



## INVESTOR COMPENSATION FUND RULES

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## 1. DEFINITIONS

- 1.1. **'Act'** means the Securities Act 2014 of the laws of the Republic of Botswana, as amended from time to time;
- 1.2. **'BWP'** means the denomination for the official currency in Botswana;
- 1.3. **"BSEL/Exchange"** means the Botswana Stock Exchange Limited;
- 1.4. **'Claimant'** means all securities investors, with eligible claims in terms of the Rules, excluding institutional investors, who have suffered loss as a result of a Participant's failure to meet their contractual obligations;
- 1.5. **'Compensation Fund'** means the Investor Compensation Fund established in terms of these Rules;
- 1.6. **'Participants'** means the Exchange, the Central Securities Depository Company of Botswana (CSDB), Securities Brokers who are Members of the Exchange, Special Members of the Exchange, CSD Participants and any other entity as the Exchange may determine from time to time;
- 1.7. **'Rules'** means these Investor Compensation Fund Rules;
- 1.8. **'Securities'** shall have the same meaning as ascribed in the Securities Act 2014;
- 1.9. **"Securities investors"** means a person or entity that makes investments in listed securities;
- 1.10. **'Trustees'** means Members of the Investor Compensation Fund Board of Trustees appointed to administer these Rules.

## 2. NAME OF FUND

The name of the fund shall be the Botswana Stock Exchange Limited (BSEL) Investor Compensation Fund, herein referred to as "the Compensation Fund".

### 3. INTRODUCTION

- 3.1. In terms of the Section 57 of the Securities Act the Non – Bank Financial Institutions Regulatory Authority (NBFIRA) shall make Investor Compensation requirements by which an Investor Compensation Fund shall be established in order to, among other things, grant compensation to investors for losses suffered as a result of the Securities Broker or Dealers becoming incapable of meeting their contractual obligations.
- 3.2. The Rules extend the scope of application to other capital markets participants as defined in Rule 1.6.
- 3.3. NBFIRA has delegated the function of developing the Rules and management of the Compensation Fund to the Exchange.
- 3.4. A Compensation Fund in relation to a financial market, means a rescue fund for securities investors, established in order to grant them compensation for pecuniary losses suffered as a result of a Participant's failing to meet their contractual obligation;
- 3.5. The BSEL Board of Directors shall establish a Compensation Fund, which shall be managed, administered and utilized by the Exchange, consisting principally of contributions made by Participants and the Exchange;
- 3.6. The Compensation Fund contributions shall be made in BWP in order to compensate any damages caused by non-fulfilment of trading obligations.

### 4. PURPOSE OF THE COMPENSATION FUND

- 4.1. To grant compensation to clients for losses suffered as a result of non-fulfilment of contractual obligations due to:
  - 4.1.1. Dishonesty, insolvency, default, or liquidation of a Participant;

- 4.1.2. Dishonesty of an employee of a Participant, among other reasons.
- 4.2. To protect securities investors' investment interests.
- 4.3. To ensure financial integrity in the securities market in Botswana.
- 4.4. To enhance investors' confidence in the securities market of Botswana.

## 5. SOURCE OF FUNDING FOR THE INVESTOR COMPENSATION FUND

- 5.1. The Investor Compensation Fund shall consist of:
  - 5.1.1. money which was contained in the Compensation Fund immediately before the commencement of these Rules;
  - 5.1.2. money contributed by Participants to the Compensation Fund in accordance with these Rules;
  - 5.1.3. interests from time to time accruing from the investment of the Compensation Fund;
  - 5.1.4. money recovered by or on behalf of the Exchange in the exercising of any right of action conferred by these Rules;
  - 5.1.5. money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Exchange pursuant to these Rules; and
  - 5.1.6. any other money lawfully paid into the scope and function of the Compensation Fund.

