Papua New Guinea's National Stock Exchange

Business Rules Amendments

01 August 2024

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Introduction

These amendments are amendments in relation to the replacement of Affiliate requirements with new Responsible Managers requirements.

Any amendments to the Rules or Appendices are subject to approval by the Securities Commission of Papua New Guinea in accordance with section 11 of the *Capital Market Act 2015* (refer Int.20 in the Rules)

The amendments have been approved by the Securities Commission of Papua New Guinea.

The amendments will take effect on 01 August 2024.

The amendments are shown in mark-up in the attached documents.

These amendments are interim amendments until the Business Rules are rewritten in late 2024.

Amendments

Rule 4.15.1

Rule 4.15.1 will be amended as follows:

4.15 DOCUMENTS – REGISTRATION

4.15.1 (1) For the purposes of this Rule:
"transfers" or "renunciations" shall include "split transfers" and "split renunciations".

(2) (i) The buying Broker shall forward Security or Brokers Transfers to the Issuer for registration within five Business Days of receipt of documents from the selling Broker, PROVIDED THAT when the books of an Issuer close for any purpose all transfers in its possession must be lodged with the Issuer before the registers close, unless the transfers are in respect of a transaction settled on an "ex entitlement" basis.

(ii) When the buying Broker is not able to complete the transfers with the buyer's full name and address pursuant to Rule 4.15.1(2)(i), it shall nominee the Securities.

(iii) The buying Broker, shall obtain the buyer's details from its principal to enable it to comply with Rule 4.15.1(2)(i) and shall not forward transfers or renunciations to any person who is not a~~n Affiliate or~~ Participating Organisation unless authorised to do so by the Exchange and subject to the conditions laid down by the Exchange.

Purpose of amendments

The purpose of the amendment is to delete reference to Affiliates. The only party to contracts are Participating Organisations. PNGX does not recognise Affiliates as parties to transactions.

Section 5

The heading to Section 5 will be amended as follows:

SECTION 5 – ~~AFFILIATES AND~~ PARTICIPATING ORGANISATIONS

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Purpose of amendments

The purpose of the amendment is to delete reference to Affiliates.

Section 6

Section 6 will be amended as follows:

6 ~~AFFILIATES AND~~ PARTICIPATING ORGANISATIONS

6.1 ~~AFFILIATES~~ DELETED

6.1.1 ~~RECOGNITION~~ DELETED

~~(1) Subject to Rule 6.1.2 and to payment of the fee under 6.1.3, the Exchange shall recognise a natural person as an Affiliate provided the requirements specified in Rule 6.1.1(2) are satisfied and provided the applicant:~~

~~(a) has been engaged for an aggregate of not less than two years:~~

~~(i) in the business of a Participating Organisation;~~

~~(ii) by the Exchange or a related corporation of the Exchange; or~~

~~(iii) in the business of any person or entity which is considered by the Exchange to provide substantially equivalent experience to that derived from engagement under sub-paragraph (i) or (ii) above; and~~

~~(b) (i) holds an accepted tertiary qualification in commerce, economics, law, accountancy, business administration, banking, secretarial practice or any other qualification considered by the Exchange to be substantially equivalent; and~~

~~(ii) has successfully completed such subjects or courses as are specified by the Exchange;~~

~~(c) is not an insolvent under any law;~~

~~(d) is satisfied that the applicant has the required financial resources to meet his or her obligations as an Affiliate; and~~

~~(e) applies to be recognised as an Affiliate in accordance with Rule 6.1.2.~~

~~(2) The Exchange shall recognise a natural person as an Affiliate where the applicant meets the requirements specified in Rule 6.1.1 if the Exchange:~~

~~(a) has no reason to believe that the applicant is not of good fame and character and high business integrity;~~

~~(b) has no reason to believe that the applicant will not carry out his obligations as an Affiliate efficiently, honestly and fairly;~~

~~(c) is satisfied that the applicant intends to devote the substantial part of the working week to the business of a Participating Organisation.~~

~~(3) The Exchange may in its discretion recognise a natural person as an Affiliate notwithstanding that the applicant does not satisfy each of the conditions set out in Rules 6.1.1 (1)(a) and (1)(b).~~

~~(4) For the purposes of this Rule 6.1.1 but without limiting the discretion of the Exchange, a person will be deemed to be not of good fame and character if, at the time of application, he is prohibited under the Companies Act from being a director or promoter of, or being in any way concerned in or taking part in the management of, a company.~~

