



NAIROBI SECURITIES EXCHANGE LIMITED

## **(NOMINATED ADVISORS) RULES, 2012**

## **ARRANGEMENT OF CLAUSES**

### **PART I**

#### **PRELIMINARY**

- 1— Short Title and Commencement.
- 2— Interpretation.
- 3—Application.

### **PART II**

#### **ELIGIBILITY CRITERIA**

- 4— Eligibility requirements for Nominated Advisor.
- 5— Eligibility Criteria for an Authorized Representative.

### **PART III**

#### **APPLICATION PROCESS**

- 6— Application Process.
- 7— Interview and verification.
- 8— Approval of Registration by the Securities Exchange.
- 9— Appeals from the decisions of the Securities Exchange.

### **PART IV**

#### **RESPONSIBILITIES OF A NOMINATED ADVISOR**

- 10— General Obligations.
- 11— Obligation to report to the Securities Exchange.
- 12—Assessing the appropriateness of a GEMS Company for listing.
- 13—Assessing the appropriateness of a Board of Directors of a GEMS Company.
- 14— Other responsibilities.

### **PART V**

#### **CONTINUING OBLIGATIONS OF A NOMINATED ADVISOR**

- 15 —Continuing eligibility.
- 16—Request for information.
- 17—Suspension of a Nominated Advisor or an Authorized Advisor.
- 18—Departing or a new Authorized Representative.
- 19—Application for re- registration of an Authorized Representative.
- 20—Notification obligations.
- 21— Appointment of a Compliance Officer.
- 22—Continuing Obligations on guiding and advising GEMS Companies.
- 23—Resignation or Removal of a Nominated Advisor.
- 24— Due skill and care.
- 25— Independence of Nominated Advisors.
- 26— Conflict of interest.
- 27—Transactions involving Nominated Advisors during close period of the GEMS company.
- 28—Disclosure of dealings of Nominated advisors in a GEMS Company.
- 29—Operations and Procedures of a Nominated Advisor.
- 30— Maintenance of records
- 31— Submission of reports.

**PART VI**  
**INSPECTION AND DISCIPLINE OF A NOMINATED ADVISOR**

- 32— Inspection of Nominated Advisors.
- 32— Disciplinary action against a Nominated Advisor.
- 33— Suspension or Removal of Nominated Advisor from the Register.
- 35— Suspension from acting as a Nominated Advisor.

**IN EXERCISE** of the powers conferred by Regulation 4(1) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002, The Nairobi Securities Exchange Limited, makes the following Rules-

**THE NAIROBI SECURITIES EXCHANGE (NOMINATED ADVISORS) RULES, 2012**

**PART I**

**PRELIMINARY**

Short Title and Commencement	<p><b>1.</b> These Rules may be cited as the Nairobi Securities Exchange (Nominated Advisors) Rules, 2012.</p>
<p>Interpretation</p> <p>Cap. 485A.</p>	<p><b>2.</b> In these Rules, unless the context requires otherwise-</p> <p>“Act” means the Capital Markets Act, Cap 485A of the Laws of Kenya and the Regulations, Rules and Guidelines issued thereunder;</p> <p>“Authority” has the meaning assigned to it under the Act;</p> <p>“Authorized Representative” means a person in the full time employment of a Nominated Advisor, who performs for the Nominated Advisor any of the prescribed responsibilities whether his remuneration is by way of salary, wages, commission or otherwise, and includes any director or officer of a Nominated Advisor who performs the responsibilities of a Nominated Advisor;</p> <p>“Close Period” refers to a period when the directors and key personnel of a GEMS Company are prohibited from dealing in shares of the company and includes the period of one month before the company announces its financial results;</p> <p>“Compliance Officer” refers to a senior officer of the Nominated Advisor designated to carry out the responsibilities in Rule 21 of these Rules.</p> <p>“GEM Company” means a company listed on GEMS;</p> <p>“Growth Enterprise Market Segment” or “GEMS” in these Rules refer to a market segment where issues that satisfy the eligibility requirements prescribed under Regulation (7)(1)(c) of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002, are listed.;</p> <p>“fit and proper” means the assessment whether a person is fit and proper to hold any particular position which shall be carried out in accordance with the standards prescribed in Regulation 52 of the Capital Markets (Licensing Requirements) (General) (Regulations), 2002;</p>

