



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 113 2012

NOTIFICATION OF APPLICATION FOR APPROVAL OF AMENDMENT OF RULES OF THE NAMIBIAN STOCK EXCHANGE

In terms of section 12(6) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) -

- (a) notice is given that the Namibian Stock Exchange has applied for approval of the amendment of the Namibian Stock Exchange Rules, particulars of which are set out in the Schedule: and
- (b) all interested persons who have any objection to the proposed amendments to lodge their objections with the Registrar of Stock Exchanges, P. O. Box 21250, Windhoek, within a period of 30 days from the date of publication of this notice.

SCHEDULE

1. In these rules “**the Rules**” means the Namibian Stock Exchange Rules 1995 promulgated by Government Notice No. 151 of 12 September 1995, as amended by Government Notices No. 145 of 15 July 1997, No. 81 of 5 May 1999, No. 12 of 1 February 2002, and General Notice No. 203 of 16 August 2002 and No. 251 of 15 October 2005.

Amendment of Section 3 of the Rules

2. By the deletion of Rules 3.6, 3.7 and 3.8

Addition of Section 15 of the Rules

3. The following section is added to the Rules

Section 15 – Supervision and enforcement**15.1 Surveillance and investigation by the NSX****15.1.1 Surveillance**

The NSX may set up and maintain systems for:

- 15.1.1.1 monitoring compliance by members with the Act, the Rules and the Directives;
- 15.1.1.2 the surveillance of any matter relevant for the purposes of the Act, the Rules and the Directives; and
- 15.1.1.3 supervising compliance by members with the Financial Intelligence Act, 2007 (Act No. 3 of 2001).

15.1.2 Investigation

- 15.1.2.1 The CEO, and any other person designated by him, may –
- 15.1.2.1.1 investigate any NSX related activities of any person who at the relevant time was a member or an employee of a corporate member;
- 15.1.2.1.2 investigate whether that member or corporate member or any of its employees complies with the Act, the Rules and the Directives of the Financial Intelligence Centre Act;
- 15.1.2.1.3 investigate whether the member is trading in such a manner that there is a danger that such member may not be able to meet its commitments to clients, other members or a settlement system;
- 15.1.2.1.4 investigate whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the NSX or its members; and
- 15.1.2.1.5 require any person who is subject to the jurisdiction of the NSX and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to furnish such information or to produce such book, document, tape, electronic record or other object, provided that the subject of the investigation has first been put to such person.
- 15.1.2.2 The CEO may delegate the power granted to him in terms of rule 15.1.2.1 to any member of his staff.

15.2 Use of information obtained by the NSX and referral to another authority

- 15.2.1 Any information, document, book, tape or electronic record or other object obtained by the NSX, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings and may be furnished by the NSX to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.
- 15.2.2 If the NSX becomes aware of any possible contravention of law by a person over whom the NSX does not have jurisdiction, the NSX may refer such matter to the appropriate authority or authorities, whether outside or inside Namibia.

15.3 Improper conduct

The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a member or employee of a member shall constitute improper conduct, provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 15.3.1 committing or attempting to commit any act which is dishonest or fraudulent;
- 15.3.2 being a party to, or facilitating or conducting a transaction which is fictitious or has a dishonest or unlawful motive;
- 15.3.3 contravening, attempting to contravene, or failing to comply with any one or more provision of the Act, a Rule or a Directive;
- 15.3.4 negligently or recklessly conducting the business or affairs of the member in such a way that actual or potential prejudice is, or may be, caused to the NSX, any other member, a client of a member or the general public. The failure by a member to introduce appropriate and reasonable safeguards or controls to avoid such prejudice may be treated, where appropriate, as constituting either negligence or recklessness;
- 15.3.5 committing or attempting to commit any act which is detrimental to the interest, good name or welfare of the NSX or its members;
- 15.3.6 knowingly obstructing the business of the NSX or its members; and
- 15.3.7 failing, when requested, to assist the NSX in the exercise of its duties, including but not limited to, failure without sufficient cause to provide information in accordance with 15.1.2.1.5.