## 6. SCOPE OF THE INVESTOR COMPENSATION FUND

- 6.1. The Compensation Fund shall cover transactions and dealings of Securities traded on the Exchange.
- 6.2. The Compensation Fund shall cover losses suffered by a claimant, for recovery of the loss, where:

- 6.2.1. the claimant gives money or other property or authority over property, to a Member:
  - 6.2.1.1. who is a Member of the Exchange at that time; or
  - 6.2.1.2. who the claimant reasonably believed to be a Member of the Exchange at that time and who was a Member of the Exchange at some earlier time;
  - 6.2.1.3. the money or property or authority was given to the Member in connection with effecting a transaction, or proposed transaction covered by the provisions of the operating Rules of the Exchange relating to transactions effected through the Exchange.
- 6.2.2. the claimant suffers loss because:
  - 6.2.2.1. if the claimant provided money or other property to the Member resulting in the defalcation or fraudulent misuse of the money or other property by the Member; or
  - 6.2.2.2. if the claimant gave the Member authority over property resulting in the fraudulent misuse of that authority by the Member.
- 6.3. Where a claimant suffers loss arising from a contractual or statutory obligation placed on any other participant besides a Member as defined under Rule 1.6.
- 6.4. The Compensation Fund does not cover default obligations, shortfalls, deficiencies and or any other defaults during clearing and settlement of trade transactions by CSDB. This type of protection is provided for by the Settlement Guarantee Fund.

## 7. OVERSIGHT OF THE COMPENSATION FUND

- 7.1. Overall oversight of the Compensation Fund shall vest with the BSEL Board of Directors.

- 7.2. The BSEL Board of Directors shall establish and appoint, a management Board of Trustees to be known as the Investor Compensation Fund Board of Trustees (the Trustees), comprising three (3) Trustees.
- 7.3. The Composition of the Board of Trustees shall constitute:
  - 7.3.1. Two Independent Non – Executive Directors of the Exchange; and
  - 7.3.2. One Trustee Independent of the Exchange.
- 7.4. The tenure for Trusteeship of the Compensation Fund Board of Trustees shall be three years, renewable for further 3-year terms. This constitutes nine years and three terms.
- 7.5. Trustees shall serve for three terms, and be eligible for re-election for more terms, unless upon an assessment by the Trustees, with assistance from an independent assessor, conducted when the three terms (nine years) lapses and every year after the nine years, it is concluded that the Trustees exercises objective judgement and there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making.
- 7.6. The BSEL Board of Directors may at any time remove a Trustee of the Compensation Fund Trust appointed by it under this Rule and may fill a vacancy arising in the membership of the Compensation Fund Board of Trustees.
- 7.7. The Head of Finance and Administration of the Exchange shall act as the secretary to the Board of Trustees.
- 7.8. The Trustees shall meet once per year or as and when a meeting is required.
- 7.9. Trustees shall discharge their responsibilities in accordance with the provisions of the Compensation Fund Rules.
- 7.10. The BSEL Board of Directors may delegate all or any of its powers, authorities and discretions vested in it under these Rules, to the Compensation Fund Trustees such as the power to approve payments of a large amount.

- 7.11. A delegation by the BSEL Board of Directors under this Rule does not prevent the exercise of power, authority or discretion by the BSEL Board.

## 8. MANAGEMENT AND ADMINISTRATION OF THE COMPENSATION FUND

- 8.1. The BSEL shall be vested with the day-to-day management and administration of the Compensation Fund.
- 8.2. The BSEL shall:
  - 8.2.1. Manage and administer the Compensation Fund;
  - 8.2.2. Ensure that a Trust Account in the name of the Compensation Fund is established, separate from the funds and liabilities of the Exchange;
  - 8.2.3. Levy contributions from Participants;
  - 8.2.4. Evaluate and pay claims made by investors and acting with impartiality in respect of all claims presented;
  - 8.2.5. Ensure that the investing public is aware of the Compensation Fund, its benefits and any changes in regulations; and
  - 8.2.6. Invest the money or assets held in the Compensation Fund Trust Account that is not immediately required for the purposes of the Compensation Fund, in terms of these Rules and as approved by the Compensation Fund Board of Trustees.
- 8.3. The BSEL shall deduct statutory fees, audit fees, legal expenses as they accrue from time to time.
- 8.4. The BSEL shall deduct both management fees and administration fees being 1 percent of the value of assets in the Fund. The BSEL Board of Directors shall have the right to review the management fee from time to time and where necessary.

