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General Notice

BANK OF NAMIBIA

No. 518

2023

CLIENT DISCLOSURE RULES: VIRTUAL ASSET ACT, 2023

The Bank of Namibia designated as the Regulatory Authority in terms of section 5(1) of the Virtual Assets Act, 2023 (Act No. 10 of 2023) has under section 51(1) of that Act made the Client Disclosure Rules set out in the Schedule.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

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PART 1

DEFINITIONS AND SCOPE OF RULES

Definitions

1. In these rules, a word or an expression to which a meaning has been given in the Virtual Assets Act, 2023 (Act No. 10 of 2023), has that meaning, and –

“Regulatory Authority” means the Bank or any other entity designated as the Regulatory Authority in terms of section 5(1) of the Act; and

“the Act” means the Virtual Assets Act, 2023 (Act No. 10 of 2023).

Scope of the rules

2. (1) These rules apply to persons issued with a licence under the Act to operate as virtual asset service providers or token issuers.

(2) These rules must be read together with the Act, regulations, rules, directives and guidelines issued under the Act, the laws relating to money laundering and terrorism financing and proliferation activities and other applicable laws.

PART 2

GENERAL REQUIREMENTS

General requirements

3. (1) A licence holder must pay due regard to the information needs of the clients of the licence holder and must communicate information to the clients in a way which is clear, fair, and not misleading.

(2) A licence holder must ensure that communications –

- (a) are presented in a way that is likely to be understood by the average member of the group to whom it is directed, or by whom it is likely to be received;
- (b) do not disguise, diminish or obscure important items, statements or warnings;
- (c) are accurate, up-to-date, and relevant to the means of communication used; and
- (d) do not omit any relevant fact where this would result in the communication being insufficient, unclear, unfair, or misleading, and do not make definitive statements that cannot be substantiated.

PART 3

DISCLOSURE REQUIREMENTS

General disclosure requirements

4. (1) A licence holder must provide the licence holder’s clients with the following general information in writing, as applicable before providing relevant products and services or products or services:

- (a) the name and address of the licence holder, and the contact details necessary to enable a client to communicate effectively with the licence holder;
 - (b) a description of the products and services provided;
 - (c) the methods of communication to be used between the licence holder and the client;
 - (d) the languages in which the licence holder and clients may communicate;
 - (e) any specific technological requirements that the clients must have in place in order to benefit from the products or services, for example, if the client must have a particular wallet in order to receive virtual asset;
 - (f) a statement of the fact that the licence holder is licensed under the Act and the activities for which the licence holder is licenced;
 - (g) a description, which may be provided in summary form, of any conflicts of interest which may arise and how the licence holder will ensure fair treatment of the client;
 - (h) any cancellation or withdrawal rights that the client has in relation to the products or services, including practical instructions for exercising any right to cancel or withdraw, including the contact details to which any cancellation or withdrawal notice must be sent;
 - (i) minimum duration of the contract, in the case of services to be performed permanently or recurrently;
 - (j) any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases;
 - (k) details regarding how complaints may be made and the licence holder's procedure for handling complaints;
 - (l) the law and competent court applicable to the provision of the product or services; and
 - (m) any other information as may be required by the Regulatory Authority.
- (2) Where a communication refers to –
- (a) features such as “guaranteed”, “protected” or “secure”, that statement must be factually accurate;
 - (b) yield figures, it must provide a balanced impression of both the short and long term prospects of the relevant product or service;
 - (c) a comparison –
 - (i) the comparison must be meaningful and presented in a fair and balanced way;
 - (ii) the sources of the information used for the comparison must be specified; and

- (iii) the key facts and assumptions used to make the comparison must be included.
- (d) past performance, there must be a clear and prominent statement that past performance is not an indicator of future performance, and the reference period and the source of information must be clearly stated, and any information on past performance must be based on objective information;
- (e) future performance, the licence holder must –
 - (i) give a balanced impression, covering both negative and positive scenarios;
 - (ii) be clear as to the basis on which future performance is predicted;
 - (iii) contain a clear and prominent statement that such forecasts are not a reliable indicator of future performance; and
 - (iv) not provide information on future performance if it is not able to obtain the objective data to substantiate the claim.
- (f) products or services having or not having regulatory protections, this information must be provided in a way which is clear and accurate.

(3) A licence holder may not make any comparison, or any reference to past or future performance, unless it represents a balanced approach and does not take advantage of the recipient of the communication, for example by creating a fear of missing out.

(4) A licence holder may not use the name of the Regulatory Authority or that of any other regulatory body or authority in such a way that would indicate or suggest endorsement or approval by the Regulatory Authority or other regulatory body or authority of the relevant products or services of the licence holder.

(5) A licence holder may not use the name of any regulator, including the Regulatory Authority in a way that is misleading.

Execution disclosure

5. Holders of Virtual Asset Broker-Dealer and Virtual Asset Market Place licences must disclose to clients the factors they have taken into account when executing transactions on behalf of clients, including price, costs, speed, likelihood of execution and settlement, size, nature and any other consideration that they consider relevant.

