SECTION 18

Exchange Traded Funds

18.1 The following requirements are for listing Exchange Traded Funds (ETFs). ETFs will be listed on the Exchange Traded Funds Board (ETF Board).

18.2 General

18.2.1 Once an application has been made to the Committee for listing an ETF, and such application has been approved, the ETF will be listed by the BSE.

18.2.2 ETFs will be traded in the same way as any other securities on the BSE and will be subject to the BSE’s Trading Rules.

18.2.3 Trades on ETFs will be settled through the CSD.

18.2.4 ETFs must be freely transferable.

18.2.5 An application for the issue of ETFs must include the following information:

(a) combination or structure of the ETF and details of the index on which the ETF is structured if applicable;
(b) Net Asset Value (NAV) of the ETF as at the date of application;
(c) Percentage change of the NAV of the underlying basket of securities for the previous 6 months on a daily basis;
(d) Liquidity (turnover/market capitalisation) of each of the underlying securities & basket of securities as a whole over the past year;
(e) The basis of computation of management fees if any;
(f) Course of action that will be taken by the issuer in the event an underlying security is suspended or de-listed, and its repercussion on the computation of NAV;
(g) Details of the issuer;
(h) Currency in which the ETF will be structured and traded;
(i) Rules pertaining to the treatment of corporate actions including unbundling and re-bundling of securities;
(j) Any other information that may be required by the BSE on a case by case basis;
(k) Any other information that may be required as detailed in the following sections.

18.3 Criteria for listing

18.3.1 ETFs must be:

(a) open ended (unless an exemption has been granted otherwise);
(b) issued over an index or be structured on a combination of securities/commodities or financial instruments based on a given ratio acceptable to the BSE;
(c) disclose the methodology of computation of the index, if the ETF is structured on such index;
(d) disclose the methodology of computation of the NAV of ETF if such ETF is based on a commodity or commodities;
(e) fully secured at all times: either by the underlying securities/commodities or financial instruments it represents, a proxy security acceptable to BSE which should be listed, freely tradable and have adequate liquidity or cash;
(f) the component securities should be housed in a trust and trustee should be appointed, subject to approval by the BSE, to protect the interests of the investors in the ETF.

18.3.2 The underlying index or portfolio must consist of securities that are listed on the BSE or any other Securities Exchange acceptable to the BSE;

18.3.3 The ETF issuer must:

(a) prove to the BSE that it has the relevant expertise to issue ETFs or has access to such expertise;
(b) satisfy the BSE that a secondary market in the ETF will be established and maintained through appointing market makers;
(c) Undertake to compute the Net Asset Value (NAV) of the ETF on a daily basis and make the NAV public to all market participants at the same time through the BSE;
(d) Ensure that the computation of NAV will take into account any corporate actions on the underlying securities and management fees.

18.4 Corporate actions and dividends

18.4.1 In the case of ETFs that make provision for regular distribution of dividends to shareholders, such distributions must be made at least on a half yearly basis. Such distributions should be announced through the BSE in accordance with the following requirements:

a) The last day to register (last day to settle transactions to qualify for the dividend) must be made at least 14 working days prior to this date;
b) The cash amount to be distributed and the date on which the distribution will be paid, must be made at least 14 trading days prior to the last day to register.

18.4.2 Where corporate actions, including but not limited to, mergers, takeovers, re-bundling, unbundling, rights issues, capital reductions or scrip dividends, occur in a constituent security of the ETF, the manager of the ETF shall rebalance its portfolio in accordance with the rules of the providers of the index and/or the rules pertaining to the ETF.

18.4.3 Where such rules allow the payment of special distributions to shareholders, rather than the re-investment of such proceeds in the constituent component of an index, the manager will distribute such proceeds to the ETF shareholders in accordance with its rules.
18.5 Continuing obligations

18.5.1 The applicant issuer is required to disseminate any announcement on the underlying securities to the BSE, latest on or before the expiry of 1 market day subsequent to such announcement in respect of the constituent security.

18.5.2 The issuer of the ETF will be required to make an announcement should there be a change in the constituent portfolio or the underlying index.

18.5.3 Disseminate the NAV of the ETF to participants based on the last traded price on a daily basis before the commencement of trading. This must be done through the BSE.

18.6 Conditions for Listing

18.6.1 An issuer of ETFs must comply with the following requirements:

(a) All applications for listing ETFs are to be submitted to the Committee through a sponsoring broker;
(b) The BSE may, in its overriding discretion, grant a listing to an issuer who does not fulfil the requirements set out or refuse a listing to an issuer who does not comply with the listing requirements on the basis that, in the BSE’s opinion, the grant or refusal of the listing is in the interest of the investing public. The BSE reserves the right to withhold the reasons for refusal to grant a listing. Issuers that wish to apply for a listing, but do not meet all of the objective criteria prescribed by these listing requirements for the grant of a listing are therefore advised to discuss their intended applications with the BSE.
(c) The issuer must be duly incorporated or otherwise validly established under the law of the country of incorporation or establishment of the ETF, and must be operating in conformity with its memorandum and articles of association (or similar statutory provision) and all laws of its country of incorporation or establishment.
(d) Where an issuer is seeking a secondary listing for ETFs listed on another Stock Exchange, it must be in compliance with the requirements of that Exchange and the relevant laws of that country and such Exchange should be acceptable to the BSE.