15.4 Disciplinary procedures**15.4.1 Conclusion of investigation**

On conclusion of any investigation in terms of 15.1.2 and if, after having considered all the relevant information in his possession, the CEO is of the opinion that there are grounds for an allegation of improper conduct, the CEO may:

- 15.4.1.1 refer the matter for determination to a Disciplinary Committee; or
- 15.4.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 15.4.2.4 or suspension or termination of membership or employment with a member, prefer a formal charge against such

person (“the respondent”) setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a disciplinary tribunal (“a Tribunal”), to be heard in terms of the Rules. Such charge may further, in the discretion of the CEO, make provision for an admission of guilt.

15.4.2 **Disciplinary Committee**

15.4.2.1 The Chairman may from time to time appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman or the Deputy Chairman or the Chief Executive Officer or acting Chief Executive Officer of the NSX, and at least two non conflicted independent Board members of the NSX. The Chairman, Deputy Chairman, Chief Executive Officer or acting Chief Executive Officer who is a member of the Disciplinary Committee shall be the chairman of the Disciplinary Committee. A Disciplinary Committee may at any time co-opt additional members for the Disciplinary Committee, whether members of the Board of the NSX or not, whenever it deems such additional appointments to be necessary and appropriate.

15.4.2.2 A Disciplinary Committee may, subject to rule 15.4.2.3 –

15.4.2.2.1 issue instructions to the person whose conduct or omission is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;

15.4.2.2.2 warn, reprimand, censure or, subject to rule 15.4.2.4, impose a fine (with or without ordering that a contribution be made towards the NSX’s costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;

15.4.2.2.3 in relation to an employee of a member, direct the member to conduct a disciplinary enquiry into the acts or omissions of such person;

15.4.2.2.4 direct a member to ensure that any sanction imposed on an employee of that member is complied with by such employee;

15.4.2.2.5 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; and

15.4.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.

15.4.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 15.4.2 unless:

15.4.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a corporate member, the alleged improper conduct shall be put to an executive director or otherwise to a duly authorised employee of the member; and

15.4.2.3.2 such person has been given an opportunity, orally or in writing, of explaining his or her conduct after being warned that any explanation furnished pursuant to the rules may be used in evidence against him or her.

- 15.4.2.4 No fine imposed by a Disciplinary Committee may exceed N\$250 000 per contravention, or such other amount as the NSX may determine by directive. A Disciplinary Committee may direct that any action taken in terms of rule 15.4.2 be published.
- 15.4.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. The Tribunal may, if it finds the person guilty of the conduct which forms the subject of the charge, impose a penalty more severe than that imposed by the Disciplinary Committee.
- 15.4.3 **Preferring charges to be heard by a Tribunal**
- 15.4.3.1 Where the CEO has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 15.4.1.2, be in a form prescribed by the CEO, be signed by the CEO or his Deputy, and be served on the respondent in such manner as the CEO may determine.
- 15.4.3.2 Where the CEO has decided to make provision for an admission of guilt, he shall stipulate:
- 15.4.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the NSX's costs as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression, the CEO shall take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;
- 15.4.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 10 weeks from the date on which the charge sheet is served on the respondent; and
- 15.4.3.2.3 whether the terms of the admission of guilt should be published in a NSX Gazette and in the media.
- 15.4.3.3 A respondent:
- 15.4.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
- 15.4.3.3.2 may within 4 weeks after receipt of the charge sheet request particulars to the charges, to which the CEO must respond within 4 weeks after receipt of such request; and
- 15.4.3.3.3 shall, if no admission of guilt is tendered by the CEO or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 10 weeks after the date on which the charge sheet was served on the respondent or within 4 weeks after the date on which the NSX has responded to the request for further particulars, whichever is later.
- 15.4.3.4 Thereafter the chairman of the Tribunal shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 15.4.3.5 No extension of the time periods set out in rule 15.4.3, including the date for the hearing of the charges, shall be allowed without good reason. Furthermore, no such extension shall be allowed without the consent of the chairman of the Tribunal.

15.4.4 Tribunal

15.4.4.1 The Chairman may from time to time appoint one or more Tribunals each comprised of three members.

15.4.4.2 The members of a Tribunal shall be:

15.4.4.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than ten years experience. Such person shall act as chairman of the Tribunal;

15.4.4.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and

15.4.4.2.3 a person appointed by reason of that person's knowledge or experience of stock broking.