	<p>“Nominated Advisor” means a company registered by the Securities Exchange to undertake the responsibilities set out in the Part IV of these Rules;</p> <p>“Nominated Advisor Agreement” means an agreement appointing a nominated advisor to act for a GEMS Company.</p> <p>“Public notice”, in these Rules, shall refer to the publication by the Securities Exchange of information in accordance with these rules. The public notice shall be made by:</p> <p>(a) circulation through the market feed in Automated Trading System (ATS);</p> <p>(b) Publication on the Exchange’s website;</p> <p>“Securities Exchange” means the Nairobi Securities Exchange Limited licensed by the Authority to operate a Securities Exchange in Kenya, which reference shall include its successors in title and permitted assigns;</p> <p>“Significant shareholder” means a person who holds, in a GEMS company, ten per cent or more of the total issued securities of the class of shares concerned or the voting rights in relation thereto, taking into account options, warrants or similar that he may hold as if they have been exercised;</p> <p>“Substantial shareholder” means a person who holds, in a GEMS company, twenty -five per cent or more of the total issued securities of a class of shares concerned or the voting rights attached to such shares, taking into account options, warrants or any other similar activity which it may hold as if they have been exercised.</p>
Application.	<p><b>3.</b> (1) These Rules shall apply to the registration and supervision of a Nominated Advisor and an Authorized Representative by the Securities Exchange.</p> <p>(2) The Securities Exchange shall be the competent authority to register all Nominated Advisors and Authorized Representatives to operate in the GEMS.</p>

<b>PART II</b>	
<b>ELIGIBILITY CRITERIA</b>	
<p>Eligibility Requirements for a Nominated Advisor. Cap. 489.</p>	<p><b>4.</b> (1) An applicant seeking registration as a Nominated Advisor shall-</p> <ul style="list-style-type: none"> <li>(a) be a company duly incorporated under the Companies Act;</li> <li>(b) have acted in, or its Authorized Representatives have acted in at least three relevant corporate finance transactions during the three-year period preceding the application.</li> </ul> <p style="padding-left: 40px;">For the purposes of this sub-rule, a relevant transaction includes offering advisory services on the public offering of securities, corporate financial restructuring, takeover, mergers, acquisitions and privatizations, corporate financing options including issuance of equity or debt securities or loan syndication or investment;</p> <ul style="list-style-type: none"> <li>(c) maintain a professional indemnity insurance cover;</li> <li>(d) have and maintain suitable facilities for carrying on business including office space, operational systems, appropriate equipment and personnel;</li> <li>(e) employ at least two persons who shall be registered as Authorized Representatives; and</li> <li>(f) Designate the person to be the Compliance Officer.</li> </ul>
<p>Eligibility Criteria for Authorized Representative.</p>	<p><b>5.</b> (1) A person who intends to be registered as an Authorized Representative shall –</p> <ul style="list-style-type: none"> <li>(a) be a holder of at least a first degree in either Accounting, Finance, Economics, Law or any other relevant degree;</li> <li>(b) be a member, in good standing, of a relevant professional body;</li> <li>(c) have at least three (3) years experience in significant corporate finance advisory roles, which may include regulating issues relating to corporate finance;</li> <li>(d) have at least three (3) years practical experience in any of the transactions under Rule 4 (1) (b);</li> <li>(e) be in full time employment of a Nominated Advisor;</li> <li>(f) demonstrate a sound understanding of the capital markets operations in general and SMEs in particular;</li> <li>(g) meet the Authority’s prescribed fit and proper requirements.</li> </ul>