18.7 Pre-listing statements

18.7.1 An applicant issuer of ETFs must include the following in a pre-listing statement/prospectus:

a) Full name of issuer, manager and trustee;
b) Place and date of incorporation of issuer, manager and trustee;
c) The full names, details and addresses of directors of the issuer, manager and trustee;
d) A statement that the BSE’s approval of the listing of the ETF is not to be construed in any way as an indication of the merits of the issuer or of the ETF, that the BSE has not verified the accuracy and truthfulness of the contents of the ETF documentation and that to the extent permitted by law, the BSE will not be liable for any claim of whatever nature;

e) A statement that claims against the BSE Security Fund may only be made in respect of trading in ETFs on the BSE and in accordance with the terms of the rules of the Security Fund, and can in no way relate to the issue of ETFs by an applicant issuer;

f) The names and addresses of the advisors and transfer secretaries to the issue;

g) A professional opinion regarding the effect of Capital Gains Tax on the Fund and the security holder;

h) A statement to the effect that:

“Prospective purchasers of any ETF should ensure that they fully understand the nature of ETFs and the extent of their exposure to risks, and that they consider the suitability of ETFs as an investment in the light of their own circumstances and financial position”;

i) Basis and formula for the computation of management fees applicable to the ETF;

j) Audited financial statements of the issuer, manager and trustee for the previous 3 years;

k) A description of the index, including the name of the publisher of the index, its date of establishment and how it is compiled;

l) A description of the constituent stocks (if applicable) and the ratio of their combination;

m) The identity of the party that sponsors and/or calculates the index;

n) An explanation of the computation of the index;

o) The frequency with which the index is updated and published;

p) Provisions in the event of modification and discontinuance of the index;

q) The authority to use the index from the party that sponsors and/or calculates the index;

r) NAV of the ETF as at the date of application;

s) Basis of pricing of the ETF by the issuer and/or manager;

t) Trust Deed;

u) Any other information that is required in respect of section 18.2 or any other section of these rules.

18.7.2 Pre-listing statements must be formally approved by the BSE prior to its publication. Such approval will only be given if the BSE considers that the information in the pre-listing statement is complete.

18.8 Listing announcements

18.8.1 The applicant issuer must publish an announcement immediately after the BSE has approved an application for listing, containing:
(a) The information in respect of details of the ETF;
(b) The period of marketing (if applicable) and the expected listing date;
(c) A statement that BSE approval for the listing has been granted;
(d) The code or name under which the ETF will trade;
(e) Places where copies of the ETF issue documentation can be obtained.

18.9 Daily Publication

18.9.1 The applicant issuer must publish the following details on an approved information dissemination system and also report the same to the BSE on a daily basis:

(a) The NAV of the ETF for the preceding day;
(b) The accrued reserves distributable to ETF holders, if applicable each preceding day;
(c) The index level for the preceding day;
(d) Management fees payable;
(e) The constitution of the index basket which an investor wishing to subscribe in specie must deliver on the following trading day;
(f) The cash amount which an investor wishing to subscribe in specie must deliver on the following trading day; and
(g) The cash amount which a holder wishing to redeem in specie (i.e. exercise his delivery rights) will receive.

18.9 Increases and redemptions in issue size of existing ETF’s

18.10.1 In the event of an increase in the issued quantity of existing ETFs, issuers shall submit a memorandum detailing the specific terms of the increase in issue size including the quantity and price of the ETFs to be issued.

18.10.2 Issuers may increase or reduce the issue size of existing ETFs, subject to the approval of the BSE and the announcement of such change in the issue size through the BSE.

18.11 ETF risk management

18.11.1 The issuer of the ETF shall undertake the responsibility of ensuring that the value of the underlying securities and collateral at any given point in time is greater than or equal to the NAV of the ETF units issued.

18.11.2 ETFs should be backed 100% by the securities they represent or in the alternative be backed by a sample selection of such securities and other collateral acceptable to the BSE such as cash.

18.12 The appointment of market makers

18.12.1 An applicant issuer shall, prior to the listing of the ETF, be required to appoint a market maker and such duly appointed market maker must undertake to quote buy and sell prices in respect of the ETF on a daily basis.
18.13 Initial and annual listings fees

18.13.1 The initial listing fees payable by the issuer will be 0.025% of the NAV of the ETF at the point of listing subject to a minimum of P25 000 or such amount not exceeding P100 000 as the Committee may fix.

18.13.2 The annual listings fees on account of ETFs will be computed 0.025% of the NAV of the ETF at the beginning of the calendar year subject to a minimum of P25 000 or such amount not exceeding P100 000 as the Committee may fix.

