owners. The Commission may also engage third parties where this may be required.
- 9.2.2.7 Considering that the security and background checks are outside the control of the Commission, and further considering that there are set timeframes within which a trade ought to be completed and in order to maintain the efficiency of markets, a broker may continue with its relationship with a client until further notification from the Commission of the results of the fitness and probity test of the particular beneficial owner subject to clause 9.2.2.8.
- 9.2.2.8 Where the Commission receives a negative report on the fitness and probity of a particular beneficial owner who is a substantial shareholder subsequent to a trade, the Commission shall notify the broker and may issue a directive to the broker requiring the broker to—
- (a) advise the substantial shareholder to divest of ownership in that entity within a specified timeframe; or

- 9.2.3.2 A notice referred to under clause 9.2.3.1 shall be in writing and shall contain the following information in addition to the information required to be disclosed under section 155 of the Act:
- (a) the name, address and certified copies of the identification documents of the substantial shareholders in the issuer;
 - (b) where the substantial shareholder is a corporate entity, the details of the beneficial owners of the corporate;
 - (c) the total number of shares owned by each substantial shareholder; and
 - (d) Copies of the Sale and Purchase Agreements and other legal documentation regarding the transaction including filings made to PACRA and the Zambia Revenue Authority, as appropriate.

9.2.3.3 An issuer may require a substantial shareholder to submit additional information the issuer may need to submit a complete notification to the Commission with respect to the trade.

9.2.3.4 Where a substantial shareholder neglects or fails to comply with its reporting requirements under the Securities Act and these Guidelines, the substantial shareholder shall be subject to the penalty prescribed under section 159 of the Act of not more than one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day the non-compliance continues.

9.2.4 *Obligations of Issuers*

9.2.4.1 Where an entity makes an application to the Commission for the registration of the entity's securities, the entity shall, as part of the application process, be required to submit the following in addition to the documents required for purposes of the application:

- (a) the name, address of the substantial shareholder;
- (b) certified copies of the identification documents of the substantial shareholders in the issuer at the time of registration of the securities;
- (c) where the substantial shareholder is a corporate entity, the details of the beneficial owners of the corporate;
- (d) the total number of shares owned by each substantial shareholder; and
- (e) where the substantial shareholder is a foreign national or a Zambian national that is not ordinarily resident within the Republic, a police clearance certificate or report from the country of residence whose validity shall not be more than six (06) months old.

9.2.4.2 Where the substantial shareholder is a corporate entity, the applicant shall submit details of the beneficial owners of the corporate entity as specified under clause 9.2.4.1 with respect to each beneficial owner. In the case of complex structures with respective shareholders being corporates, the applicant shall provide details of all the substantial shareholders in each corporate at every layer until the ultimate beneficial owners are identified and their details provided as specified under clause 9.2.4.1.

9.2.4.3 An applicant shall ensure that the information it submits with respect to beneficial ownership is adequate, accurate and current prior to submitting it to the Commission for the purposes of vetting.

9.2.4.4 The Commission may require an applicant to submit additional information the Commission may need to properly undertake the vetting function.

9.2.4.5 The Commission shall, on receipt of the information specified under clause 9.2.4.1, conduct background and security checks with law enforcement agencies and relevant local and international regulatory authorities to ascertain the fitness and probity of the beneficial owners. The Commission may also engage third parties where this may be required.

9.2.4.6 Where the Commission subsequently receives a negative report on the fitness and probity of a particular beneficial owner who is a substantial shareholder in the issuer, the Commission may issue a directive to the applicant to rectify the application by removing, from the issuer, the beneficial owners or substantial shareholders that are found not to be fit and proper and provide a timeline within which this directive ought to be complied with.

9.2.4.7 Where an applicant neglects or fails to comply with the Commission's directive, the Commission may decline the application for registration of the securities.

9.2.4.8 Following the registration of securities, section 157 of the Act requires an issuer to notify the Commission, within five days of being notified by a substantial shareholder of the acquisition of further securities in the company or the disposal of securities as a result of which the person ceases to be a substantial shareholder in the company.

9.2.4.9 A notice referred to under clause 9.2.4.8 shall be in writing and shall contain the following information in addition to the information required to be disclosed under section 155 of the Act:

- (a) the name, address and certified copies of the identification documents of the substantial shareholders in the issuer at the material time;

- (b) where the substantial shareholder is a corporate entity, the details of the beneficial owners of the corporate;
 - (c) the total number of shares owned by each substantial shareholder; and
 - (d) Copies of the Sale and Purchase Agreements and other legal documentation regarding the transactions including filings made to PACRA and the Zambia Revenue Authority, as appropriate.
- 9.2.4.10 The requirements of clauses 9.2.4.2, 9.2.4.3 and 9.2.4.4 shall apply to an issuer subsequent to the registration of securities.
- 9.2.4.11 Where the Commission receives a negative report on the fitness and probity of a particular beneficial owner who is a substantial shareholder subsequent to the notification of the acquisition or disposal of securities, the Commission shall issue a directive to the issuer requiring the issuer to advise the substantial shareholder to divest of ownership in that entity within the timeframe specified by the Commission.
- 9.2.4.12 Where an issuer neglects or fails to comply with the notification requirements for substantial shareholders, the Commission may invoke the penalty specified under section 159 of the Act of not more than one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day the non-compliance continues.
- 9.2.4.13 Where an issuer neglects or fails to comply with the Commission's directive under clause 9.2.4.11, the Commission may impose an administrative penalty in accordance with the Act.