	<b>PART III APPLICATION PROCESS</b>
Application Process.	<p><b>6.</b> (1) A person who intends to operate as a Nominated Advisor shall apply to the Securities Exchange using Form 1 as set out in the First Schedule.</p> <p>(2) An application made under sub-rule (1) shall be accompanied by–</p> <p style="padding-left: 40px;">(a) all supporting documents as set out in Form 1 of the First Schedule; and</p> <p style="padding-left: 40px;">(b) the prescribed fees as set out in the Second Schedule.</p> <p>(3) The application for registration of an Authorized Representative shall be lodged by the Nominated Advisor for whom he shall be acting.</p>
Interview and verification.	<p><b>7.</b> (1) The Securities Exchange may conduct an inspection of the premises of the applicant or conduct an examination of the applicant to ascertain that the applicant is adequately prepared to commence operations as a Nominated Advisor.</p> <p>(2) The Securities Exchange may conduct interviews in order to assess the competence and suitability of the applicant for Nominated Advisor and their proposed Authorized Representative(s) to ensure they have sufficient understanding of the capital markets legal and regulatory framework and the responsibilities of the Nominated Advisor under the Law.</p>
Approval of registration.	<p><b>8.</b> (1) The Securities Exchange shall within thirty (30) days of receipt of a complete application made under Rule 6, inform the applicant in writing of its approval or disapproval of the application for registration as a Nominated Advisor or Authorized Representative, provided that, prior to issuing a notice to disallow an application, the Securities Exchange shall give the applicant an opportunity to be heard.</p> <p>(2) The Securities Exchange shall, where it has approved an applicant to be a Nominated Advisor, include with its written decision, a list of the employees of a Nominated Advisor which it has registered as Authorized Representatives.</p> <p>(3) The Securities Exchange shall, within seven (7) days of grant of an approval, inform the Authority of any persons whom it has registered as Nominated Advisors and as Authorized Representatives of a Nominated Advisor.</p> <p>(4) The Securities Exchange shall maintain a register of all registered Nominated Advisors and Authorized Representatives which shall be accessible to the public for inspection at all times.</p>

<p>Appeals from the decisions of the Securities Exchange.</p>	<p><b>9.</b> (1) Any person aggrieved by the decision of the Securities Exchange may appeal to the Authority in accordance with Section 22 of the Act.</p> <p>(2) The Authority may, after hearing the grounds of the refusal to register a Nominated Advisor or Authorized Representative by the Securities Exchange; confirm, reverse or modify the decision or make any other order in the circumstances as it considers just.</p> <p>(3) The decision of the Securities Exchange shall remain in force pending the determination of the appeal under sub-rule (1).</p>
	<p><b>PART IV</b> <b>RESPONSIBILITIES OF A NOMINATED ADVISOR</b></p>
<p>General Obligations.</p>	<p><b>10.</b> (1) A Nominated Advisor shall be responsible to the Securities Exchange for assessing the appropriateness of a company for which it acts with regard to-</p> <p>(a) its eligibility for listing on the Growth Enterprise Market Segment of the Securities Exchange; and</p> <p>(b) advising companies on their compliance with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002.</p> <p>(2) A Nominated Advisor may, in the performance of its responsibilities under sub-rule (1), seek advice and assistance from other professional advisors where appropriate, provided that, the Nominated Advisor retains the overall management and responsibility for the process.</p>
<p>Obligation to report to the Securities Exchange.</p>	<p><b>11.</b> (1) A Nominated Advisor shall, where it forms an opinion that a GEMS Company for which it acts for is no longer eligible to be listed on the GEMS, promptly inform the Securities Exchange of such opinion.</p> <p>(2) A Nominated Advisor shall provide a Securities Exchange with-</p> <p>(a) a list of GEMS Companies for which it acts as a Nominated Advisor on an annual basis; and</p> <p>(b) The Nominated Advisor Agreement between itself and each GEMS Company for which it acts as a Nominated Advisor.</p> <p>(3) The Nominated Advisor shall promptly inform the Securities Exchange of any changes in the list of GEMS Companies which it represents.</p>
<p>Assessing the appropriateness of an GEMS Company for listing.</p>	<p><b>12.</b> (1) A Nominated Advisor shall, in assessing the appropriateness of an applicant and its securities for listing on GEMS,-</p> <p>(a) achieve a sound understanding of the applicant and its business;</p>

	<p>(b) oversee the due diligence process, satisfying itself that any material issues arising from it are dealt with or otherwise do not affect the appropriateness of the applicant for listing on the GEMS;</p> <p>(c) guide the GEMS applicant in preparing the admission documents in accordance with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002; and</p> <p>(d) ensure that the applicant has sufficient systems, procedures and controls in order to comply with the provisions of Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002;</p> <p>(2) Without prejudice to Rule 11(1), a Nominated Advisor shall provide an undertaking to the Securities Exchange that an applicant is in compliance with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002;</p> <p>(3) A Nominated Advisor may be held liable for the failure to ensure compliance by an applicant with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002;</p> <p>(4) A Nominated Advisor who is found liable under Sub-rule (3) commits a disciplinary offence that may lead to sanctions and/or penalties under these Rules.</p>
<p>Assessing the appropriateness of the Board of Directors of a GEMS company</p>	<p><b>13.</b> A Nominated Advisor shall, in assessing the appropriateness of the board of directors of an applicant for listing on the GEMS -</p> <p>(a) investigate and confirm that each director or a proposed director is fit and proper;</p> <p>(b) consider the effectiveness of the board as a whole;</p> <p>(c) consider their skills and their overall effect on the effectiveness of the board;</p> <p>(d) consider the needs of the company; and</p> <p>(e) take into account that the company will be admitted to trading on a public market.</p>
<p>Other responsibilities.</p>	<p><b>14.</b> A Nominated Advisor shall comply with –</p> <p>(a) Regulation 10A of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002;</p> <p>(b) the Third Schedule of these Rules; and</p> <p>any other requirements as may be prescribed by the Securities Exchange from time to time.</p>

