



Notice No: SS 03/04/2018

Directive on Nominee Requirements For Securities Market Intermediaries -April 2018

This directive is issued in terms of the FIRST SCHEDULE, paragraph 21 of the Securities and Exchange Act [Chapter 24:25]

INTRODUCTION

1. This directive is issued in terms of the FIRST SCHEDULE paragraph 21 of the Securities and Exchange Act [Chapter 24:25].
2. For the purpose of this directive, a Nominee refers to a company or an artificial or juristic person that holds assets in its own name on behalf of the beneficial owners (i.e. the nominee is not the beneficial owner of these assets). Its main business shall be to take title of securities, cash, property, money market and any debt instruments (assets) on behalf of its clients as an agent and shall deal with such assets strictly in accordance with directions given by the clients from time to time. The Nominee shall at all times be required to disclose to regulatory authorities and other Self-Regulatory Organisations (SRO) the identity of the person on whose behalf that security is held and the number and class of securities held for such person with a beneficial interest.

A Securities Market Intermediary (SMI) means a person who is licensed and registered in terms of the Securities and Exchange Act [Chapter 24:25].

LICENSEES ALLOWED TO OWN NOMINEE COMPANIES

3. A nominee shall be a company registered in terms of the Companies Act [Chapter 24: 03] or an artificial or juristic person created in terms of the law. In the case of a company, the Nominee shall be wholly owned by the SMI. All licensed and registered Securities Market Intermediaries are hereby authorised to own nominees.

KNOW YOUR CLIENT (KYC) AND RECORDS TO BE MAINTAINED

4. A Securities Market Intermediary that elects to own and operate a nominee shall perform Know Your Client procedures (KYC) and Customer Due Diligence (CDD) and maintain records of the beneficial owners. The nominee shall ensure that its beneficial owners are classified correctly for the collection of taxes, dividends, interest and coupons.
5. The arrangements made by the client with the SMI for the custody of securities must be recorded in a written mandate. The client must accept the terms of the mandate and communicate such acceptance to the SMI before any funds and securities are accepted for such purpose. The mandate maybe in electronic form and its acceptance maybe expressed by electronic means. If acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.
6. The Securities Market Intermediary shall maintain records of all assets held by the nominee and reconcile the records at least once a month.
7. The nominee shall collect on behalf of beneficial owners: payments, corporate action entitlements, dividends, rentals and interest relating to all assets held.
8. The Securities Market Intermediary shall undertake and binds itself:
 - 8.1 To pay all expenses of and incidental to the formation and operation of the nominee;
 - 8.2 To pay all the liquidation expenses in the event of the winding up of the nominee;
 - 8.3 Not to dispose of the assets it holds in the nominee to any person without the prior written approval of the beneficial owner;
 - 8.4 To inform the client on how nominee accounts operate;
 - 8.5 To compensate in full, the client of the nominee against any loss suffered as a result of a breach by the nominee of its agreement with a client;
 - 8.6 To guarantee the due performance of the obligations of the nominee to its clients;
 - 8.7 To put in place adequate and appropriate security and administrative systems;
 - 8.8 To collect on behalf of all clients': corporate action entitlements; dividends; rentals and interest relating to all assets;
 - 8.9 To verify computations of corporate action entitlements, dividends, rentals and interest relating to assets held on behalf of all clients and ensure timely payment thereof as well as communicating all details of any options and rights issues to clients;
 - 8.10 Not to have any authority to exercise any voting rights attached to shares registered in the nominee, unless instructed to do so by the client;
 - 8.11 To separate clients' funds and securities from those of the SMI. The funds and securities shall not be available in any circumstances for payment of any of its debt or finance its business activities;
 - 8.12 To issue a signed receipt recording the name of security, number of securities and certificate number or any other number identifying the security in respect of securities so received;
 - 8.13 To record securities which have been pledged by the client as collateral for loan;
 - 8.14 To properly account for the assets of each client; and
 - 8.15 To open and maintain one or more bank trust accounts as prescribed in PART VI of the Securities and Exchange Act and PART IV of Statutory Instrument 100 of 2010, to ensure

that any funds received by the SMI from a client are segregated from the SMI's own funds from the time such funds are deposited.

FINANCIAL RESOURCES AND RISK MANAGEMENT

9. The SMI shall ensure that the nominee has adequate insurance against loss through fire, fraud and other disasters. The policy shall be renewed annually not later than each anniversary of the commencement of the policy and failure to renew the policy shall be grounds of the Commission to revoke operation of the nominee forthwith.
10. The SMI operating the nominee must ensure that it has the following:
 - 10.1 Knowledge, skills and robust operational structure to handle the requirements of operating the business of the nominee;
 - 10.2 Is adequately capitalised in terms of the prescribed requirements;
 - 10.3 Appropriate risk management system to provide assurance of continuity of the business; and that securities are safeguarded from unauthorised access and misappropriation;
 - 10.4 A copy of the last audited financial statements of the SMI;
 - 10.4.1 The audited financial statements shall have a separately disclosed Asset and Liability section(s) of the nominee if the SMI is already operating a nominee; and
 - 10.5 In the event that the SMI is subjected to bankruptcy proceedings or a moratorium is granted on its debts, or is wound up or comparable measures are taken, the client shall, on the basis of the record provided, withdraw its securities from the nominee;
11. The nominee shall be prohibited from:
 - 11.1 Changing its ownership structure without prior approval from the Commission;
 - 11.2 Acquiring any interest, for its own account, in any other company or from owning a subsidiary company; and
 - 11.3 Incurring any liability, including contingent liabilities such as suretyship, indemnification, pledging, other than the liabilities it incurs to its clients in respect of assets held on their behalf.

DISCLOSURE AND RECORDS PRESERVATION

12. The details of all clients' securities must be recorded and stored in a nominee register in the SMI's system in a manner which will render it possible at any time to establish readily the identity of the person entitled to the ownership of those securities.
13. All securities received or purchased on behalf of nominee clients must be allocated in the nominee register on the same day.
14. The SMI that owns and operate a nominee register must balance the securities daily with the client's account at Central Securities Depository (CSD) or Central Securities Depository participant. Reconciling differences must be rectified within the same day, unless there are circumstances beyond the control of the SMI, in which case the difference must be rectified as soon as is reasonably possible. A monthly report must be furnished to The Commission by the 10th business day after the SMI month: stating that-

- 14.1 as at the month end, the securities balances in the nominee register have been agreed with the CSD client account securities balances or if there are differences, explaining the reasons for such differences; and
 - 14.2 any circumstances have arisen that have resulted in the improper use of clients' securities.
15. The SMI shall preserve information on nominee accounts for at least ten years from the termination of the business relationship with a client.
16. The assets held on behalf of clients shall be permissible assets, within the categories in respect of which the SMI holds a valid license.
17. The Commission may revoke the operating of a nominee:
 - 17.1 If the SMI violates the provision of the rules or regulations of the Commission regarding the provision of information to the Commission and other SROs on nominee accounts; and
 - 17.2 Where the approval of the SMI is revoked, the nominee accounts shall be transferred to another SMI with the consent of the clients.

REPEAL OF PREVIOUS DIRECTIVE UNDER NOTICE NO. SS13/11/2014

Following further consultations and representations made by Securities Market Intermediaries, and in preparation for the introduction of on-line trading, the Commission hereby repeals the Directive issued under Notice SS13/11/2014 captioned "Directive on Nominee Requirements, Custodial and Investment Management Companies".

For and on Behalf of Securities and Exchange Commission of Zimbabwe



**Mr. Tafadzwa Chinamo
Chief Executive Officer**

Date: 04/04/2018