~~(5) In considering whether or not an applicant is of good fame and character, but without limiting the discretion of the Exchange, the Exchange shall be entitled to take into account any conviction of the applicant for any offence (other than a traffic offence) and whether the applicant has been charged with such an offence at any time and whether the applicant has at any time been adversely mentioned in a report made by or at the request of any government or governmental authority or agency.~~

6.1.2 ~~APPLICATION PROCEDURE~~DELETED

~~(1) Each applicant for recognition as an Affiliate shall execute and deliver to the Exchange an application in the form determined from time to time by the Exchange.~~

~~(2) An applicant for recognition as an Affiliate shall provide in writing in such form as the Exchange requests, such other information in addition to that contained in the application as the Exchange requires.~~

6.1.3 ~~FEE~~ DELETED

~~The fees for Affiliates shall be prescribed by the Exchange.~~

6.1.4 DELETED~~CERTIFICATE~~

~~A certificate of recognition as an Affiliate may be issued by the Exchange to any Affiliate. Such certificate shall remain the property of the Exchange and on demand in writing by the Exchange shall be returned to the Exchange. The Exchange may institute proceedings for the recovery of the certificate retained by any person not being an Affiliate of the Exchange.~~

6.1.5 DELETED~~REGISTRATION BY AFFILIATE OF ASSOCIATED PARTICIPATING ORGANISATIONS~~

~~An Affiliate shall register with the Exchange the name and address of the Participating Organisation with which he or she is associated. For this purpose an Affiliate is associated with a Participating Organisation if he or she is an officer, employee or securities representative of the Participating Organisation or in the opinion of the Exchange is otherwise associated with the Participating Organisation.~~

6.1.6 DELETED~~SURRENDER OF AFFILIATE STATUS~~

~~(1) An Affiliate may surrender his or her recognition as an Affiliate by giving notice in writing to the Exchange. The surrender shall not take effect until it is accepted by the Exchange. The Exchange shall not unreasonably refuse to accept a surrender.~~

~~(2) Subject to Rule 6.1.2(3), to the payment of the fee prescribed by Rule 6.1.3 and to the applicant meeting the requirements and conditions specified in Rule 6.1.1(2):~~

~~(a) the Exchange shall recognise a natural person as an Affiliate whose surrender of recognition as an Affiliate was accepted by the Exchange less than 12 months prior to the date that the applicant submitted an application to be recognised again as an Affiliate notwithstanding that the applicant does not satisfy the conditions set out in Rule 6.1.1(1)(b); and~~

~~(b) the Exchange may recognise a natural person as an Affiliate whose surrender of recognition as an Affiliate was accepted by the Exchange more than 12 months prior to the date that the applicant submitted an application to be recognised again as an Affiliate notwithstanding that the applicant does not satisfy the conditions set out in Rule 6.1.1(1)(b)(i) and (ii).~~

6.1.7 DELETED~~REGISTER~~

~~(1) The Exchange shall maintain a register of Affiliates stating the following for each Affiliate:~~

~~(a) the name and home address of the Affiliate;~~

~~(b) the name of each Participating Organisation with which the Affiliate is associated within the meaning of Rule 6.1.5; and~~

~~(c) such other details prescribed by the Exchange.~~

~~(2) Each Affiliate must provide such information in relation to the Affiliate requested by the Exchange in order to maintain the register of Affiliates.~~

~~(3) Any Affiliate or representative of an Affiliate authorised in writing may examine the register of Affiliates during business hours.~~

~~(4) The Exchange may publish details set out in the register as it thinks fit and an Affiliate or a Participating Organisation will have no claim against the Exchange in relation to such publication.~~

6.2 PARTICIPATING ORGANISATIONS

6.2.1 RECOGNITION

(1) Subject to Rule 6.2.2 and to payment of the fee under Rule 6.2.3, the Exchange shall recognise a company~~ or partnership~~ as a Participating Organisation provided the requirements specified in Rule 6.2.1(2) or (3) are satisfied and provided:

(a) ~~(i) in the case of a company, not less than one director is an Affiliate~~
~~(iii) in the case of a partnership of companies, each of the companies fulfils the requirements of Rule 6.2.1(1)(b)(i)~~deleted;

(b) in the case of applicant corporations, the voting shares of the applicant carry one vote per share and otherwise confer identical voting rights on each shareholder according to his shareholding. The Exchange may in its discretion waive this requirement;

(2) The Exchange shall recognise a company as a Participating Organisation where the applicant meets the requirements specified in Rule 6.2.1(1) if the Exchange:

(a) is satisfied that:

(i) each director of the applicant~~ who is not recognised as an Affiliate~~;