15.5 Procedure and evidence – Disciplinary Matters

15.5.1 Any charges preferred shall be decided on a balance of probabilities.

15.5.2 In a hearing before a Tribunal:

15.5.2.1 the chairman of the Tribunal shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal shall by a simple majority decide all other matters arising during the hearing;

15.5.2.2 the chairman of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to the rules and to the principles of natural justice;

15.5.2.3 the NSX may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the NSX, or the charges may be prosecuted by an employee of the NSX; and

15.5.2.4 the respondent is entitled to be legally represented at the respondent's own cost.

15.5.3 If a respondent without good cause fails to attend a hearing before a Tribunal at the time and place stated in the charge sheet, the Tribunal may proceed with its consideration of the charge in the absence of the respondent.

15.5.4 If, at any stage during a hearing before the Disciplinary Committee or a Tribunal, one or more of the members of the body hearing the matter dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the body before whom the hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the body concerned. In any other case, the matter shall be heard de novo.

15.5.5 If a Tribunal finds a respondent guilty of an offence, the Tribunal shall have the powers set out in and shall apply rule 15.6.

15.5.6 A person charged is entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations is entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.

- 15.5.7 The NSX may make available to the South African Institute of Stock Brokers or a similar Namibian organisation when established in the future (“**the Institute**”), if the respondent is a member or was a member of the Institute, such documents, including extracts from meetings, verbatim records of proceedings and exhibits, as are presented at any disciplinary hearing against a stockbroker or former stockbroker.
- 15.5.8 Whenever the Institute or any committee of the Institute investigates or deals with any complaint against a stockbroker or former stockbroker and finds such person guilty on one or more of the charges laid against such person:
- 15.5.8.1 the NSX is authorised at any time at the expense of the NSX to apply to and obtain from the Institute a copy of the relevant extracts from the minutes of meetings of the Institute and its committees and the verbatim record of any proceedings at enquiries or hearings in respect of such complaint, as well as copies of any relevant documents, including correspondence, and, where applicable and practicable, exhibits tabled at such enquiries or hearings. All of the documents so made available to the NSX shall be retained by the NSX for its own purposes; and
- 15.5.8.2 the CEO may consider and take cognisance of such documents for the purpose of initiating, investigating or adjudicating on any complaint against the stockbroker or former stockbroker or any member of the NSX with which such stockbroker or former stockbroker was in any way associated, and all such documents may be admitted in any proceedings under the Rules as if the facts stated therein had been led as evidence in the proceedings in terms of the Rules.
- 15.6 Disciplinary matters – Penalties**
- 15.6.1 When any person has been found guilty of improper conduct by a Tribunal pursuant to the rules, the Tribunal –
- 15.6.1.1 may warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed N\$500 000;
- 15.6.1.2 shall in determining an appropriate penalty take into account:
- 15.6.1.2.1 any previous conviction in terms of the rules of the NSX, the by-laws of the Institute or in a court of law;
- 15.6.1.2.2 the harm or prejudice which is caused by the offence;
- 15.6.1.2.3 any other aggravating or mitigating circumstances; and
- 15.6.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;
- 15.6.1.3 may, on such conditions as the Tribunal may deem fit, terminate the membership of a member who has been found guilty of improper conduct or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
- 15.6.1.4 may direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Tribunal deems appropriate;
- 15.6.1.5 may find that an officer or a registered securities trader does not meet the fit and proper requirements set out in rule 4.1;