Virtual asset advisory services

6. (1) A holder of a Virtual Asset Advisory Services licence providing any recommendation or advice in connection with virtual assets must always disclose to clients any benefits the Virtual Asset Advisory Services licence holder is receiving in connection with those virtual assets, as well as any other matter that could create a conflict of interest in relation to or otherwise bias any recommendation or advice provided.

(2) A licence holder referred to in subrule (1) providing any recommendation or advice in connection with virtual assets must disclose all benefits paid to the licence holder, whether by way of fees, commissions, dividends, directly or indirectly, in connection with such recommendation or advice, or otherwise received from any party which are associated with the relevant virtual assets.

Risk disclosure requirements

7. (1) A licence holder must provide their clients with appropriate risk disclosures before providing services or selling virtual assets to clients, and must ensure that the risk disclosures are prominently displayed using a font size at least equal to the predominant font size used throughout the information provided.

(2) Risk disclosures referred to in subrule (1) must be appropriate to the services and virtual assets provided, and must include the following coverage, as applicable –

- (a) the fact that the value of virtual assets may be subject to sudden and extreme volatility, including a total loss of value;
- (b) past performance is not a reliable indicator of future performance;
- (c) virtual assets are not always be liquid or transferrable or there may not be secondary market;
- (d) virtual assets involve new and evolving technologies, that the markets in virtual assets are still in an early stage of development, and that client may be disadvantaged by information asymmetries when dealing in virtual assets;
- (e) the operation of virtual assets can be complicated, and so clients must take care to understand the risks of virtual assets before dealing in them; and
- (f) there is a greater risk of virtual assets being irrevocably lost, stolen, or compromised as a result of a security issue than with traditional investments.

(3) A licence holder must always give a fair and prominent indication of any relevant risks when referencing any potential benefits of relevant products or services.

Fees disclosure requirements

8. (1) A licence holder must provide the licence holders clients with clear and transparent disclosure regarding fees, costs and charges of services provided so that the client can verify and has an informed view of their total costs.

(2) Where applicable, the licence holder must give notice of the possibility that other costs, including taxes or other fees, may arise for the client.

(3) Where a licence holder offers a yield as part of relevant products and services, the licence holder must give a transparent explanation of the effect of costs and charges on such yield.

(4) A licence holder must disclose to clients the arrangements for payment.

(5) Where any part of the total fees, costs and charges is to be paid in or represents an amount of foreign currency or virtual assets, the licence holder must indicate the currency or virtual assets involved and applicable conversion rates and costs.

(6) Fees information must be provided to clients in writing before providing the relevant service and in relation to an ongoing service, and clients must be kept up to date regarding fees regularly, and at least quarterly.

Disclosure requirements when holding virtual assets

9. (1) Licence holders must provide the licence holders clients with information about the existence and the terms of any security interest or lien which the licence holder or any third party used by the licence holder has or may have over the client's virtual assets, and any right of set-off it holds in relation to the client's virtual assets.

(2) A licence holder that holds virtual assets with a third party subject to the Custody of Client Asset Rules published under the Act must provide that client with the following information, where applicable:

- (a) that virtual assets may be held by a third party on behalf of the licence holder;
- (b) the level of responsibility taken by the virtual asset service provider for any acts or omissions of the third party;
- (c) the consequences for the client of the insolvency of the third party;
- (d) that the virtual assets may be held with the virtual assets of other persons in an omnibus account by a third party and a prominent warning of the resulting risks;
- (e) if it is not possible under national law for virtual assets belonging to a client held with a third party to be separately identifiable from the virtual assets of that third party or the licence holder, that fact and a prominent warning of the resulting risks; and
- (f) that accounts that contain virtual assets belonging to that client are or will be subject to the law of a jurisdiction other than that of Namibia, and indication that the rights of the client relating to those instruments or money may differ accordingly.

(3) A licence holder that holds virtual assets must provide clients with information regarding the clients' reports in accordance with the Custody of Client Assets Rules published under the Act.

Additional disclosure requirements in relation to virtual asset advisory services

10. A holder of a Virtual Asset Advisory Service licence must before providing advice:
- (a) explain to the client the range and types of virtual assets that may be recommended in the advice, including any relationship with other virtual asset service providers or token issuers where these may pose a risk of impairing the independent basis of any advice provided; and
 - (b) inform the client whether the licence holder will provide the client with a periodic assessment of the suitability of the virtual assets recommended to that client.

Record keeping

11. A licence holder must maintain adequate records of the licence holder's communications with clients for a period of not less than five years after the relationship with the client has ended, or such other period which the Regulatory Authority may request.

PART 4**ENFORCEMENT****Enforcement**

12. Where a licence holder or person to whom these rules apply contravenes or fails to comply with a provision of these rules, the Regulatory Authority, may as it consider appropriate in the circumstances and in accordance with the Act, issue a directive, suspend or cancel a licence or amend a condition of a licence, or impose administrative sanctions or institute criminal proceedings in terms of the Act.

PART 5**SHORT TITLE****Short title**

13. These rules may be cited as Client Disclosure Rules.

PART 6**EFFECTIVE DATE****Effective date**

14. These rules become effective on the date of publication in the *Gazette*.