## 9. CLAIMS – PROCEDURES AND NOTICES

- 9.1. A claim for compensation from the Compensation Fund shall be made in writing to the Exchange, within three (3) years from the date

of default and such claim shall meet eligibility test, unless the Exchange otherwise determines.

- 9.2. The Exchange shall publish a notice inviting legitimate claimants to lodge their claims against the defaulter Participant within a specified period of time.
- 9.3. The Exchange shall publish a notice inviting and notifying legitimate claimants to collect their claims against the defaulter Participant within a specified period of time.
- 9.4. A claim shall be processed within six (6) months on submission of relevant documentation.
- 9.5. In the event of insolvency of Participant defaulter, the Exchange shall publish a notice to eligible claimants in at least one newspaper with wide circulation, all the editions to be in English and Setswana. Notice calling for claims arising from an Insolvent Participant shall also be displayed on the premises of the Exchange as well as published on X-News and on the website of the Exchange.

## 10. APPLICATION FOR A CLAIM

- 10.1. Pursuant to Rule 9 claims made for compensation from the Compensation Fund should be made to the Chief Executive Officer of the Exchange through the prescribed application form setting out:
  - 10.1.1. the names of the parties involved;
  - 10.1.2. the addresses of the parties involved;
  - 10.1.3. the details of the transaction (s) or proposed transaction (s) for which the money or property or authority over property was given, including the date, time, place and type of contract(s) or securities traded or proposed to be traded;
  - 10.1.4. what, if any, steps the claimant has taken to exhaust any remedies available to him in respect of the loss and what have been the results of any such steps.
  - 10.1.5. the amount of the actual pecuniary loss suffered in Botswana Currency.

## 11. ELIGIBLE CLAIMS

- 11.1. Claims for compensation from the Compensation Fund shall be deemed eligible if made within 3 years from the date of default.
- 11.2. Where the Exchange has satisfied itself that such a claim is legitimate and has been filed within the 3 years' specified period.
- 11.3. Eligible claims shall be those lodged by aggrieved Investors and not claims brought by Member brokers, Issuers or any associate Participant of the Exchange.
- 11.4. The following may constitute grounds for rejecting a claim for Compensation from an investor, but may not be exhaustive:
  - 11.4.1. If the investor has contributed in any way to the financial difficulties of the Participant in default;
  - 11.4.2. If the application is found to contain any inaccuracy or omission, unless this is clearly immaterial or is shown by the investor to be wholly innocent; or
  - 11.4.3. Where, in the opinion of the Board of Trustees, the investor has so conducted himself in his dealings with a Participant in default, as to be in breach of applicable law or regulations, including these Rules.

## 12. LEGITIMATE CLAIMS

- 12.1. Legitimate claims shall comprise:
  - 12.1.1. Proof that the claimant has suffered loss and the loss was a direct result of malpractice, negligence, error, on the part of the Participant;
  - 12.1.2. Proof that the claimant has suffered loss and the loss was a direct result of insolvency on the part of the Participant;

12.1.3. Proof that the claimant gave money or property or authority to a Participant or a person who the claimant believed was a Participant or acting on behalf of the Participant;

12.1.4. Proof that the money or property or authority was given to the Participant in connection with effecting a transaction covered by the provisions of the Members Rules, the Equity Listings Requirements, Automated Trading System Debt Trading Requirements and other applicable Rules and Requirements relating to transactions effected through the Exchange;

12.1.5. Any other criteria set out by the NBFIRA.

### 13. APPLICATION OF THE FUND

13.1. A person who suffers loss and has a legitimate claim as described in Rule 12 is, subject to these Compensation Fund Rules, entitled to claim compensation from the Compensation Fund.

13.2. The amount that a claimant is entitled to claim as compensation from the Compensation Fund, subject to this Rule:

13.2.1. Shall be an amount which does not exceed 5% of the Compensation Fund or BWP 500, 000.00 (Five Hundred Thousand Pula) whichever is lower, provided that the total compensation paid from the Compensation Fund in any one year shall not exceed 50% of the balance available in the Compensation Fund.

13.2.2. Subject to the above limits, the Board of Trustees shall have absolute discretion to determine the amount of any payment which it may make by way of compensation. A

claim against the Compensation Fund relating to an alleged loss caused by malpractice, defalcation or fraudulent misuse may be allowed even if:

13.2.2.1. the person against whom the malpractice, defalcation or fraudulent misuse is alleged has not been convicted or prosecuted; and

13.2.2.2. the evidence on which the claim is allowed would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse.