- 15.6.1.6 may direct a member to ensure that any sanction imposed by the Tribunal on an employee of that member is complied with by such employee;
- 15.6.1.7 may make a fair and reasonable order as to costs; and
- 15.6.1.8 may order that particulars of the offence and finding of the Tribunal and the penalty imposed be published, provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the Tribunal in this regard.
- 15.6.2 A Tribunal may impose any one or more of the penalties referred to in rule 15.6.1.
- 15.6.3 Any penalty or part thereof may be suspended on such conditions as the Tribunal may determine.
- 15.6.4 If a member or an employee of a member fails to pay any fine imposed by a Disciplinary Committee or a Tribunal, within 7 days after being informed of the amount of the fine, the NSX may, after serving notice of not less than 3 days on such person, calculated from the expiration of the last of the 7 days within which payment must be made, –
- 15.6.4.1 recover such fine from such member or employee, as the case may be, in a court of competent jurisdiction;
- 15.6.4.2 terminate the membership of such member on such conditions as the NSX may deem fit, or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
- 15.6.4.3 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the NSX deems appropriate.
- 15.6.5 The amount of any fine paid to the NSX pursuant to the Rules shall be paid into the **NSX Guarantee Fund**. Any costs paid to the NSX pursuant to an award made by a Disciplinary Committee or a Tribunal shall be paid into the general funds of the NSX.
- 15.6.6 A Tribunal may, upon good cause shown and subject to such conditions as the Tribunal may impose, vary or modify any penalty which it may have previously imposed on any person provided that in modifying or varying such penalty, the Tribunal shall under no circumstances increase such penalty.
- 15.6.7 A report of the findings of a Disciplinary Committee or a Tribunal will be forwarded to the Registrar, by the NSX, within 30 days after the completion of the proceedings.
- 15.6.8 Should any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the NSX may determine. Any member whose membership has been terminated and who lodges an appeal in terms of the Act shall simultaneously inform the CEO that an appeal has been lodged.

15.7 Urgent issues

- 15.7.1 In order to ensure that the business of the NSX is carried on with due regard to the public interest, the Chairman may from time to time appoint one or more Urgent Issues Committees. The Chief Executive Officer or the acting Chief Executive Officer, the Chairman or the Deputy Chairman of the NSX and at least two other members of the controlling body shall constitute an Urgent Issues Committee.

- 15.7.2 An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, other members or to a settlement system of the NSX or any other exchange, or that it is conducting business in a manner which could be detrimental to the interests of the NSX or to the interests of the members of the NSX and the public.
- 15.7.3 If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a member in terms of the rules has revealed that the member is operating in such a manner that there is such imminent danger as is referred to in rule 15.7.2, the Urgent Issues Committee may call upon senior representatives of the member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.
- 15.7.4 With the agreement of the member concerned or, if the outcome of such meeting fails to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two-thirds majority and subject to rule 15.7 –
- 15.7.4.1 prohibit such member from trading;
- 15.7.4.2 restrict the trading activities of such member in such manner as it deems fit, including the application of rule 15.7.5; and/or
- 15.7.4.3 give such member such instructions as it may deem necessary in the interests of the member's clients or other members or any settlement system of the NSX or any other exchange.
- 15.7.5 The Urgent Issues Committee may during the period of any order in terms of rule 15.7.4 appoint a registered public accountant and auditor or a stockbroker, member or employee of the NSX to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into NSX transactions without the prior consent of the person appointed, which consent may be given upon such terms and conditions as the Urgent Issues Committee or the said appointee shall determine.
- 15.7.6 Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question.
- 15.8 Involuntary termination of membership – Supervision and control**
- 15.8.1 If, after provisional termination of membership at any stage prior to the final termination of membership, the NSX is of the opinion that the interests of clients, other members or the NSX may not be adequately protected by the member, the NSX may direct that such action is taken by the member or that such supervision or control is executed by the NSX as is deemed necessary to ensure that –
- 15.8.1.1 the member meets all of its obligations to its clients timeously, including the return of client assets to the clients; and
- 15.8.1.2 the member settles all transactions which have not been settled at the date of provisional termination of membership.

15.8.2 The intervention by the NSX referred to in rule 15.8.1 may, in appropriate circumstances, involve the NSX following the procedures set out in rule 8.1, as if the member had been declared to be in default.

15.8.3 The NSX may appoint one or more employees of the NSX or another member, or a registered public accountant and auditor, to exercise the supervision and control of the member's activities provided for in this rule 15.8, at the member's cost.

15.9 NSX's powers of publication

15.9.1 The NSX may in its discretion and in such manner as it may deem fit, notify the public of any fact that the NSX considers to be in the public interest, including, but not limited to, the name of the member or employee of a member who has been found guilty of any charge and of the sentence imposed on such person.

15.9.2 No action or other proceeding shall in any circumstances be taken by any member or employee of a member referred to in any notification referred to in rule 15.9.1, or in a NSX Gazette, against the NSX or any controlling body or committee member or employee thereof or any person publishing or circulating the same.