9.3 *Vetting of Entities Authorised by the Commission*

- 9.3.1 The Commission shall vet the substantial shareholders of entities that are authorised to manage and operate collective investment schemes.
- 9.3.2 Where a person makes an application to the Commission to be authorised as a manager, trustee or custodian of a collective investment scheme, the Commission shall require the applicant to submit the following details of the substantial shareholders of the applicant:
- 9.3.2.1 the names, nationality and residential address of the person;
 - 9.3.2.2 certified copies of the identification documents of the person;
 - 9.3.2.3 the proof of address of the person;
 - 9.3.2.4 the occupation of the person and the sources of funding used to invest in the applicant by the person;
 - 9.3.2.6 the curriculum vitae of the person; and
 - 9.3.2.7 where the applicant is a foreign national or a Zambian national that is not ordinarily resident within the Republic, a police clearance certificate or report from the country of residence whose validity shall not be more than six (06) months old.
- 9.3.3 Where the substantial shareholder is a corporate entity, the applicant shall provide details of the beneficial owners of the corporate entity and submit the information specified under clause 9.3.2 with respect to each beneficial owner. In the case of complex structures with respective shareholders being corporates, the applicant shall provide details of all the substantial shareholders in each corporate at every layer until the ultimate beneficial owners are identified and their details provided as specified under clause 9.3.2.
- 9.3.4 An applicant shall ensure that the information it submits with respect to beneficial ownership is adequate, accurate and current prior to submitting it to the Commission for the purposes of vetting.
- 9.3.5 The Commission may require an applicant to submit additional information the Commission may need to properly undertake the vetting function.
- 9.3.6 The Commission shall, on receipt of the information specified under clause 9.3.2, conduct background and security checks with law enforcement agencies and relevant local and international regulatory authorities to ascertain the fitness and probity of the beneficial owners. The Commission may also engage third parties where this may be required.
- 9.3.7 Considering that the security and background checks are outside the control of the Commission and in light of the limited timeframes within which decisions ought to be made relating to an application for authorisation of a person as a manager, trustee or custodian, the Commission may conditionally issue the authorisation. The condition is that if the Commission subsequently receives a negative report on the fitness and probity of a particular beneficial owner, the Commission may—
- 9.3.7.1 request, through a directive, the entity to rectify the application by removing the beneficial owners or substantial shareholders that are not fit and proper and provide a timeline within which this directive ought to be complied with;
 - 9.3.7.2 where the application has not been determined, proceed to reject the application where the applicant does not rectify the application as per the directive issued by the Commission under clause 9.3.7.1; or
 - 9.3.7.3 where the applicant has been issued with an authorisation, commence the show cause process for the revocation of the authorisation for the entity whose substantial shareholder(s) is (are) not fit and proper.

- 9.3.8 Where a manager receives instructions from a client to execute a trade for purposes of acquiring units in a collective investment scheme, the manager shall request the client to submit, with the instruction, the following information:
- 9.3.8.1 the client's name and nationality;
 - 9.3.8.2 certified copies of the identification documents of the client;
 - 9.3.8.3 proof of the residential address of the client;
 - 9.3.8.4 the beneficial owners of the securities being traded; and
 - 9.3.8.5 the occupation of the client or beneficial owner and the sources of funding used to undertake the trade.
- 9.3.9 Where the client is a corporate entity, the manager shall require the client to provide details of the beneficial owners of the corporate entity and submit the information specified under clause 9.3.8 with respect to each beneficial owner. In the case of complex structures with respective shareholders being corporates, the applicant shall provide details of all the substantial shareholders in each corporate at every layer until the ultimate beneficial owners are identified and their details provided as specified under clause 9.3.8.
- 9.3.10 A manager shall ensure that the information collected on beneficial ownership is adequate, accurate and current before submitting it to the Commission for the purposes of vetting.
- 9.3.11 The Commission may require a manager to submit additional information the Commission may need to properly undertake the vetting function.
- 9.3.12 For clause 9.3.6 to apply, the value of the transaction should be within the threshold of a substantial shareholder or if it is below that threshold, the clause shall apply where the acquisition of the additional units in the collective investment scheme makes the client a substantial shareholder.
- 9.3.13 A manager who facilitates the acquisition, by a client, of units in a collective investment scheme, where the client is a substantial shareholder or where the transaction has the effect of making the client a substantial shareholder, the manager shall immediately submit, to the Commission, the information specified under clause 9.3.6 to facilitate the vetting of the client in line with the requirements of the Securities Act
- 9.4 *Vetting of other Capital Market Participants*
- 9.4.1 Subject to clause 9.4.2, the Commission may apply the requirements of these Guidelines, to the extent that the circumstances so require, to other participants in the capital markets to ensure investor protection and the integrity of the capital markets.
 - 9.4.2 Clause 9.4.1 shall apply to
 - 9.4.3 The Commission may require a person to submit additional information the Commission may need to properly undertake its functions under these Guidelines.
- 10.0 *Due Process and Appeals*
- 10.1 The Commission shall ensure that an affected person is given the right to be heard prior to any decision being made regarding the fitness and probity of a substantial shareholder.
 - 10.2 The Commission shall ensure that —
 - 10.2.1 the documents submitted are complete; and
 - 10.2.2 the person subject to which the vetting is being conducted satisfies the criteria for a substantial shareholder.
 - 10.3 The Commission may, where the Commission deems it appropriate, interview a person subject to which the vetting process is being conducted.
 - 10.4 The Commission shall inform the affected person of the decision of the Commission with respect to the test for fitness and probity of a substantial shareholder.
 - 10.5 Where a person is dissatisfied with a decision of the Commission relating to the determination of the fitness and probity of a substantial shareholder, the person shall appeal the Capital Markets Tribunal within thirty (30) days from the date of the receipt of the Commission's decision.
- 11.0 *Review of Guidelines*
- 11.1 These Guidelines shall be subject to annual review by the Board.
 - 11.2 Where circumstances necessitate a review in between annual reviews, the Board shall be at liberty to review the Guidelines.