	<b>PART V CONTINUING OBLIGATIONS OF A NOMINATED ADVISOR</b>
Continuing eligibility	<p><b>15.</b> A Nominated Advisor shall observe-</p> <ul style="list-style-type: none"> <li>(a) all the requirements, decisions or directions given by the Authority and the Securities Exchange;</li> <li>(b) these Rules; any circulars, notices or guidelines issued by the Authority, the Securities Exchange; or under any other authority and in accordance with the Capital Markets Act.</li> </ul>
Requests for information.	<p><b>16.</b> The Securities Exchange may, at any time, request a Nominated Advisor or an Authorized Representative, for any information it may require to determine whether a Nominated Advisor or an Authorized Representative is still eligible to continue holding a valid registration.</p>
Suspension of a Nominated Advisor or Authorized Representative.	<p><b>17.</b> (1) A Securities Exchange may, where it finds that a Nominated Advisor or an Authorized Representative no longer fulfils the eligibility requirements under these Rules, or where a Nominated Advisor fails to provide any information requested by the Securities Exchange under Rule 16, suspend or revoke the registration of the Nominated Advisor or the Authorized Representative, as the case may be, or impose conditions on the Nominated Advisor or Authorized Representative as it may deem appropriate.</p> <p>(2) A Securities Exchange shall, where it has taken any action under sub-rule (1), notify the Authority in writing within twenty four (24) hours of such action, giving reasons for the action taken.</p>
Departing or new Authorized Representative.	<p><b>18.</b> (1) A Nominated Advisor shall, where an Authorized Representative leaves the full-time employment of a Nominated Advisor, promptly inform the Securities Exchange in writing of the departure and the reasons for the departure.</p> <p>(2) A person who leaves the full-time employment of a Nominated Advisor shall cease to be a registered Authorized Representative.</p>
Application for re-registration of an Authorized Representative.	<p><b>19.</b> Subject to Rule 18 (2), where a person who has been registered as an Authorized Representative moves to another Nominated Advisor, the appointing Nominated Advisor shall submit an application in the manner prescribed by the Securities Exchange for re-registration of that person as an Authorized Representative.</p>
Notification obligations.	<p><b>20.</b> A Nominated Advisor shall inform the Securities Exchange and the GEMS Company for which it acts, within twenty four (24) hours of the occurrence of, or from the time the Nominated Advisor has knowledge of any of the following events:</p> <ul style="list-style-type: none"> <li>(a) changes to its name, directors, controlling shareholders or , key personnel and its address or places of business,</li> </ul>

	<ul style="list-style-type: none"> <li>(b) receipt of any written warning, disciplinary communication or other regulatory action from any regulatory body,</li> <li>(c) any material change which may adversely affect its financial or operating position, including where it is subject of a winding up petition or appointment of a receiver or liquidator, or</li> <li>(d) any of its Authorized Representatives is subject to a bankruptcy petition or enters into any composition or arrangement with or for the benefit of his creditors.</li> </ul>
<p>Appointment of a Compliance Officer</p>	<p><b>21.</b> (1) A Nominated Advisor shall designate a Compliance Officer to coordinate all compliance matters with the Securities Exchange.</p> <p>(2) A Compliance Officer nominated under sub-rule (1) shall submit reports to the Securities Exchange, within the prescribed period detailing the status of compliance of the Nominated Advisor with these Rules.</p>
<p>Continuing obligations on guiding and advising GEMS companies</p>	<p><b>22.</b> (1) A Nominated Advisor shall maintain regular contact with a GEMS Company for which it acts to ensure that-</p> <ul style="list-style-type: none"> <li>(a) the GEMS Company is providing the Nominated Advisor with timely and complete information on developments at the GEMS Company; and</li> <li>(b) the GEMS Company understands its obligations under the Capital Markets (Securities) (Public Offers, Listings and Disclosure) Regulations, 2002.</li> </ul> <p>(2) A Nominated Advisor shall undertake a prior review of relevant notifications made by a GEMS Company to ensure compliance with the Capital Markets (Securities) (Public Offers, Listings and Disclosure) Regulations, 2002 before submitting the same to the Exchange and Authority as prescribed.</p> <p>(3) A Nominated Advisor shall conduct regular reviews of the actual trading, financial and operational performance of the company to ensure appropriate disclosure of information to investors.</p> <p>(4) A Nominated Advisor shall monitor, or ensure monitoring through a third party, the trading activity in securities of an GEMS Company for which it acts, especially when there is unpublished sensitive information in relation to the GEMS Company;</p> <p>(5) A Nominated Advisor shall liaise with and assist the Authority or the Securities Exchange when requested to do so by the Authority, Securities Exchange or a GEMS Company for which it acts.</p>