(ii) each person who is or would be a substantial shareholder within the meaning of the Securities Act of the applicant or its holding company (if that Act applied to the applicant or its holding company); and

(iii) each person who is entitled to not less than 10% of the non-voting shares of the applicant or its holding company,

is of good fame and character and high business integrity and has undertaken to the Exchange and to the applicant to comply with and be bound by the Rules of the Exchange to the extent necessary in connection with the stockbroking business to be conducted as a Participating Organisation by the applicant;

(b) is satisfied that the applicant has the required financial resources to meet its obligations as a Participating Organisation;

(c) is satisfied that the applicant complies with the Rules relating to trading and dealing by Participating Organisations having such association or connection with each other as may be specified in the Rules; ~~and~~

(d) is satisfied that the constitution of the applicant contains provisions which require continued compliance by the applicant with the requirements of these Rules, and contain provisions authorising the applicant, on its own initiative or at the request of the Exchange, to obtain from its members any information which could be obtained if Part VIII of the Securities Act, applied to the applicant; and

(e) is satisfied that the applicant complies with the management requirements prescribed by the Exchange.

(5) A company which was a Shareholder of POMSoX of the time of these Rules coming into effect is deemed to be recognised as a Participating Organisation at that time.

6.2.2 APPLICATION PROCEDURE

(1) Each applicant for recognition as a Participating Organisation shall execute and deliver to the Exchange an application in the form determined from time to time by the Exchange and if the applicant is a corporation, a copy of the constitution of the applicant.

(2) An applicant for recognition as a Participating Organisation shall provide in writing in such form as the Exchange requests, such other information in addition to that contained in the application as the Exchange requires.

6.2.3 FEE

The fees for Participating Organisations shall be prescribed by the Exchange.

6.2.4 CERTIFICATE

A certificate of recognition as a Participating Organisation may be issued by the Exchange to any Participating Organisation. Such certificate shall remain the property of the Exchange and on demand in writing by the Exchange shall be returned to the Exchange. The Exchange may initiate proceedings for the recovery of the certificate retained by any person not being a Participating Organisation of the Exchange.

6.2.5 SURRENDER OF PARTICIPATING ORGANISATION STATUS

A Participating Organisation may surrender its recognition as a Participating Organisation by giving notice in writing to the Exchange. The surrender shall not take effect until it is accepted by the Exchange. The Exchange shall not unreasonably refuse to accept a surrender.

6.2.6 WAIVER OF REQUIREMENTS FOR PARTICIPATING ORGANISATIONS

If at any time after admission of a Participating Organisation, the Participating Organisation no longer complies with the requirements of Rule 6.2.1(1)(b)(i), the Exchange may, in its discretion grant a waiver of the requirements upon such conditions as it deems fit.

6.3 APPROVED REPRESENTATIVE

(1) Application by a Participating Organisation for the registration of a natural person as an Approved Representative shall be made to the Exchange in the following form:

"We are desirous of having ... (*full name and current residential address*) registered as an Approved Representative subject in all respects to the Rules of the Exchange".

(2) Applications shall be supported by:

(i) three letters of reference from persons of repute (other than from any officer or employee of the engaging Participating Organisation) including where applicable a letter from the previous employer of the candidate; and

(ii) particulars of the business experience and educational qualifications of the candidate.

(3) The Exchange shall enter the name and current residential address of a candidate and the name of the applicant Participating Organisation in a Register of Approved Representatives maintained by the Exchange, provided the candidate:

(i) has been engaged by a Participating Organisation(s) for a period of not less than 12 months or if the candidate has been engaged by a Participating Organisation(s) for a period of less than 12 months and has previously been engaged by an entity or entities referred to in Rule 6.1.1(1)(a)(ii) and (iii), the candidate must complete at least 2 weeks engagement in the principal office of the Participating Organisation prior to the date of registration, and the Exchange:

(ii) has been satisfied by examination set by the Exchange or otherwise as to the candidate's knowledge of the Companies Act, the Rules of the Exchange and the usages of the business of a stock and sharebroker; and

(iii) has no reason to believe that the candidate is not of good fame and character and high business integrity.

(4) The Exchange may in its discretion register a person as an Approved Representative notwithstanding that the candidate does not satisfy one or more of the conditions set out in Rule 6.3(3)(i) to (iii) (inclusive).

(5) A Participating Organisation shall notify the Exchange within two Business Days after an Approved Representative commences engagement with the Participating Organisation.