18.14 Responsibilities of the Manager

18.14.1 The issuer may appoint a Manager to act on its behalf for the purpose of managing the ETF or undertake to manage the ETF.

18.14.2 The ETF Manager may levy a management fee and be reimbursed expenses incurred for managing the ETF.

18.14.3 The basis of computation of such fees and expenditures should be disclosed to the BSE and investors.

18.14.4 The Manager may at any time, at its discretion, waive or rebate its remuneration or reimbursement of expenditure or any part thereof.

18.14.5 Subject to the Listing Rules and ETF rules, the Manager may in its absolute discretion-

(a) Do all such things and enter into all such arrangements as are necessary for the administration of the scheme and to achieve the investment objectives of the ETF;

(b) Select, purchase, sell, exchange or change any of the assets of the underlying securities in the ETF

(c) Appoint persons to exercise powers and perform duties on its behalf and in particular, appoint transfer secretaries, secretaries and agents;

(d) Act on the advice or information obtained from professional advisers and others considered by it to be experts.

18.14.6 Any expenditure incurred by the Manager for the following purposes shall not be reimbursed-

(a) Preparing cheques, warrants, notices, accounts, summaries, declarations, offers or statements which the trustee is required to issue, serve or send, and deposit the same with the trustee together with stamped and addressed envelopes, if so required.

(b) Preparing, signing and executing certificates and transfers of assets which, would have to be prepared by the trustee, and the deposit of same with the trustee for signature and execution.
18.14.7 Assigning responsibilities:

(a) The Manager may, with the written approval of the Trustee and the BSE, appoint any company qualified to act on its behalf, and may assign to such appointee all its rights and duties as Manager in a form as approved by the Trustee and the BSE in terms of which it undertakes to fulfil all the obligations of the retiring Manager.

(b) The retiring Manager is then, upon payment to the trustee of all sums then due by it to the Trustee (without prejudice to the rights of the trustee, investors or other persons, in respect of any act or omission prior to such retirement) be absolved and released from all its duties and obligations under these rules.

(c) The new Manager shall thereafter exercise all powers, enjoys the rights, and perform duties and obligations of the Manager of the ETF under these rules.

18.14.8 If the Manager is liquidated, the trustee shall take immediate steps for the appointment of a new Manager.

18.14.9 The ETF Manager must be a body corporate, a company or a collective investment undertaking, registered under a regulatory authority acceptable to the BSE and must be competent, have required expertise for the performance of duties and have an unblemished reputation.

18.14.10 The Manager must satisfy the section 15(3) of the CIU Act regarding minimum financial resources.

18.15 The Trustee

18.15.1 The Issuer or Manager shall appoint a Trustee to protect the interests of investors.

18.15.2 The Trustee must satisfy section 18 of the CIU Act.

18.15.3 The powers, authority, obligations and responsibilities of the Trustee shall be detailed in the trust deed and shall include the following:

(a) The Trustee shall have all the powers necessary to protect the interests of investors and have the powers necessary to perform its functions to achieve the objectives of the ETF.

(b) Legal proceedings relating to an ETF must be instituted by or against the Trustee in its capacity as the Trustee and as such and the Trustee may institute, prosecute, intervene in or defend any legal proceedings relating to or concerning an ETF and may as a prerequisite to such action, require the manager to indemnify it against all costs, expenses and liabilities thereby incurred.
(c) The Trustee is not liable to make any payments to any investor except out of any funds held by or paid to it for the purpose under these rules.

(d) The assets of a portfolio must be registered either in the name of the Trustee or with written consent of the registrar in the name of the nominee company of the Trustee. The Trustee is liable for any act or omission of the nominee company in relation to any assets held in the name of the nominee company. Despite the foregoing, the Trustee or its nominee company must take delivery of and retain in safety custody and under its supervision and control the documents of title to the assets.

(e) The Trustee may deal in participatory interests and act as banker to the scheme. In particular the trustee may:

1. Purchase, hold, deal in or dispose of participatory interests for its own account;
2. If the trustee is a bank, act as banker for the scheme;
3. The trustee is not accountable in any way to the Manager or investors for any profits made or benefits derived by it from any of the matters referred to in clause e(1).

(f) The Trustee may act upon the advice, statements of or information obtained from lawyers, the manager, bankers, and accountants, members of any Exchange or other persons considered by the Trustee to be experts in relation to the matters upon which they are consulted.

(g) The Trustee may be required to resign from office by written notice at the request of not less than 50 per cent of the investors excluding the Manager, in all the portfolios, holding not less than 50 per cent in value of the total number of participatory interests then in issue.

(h) A Trustee appointed in the place of a retiring Trustee must execute an instrument in a form approved by the manager and the registrar in terms of which it undertakes to fulfil all the obligations of retiring Trustee. The new Trustee shall exercise all the powers, enjoy all the rights, and subject to all the duties and obligations, as fully as if such new Trustee had originally been a party to the scheme.

(i) A Trustee is deemed to have resigned if its certificate of registration is revoked or suspended and the manager must in that event immediately appoint another person qualified to act as Trustee.