## 14. INVESTMENTS AND INTEREST OF THE FUND

14.1. The Board of Trustees may decide to invest the Compensation Funds through the Exchange's Investment Policies and Asset Managers or Management Companies regulated by NBFIRA and such investments will be determined by the Exchange taking into account liquidity concerns as the claimants should be compensated timely.

14.2. All investment Funds should be registered in the name of the Fund and under a registered custodian being a bank licensed by the Bank of Botswana.

## 15. PAYMENT OF CLAIMS ONLY FROM THE COMPENSATION FUND

15.1. Money or other property belonging to the Exchange, other than its Investor Compensation Fund, is not available for the payment of a claim under these Compensation Fund Rules, whether the claim is allowed by the Exchange or is made the subject of an order of a court or a relevant tribunal.

## 16. COMPENSATION FUND CONTRIBUTION

- 16.1. The Compensation Fund shall consist of:
  - 16.1.1. The interest and profits accruing from the investment of the Compensation Fund;
  - 16.1.2. All monies paid to the Compensation Fund by the Exchange;
  - 16.1.3. All monies recovered by or on behalf of the Exchange in the exercise of any rights of action against defaulting Participant;
  - 16.1.4. All other monies lawfully paid into the Compensation Fund.
- 16.2. Each Participant shall contribute a sum of BWP 5, 000.00 (Five Thousand Pula), towards the Compensation Fund per annum.
- 16.3. The Compensation Fund balance shall not fall below 50 percent of the initial total amount of the Fund at any given point.
- 16.4. A Participant of the Exchange must annually, pay to the Exchange, as a contribution to the Compensation Fund, such amount (if any) as the Exchange may determine in relation to the Member or a class including the Member.
- 16.5. In the event a Participant defaults in payment of the contribution to the Compensation Fund, the default shall be dealt with in accordance with the relevant Rules and Requirements regulating the Participant such as the Members Rules, as amended from time to time.

## 17. INSUFFICIENCY OF THE COMPENSATION FUND'S AMOUNT

- 17.1. If at any time the amount of the Compensation Fund falls below the percent specified in Rule 16 or is insufficient to pay all amounts that, at that time, are required to be paid under Rule 13 the Exchange may determine that a levy of a specified amount must be paid equally among all the Participants.

- 17.2. The amount of the levy must be paid within the time, and in the manner, specified by the Exchange.
- 17.3. A late payment penalty shall be levied against Participants as may be determined by the Board of Trustees from time to time.
- 17.4. An amount of any levy paid under this Rule shall be paid to the Trust account in the name of the Compensation Fund and dealt with in accordance with these Rules.

## 18. LIQUIDATION OF THE COMPENSATION FUND

In the event that the Compensation Fund is liquidated, the assets in the Compensation fund shall be disbursed to the BSEL, and Participants according to the proportions of their contributions should the Fund remain sufficient.

## 19. DISPUTE RESOLUTION

Any dispute arising in terms of these Rules shall be resolved in accordance with the Members Rules or any other applicable Exchange rules and CSDB rules as may be amended from time to time.

## 20. GENERAL PROVISIONS

- 20.1. For reporting purposes, the Board of Trustees shall submit to NBFIRA an Annual Report on the activities and administration of the Compensation Fund. In addition, the Exchange may direct the Board of Trustees to furnish it with any reports it deems appropriate for full monitoring of the Compensation Fund.
- 20.2. The Rules of the Compensation Fund shall be subject to review every three years and may be reviewed as and when the need arises.
- 20.3. The Exchange shall publish a notice informing Investors and the Public on whistle blowing, protection of whistle blowers as well as the procedure for whistle blowing should they seek to report a Participant in contravention of these Rules.
- 20.4. The Rules of the Compensation Fund may be amended and submitted to the BSEL Board of Directors and Non-Bank Financial Institutions Regulatory Authority for approval.

20.5. Records which show and explain transactions of the Compensation Fund shall be kept for 20 years in line with the Financial Intelligence Act as amended from time to time.