(6) A Participating Organisation shall notify the Exchange of:

- (i) any change of name or residential address; or
- (ii) the date of termination and reasons for termination of engagement; or
- (iii) the date of cancellation of a proper authority,

of an Approved Representative who immediately prior to the change, termination or cancellation held a proper authority from the Participating Organisation. Such notification shall be given to the Exchange within two Business Days after such change, termination or cancellation.

(7) If in the opinion of the Exchange:

- (i) an Approved Representative has caused a Participating Organisation to breach any of the Rules or Regulations of the Exchange; or
- (ii) for the period of twelve months immediately prior to the opinion being formed an Approved Representative has not been engaged in the securities business; or
- (iii) an Approved Representative no longer complies with the requirements for registration specified in Rule 6.3(3),

the Exchange may subject to Rule 6.4.2(1) cancel the registration of the Approved Representative.

(8) The Exchange shall forthwith notify the Approved Representative of the cancellation of his/her registration as an Approved Representative and shall at the same time notify the Participating Organisation which employed the Approved Representative.

(9) A Participating Organisation may make application to the Exchange for registration of a person as an Approved Representative notwithstanding that such person is under the supervision and direct control of ~~an Affiliate~~a Responsible Manager in the principal place of business of that Participating Organisation.

6.4 PROCEDURAL RIGHTS

6.4.1 CONDUCT OF RECOGNITION HEARINGS

(1) The Exchange shall not reject an application for recognition as ~~an Affiliate or as~~ a Participating Organisation unless it first affords the applicant the opportunity to appear at a hearing before the Exchange and make submissions to the Exchange in relation to the application for recognition as ~~an Affiliate or as~~ a Participating Organisation. If the applicant wishes the applicant may choose to make submissions to the Exchange without appearing at a hearing.

(2) A hearing conducted for the purposes of Rule 6.4.1(1) shall be held in private, provided that the Exchange may consider submissions or information received from any person and may give directions as to the persons who may be present at the hearing. Subject to disclosure to such employees of the Exchange or a related company as the Exchange sees fit and disclosure for the purposes of any appeal and as otherwise provided in these Rules or by law, any evidence or material placed before the Exchange or considered by it shall be kept confidential by the Exchange and all participants in the hearing.

(3) At a hearing conducted for the purposes of Rule 6.4.1 (1) an applicant and any other person authorised by the Exchange may appear in person and make submissions and is entitled to be represented by an employee of the person or any other person approved by the Exchange or by a lawyer.

(4) A hearing conducted for the purposes of Rule 6.4.1(1) shall be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before the Exchange permits. The Exchange may make a transcript of proceedings at a hearing.

(5) The Exchange shall make its decision free of bias and shall give the applicant a fair hearing and shall in all other respects observe the rules of natural justice.

(6) Where the Exchange rejects any application for recognition as ~~an Affiliate or as~~ a Participating Organisation it shall, within 30 days after the conclusion of the hearing, dispatch to the applicant at the address of the applicant stated on the application the reasons in writing for the rejection of the application.

(7) The Exchange shall determine an application within 6 months of receipt of the application.

(8) An applicant shall meet his own expenses and costs incurred in connection with the determination of his application.

6.4.2 APPEALS

(1) (a) ~~A person whose application for recognition as an Affiliate has been rejected by the Exchange;~~ deleted

(b) ~~a~~ A company whose application for recognition as a Participating Organisation has been rejected by the Exchange; or

(c) a Participating Organisation whose application for registration of a natural person as an Approved Representative has been rejected by the Exchange; or

(d) the natural person referred to in Rule 6.4.2(1)(c); or

(e) a natural person whose registration as an Approved Representative has been cancelled by the Exchange,

may appeal to the Appeal Tribunal.

(2) Notice of appeal setting out the grounds of appeal must be lodged with the Secretary of the National Adjudicatory Tribunal within 30 days after the reasons in writing for:

(a) ~~rejection of the application for recognition as an Affiliate; or~~deleted

(b) rejection of the application for recognition as a Participating Organisation; or

(c) rejection of the application for registration as an Approved Representative; or

(d) cancellation of the registration as an Approved Representative,

by the Exchange are received by the person or Participating Organisation concerned.

6.4.3 STATUS OF DECISION OF NATIONAL ADJUDICATORY TRIBUNAL

The decision of the National Adjudicatory Tribunal shall be final and binding upon the parties.

6.5 MEMBER OF THE EXCHANGE

~~Affiliates and~~ Participating Organisations are entitled to describe themselves as members of the Exchange.

6.6 FEES & OTHER CHARGES

6.6. Without limiting any other provision in these Rules concerning fees, the Exchange may charge:

(a) Participating Organisations in connection with their continued recognition as Participating Organisations and their access to and use of markets and facilities and other services operated or provided by the Exchange;

(b) ~~Affiliates in connection with their continued recognition as Affiliates and use of facilities and other services operated or provided by the Exchange~~deleted,

such fees, including late fees, as the Exchange prescribes.

6.6.2 Fees charged under Rule 6.7.1 must be paid to the Exchange by the times and in the manner prescribed by the Exchange.

6.6.3 Any fees charged under Rule 6.7.1, and any changes to those fees, will take effect at a time determined by the Exchange

6.7 RESPONSIBLE MANAGERS

6.7.1 For a person to be recognised by the Exchange as a Responsible Manager the person:

a) must complete an application and provide the information in the form determined by the Exchange from time to time and give them to the Exchange;

b) pay the fees as the Exchange prescribes;

c) must be a representative of a Participating Organisation or a representative of an applicant to become a Participating Organisation; and

d) must have sat an examination set by the Exchange and attained at least the mark prescribed by the Exchange.

6.7.2 A Responsible Manager must complete an examination set by the Exchange and attain at least the mark prescribed by the Exchange at least once within the period prescribed by the Exchange.

6.7.3 A Responsible Manager must complete any training or continuing education prescribed by the Exchange by the time prescribed by the Exchange.

6.7.4 The Exchange may suspend or withdraw a Responsible Manager's recognition if the Exchange considers:

a) the person has caused a Participating Organisation to contravene, or failed to prevent a Participating Organisation from contravening, the Rules;
b) the person is not effectively discharging the functions of a Responsible Manager;
c) the person has failed to comply with any conditions imposed on their recognition as a Responsible Manager;
d) the person has failed to complete any training or continuing education in accordance with Rules 6.7.2 or 6.7.3; or
e) it is desirable to do so in order to protect the interest of the the Exchange or of the markets conducted by the the Exchange.

6.7.4 An affiliate recognised prior to the introduction of Rule 6.7 is deemed recognised as a Responsible Manager on and from the date of introduction of Rule 6.7 unless otherwise determined by PNGX

Purpose of amendments

The purpose of the amendments is to delete reference to Affiliates and to replace them with new Responsible Manager requirements.

The amendment also precludes partnerships from being Participating Organisations. PNGX is of the view that partnerships are not an appropriate structure for Participating Organisations for risk management purposes.

Affiliates

The concept of an “Affiliate” derives from the old mutual structures of stock exchanges and the requirement for “membership” (as referenced in the existing Rule 6.5). In particular, the PNGX Rules are based upon the old ASX Rules in which the reference to “Affiliate” replaced references to “Members” when ASX demutualized.

At present, a Participating Organisation must have at least one director who is an Affiliate. Whilst this may be appropriate in a small organisation, it is not appropriate in a large organisation. This structure is also not in keeping with contemporary practice whereby day to day control and oversight of the operations of the business reside with management more than with one or 2 directors who may be distant from day to day activities, especially in larger organisations.

Responsible Managers

The concept of a Responsible Manager replaces the previous concept of an Affiliate director.

The role of a Responsible Manager is to have sufficient knowledge, seniority and authority within a Participating Organisation to exert control, leadership, influence and supervision over its operations and processes.

A Participating Organisation may have one or more Responsible Managers. A single Responsible Manager will be accountable for all functions of the Participating Organisation. A number of Responsible Managers may each be accountable for different functions of the Participating Organisation. This will vary from business to business. For example, in a small advisory business, the directors are likely to be the main people who have direct responsibility for significant day-to-day business decisions and be the designated Responsible Managers. In a larger financial services group, anyone ranging from the chief executive officer down to middle management might have the required direct responsibility and be the designated Responsible Managers

Responsible Managers must have direct responsibility for significant day-to-day decisions about the operations of a Participating Organisation.

Who the Responsible Managers are, and how many there are, will depend on the nature, scale and complexity of the business of a Participating Organisation. They will be people who have direct responsibility for significant day-to-day decisions about the operations of a Participating Organisation, will be people who decide how stockbroking services are provided, and will supervise the provision of those services. A compliance manager or financial controller, for example, might not have the level of direct responsibility required. Responsible Managers do not need to actually provide day to day stockbroking services, although they might do so.

A Responsible Manager is accountable to PNGX for the compliance by the Participating Organisation with these Rules.

The new Rules include a transitional provision recognizing previous Affiliates as Responsible Managers.

These amendments are interim amendments until the Business Rules are rewritten in late 2024.

Matters "prescribed by the Exchange" will be set out in a Guidance Note until the Business Rules are rewritten in late 2024.