	<p>(6) A Nominated Advisor shall seek the advice of the Securities Exchange or the Authority if it has any doubt as to the application or interpretation of the Act or these Rules.</p> <p>(7) A Nominated Advisor shall ensure its Authorized Representative is present at all the meetings of the Board Audit Committee of the GEMS Company for which they act as an advisor.</p>
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<p>Resignation or removal of a Nominated Advisor.</p>	<p><b>23.</b> (1) A Nominated Advisor may be removed from representation of a GEMS Company-</p> <ul style="list-style-type: none"> <li>(a) upon the suspension or revocation of its registration by the Securities Exchange, or</li> <li>(b) in writing, by the board of directors of the GEMS Company, by giving 30 days' notice, or such longer period as may be stipulated in the Nominated Advisor Agreement.</li> </ul> <p>(2) A Nominated Advisor shall notify the Securities Exchange and the GEMS Company for which it acts of its intention to cease acting for the GEMS Company and the reason thereof.</p> <p>(3) A Nominated Advisor shall issue a notice of thirty (30) days or such longer period as may stipulated in the Nominated Advisor Agreement before ceasing under Sub-rule (2).</p> <p>(4) A GEMS Company shall, within thirty (30) days of the date of the notice of resignation by a Nominated Advisor, or the date of the notice of suspension or removal by the Securities Exchange, as the case may be, appoint another Nominated Advisor and shall, within twenty four (24) hours of the appointment, submit a copy of the letter of appointment of the Nominated Advisor to the Securities Exchange and provide a copy of the Nominated Advisor Agreement.</p> <p>(5) If the GEMS Company fails to find a replacement Nominated Advisor within the thirty (30) days' notice period and it ceases to have a Nominated Advisor upon the expiry of the said period, the Securities Exchange shall suspend trading in the GEMS Company until such time as the GEMS Company shall appoint a Nominated Advisor.</p> <p>(6) If the GEMS Company still has not found a replacement Nominated Advisor at the end of sixty (60) days after the expiry of the notice period, the Securities Exchange shall commence proceedings to delist such GEMS Company.</p> <p>(7) All parties must take all necessary steps and provide their full assistance and co-operation to ensure a smooth and proper transition of existing work of an exiting Nominated Advisor to the new Nominated Advisor, including providing all relevant documents,</p>
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	<p>information and records. The exiting Nominated Advisor shall provide the incoming Nominated Advisor with the reasons for their decision to resign from acting for the GEMS Company.</p> <p>(8) The Securities Exchange may have recourse to a Nominated Advisor notwithstanding their resignation in respect of the completeness and accuracy of any information provided under Sub-rules (2) and (7).</p>
Due skill and care	<p><b>24.</b> A Nominated Advisor shall, at all times, act with due skill and care.</p>
Independence of Nominated Advisors	<p><b>25.</b> (1) A Nominated Advisor shall demonstrate to the Securities Exchange that its Board and staff are independent from the GEMS Companies for which it acts so as to guarantee the independence of a Nominated Advisor.</p> <p>(2) A Nominated Advisor shall comply with the provisions set out in the Third Schedule.</p>
Conflict of Interest	<p><b>26.</b> (1) A Nominated Advisor shall avoid a conflict of interest between the GEMS Company for which it acts and its own interests or interests of any other parties.</p> <p>(2) For the purposes of Sub-rule (1), a Nominated Advisor shall ensure –</p> <p>(a) that it does not act as a reporting accountant or an auditor to a GEMS Company it represents unless it has satisfied the Securities Exchange that appropriate safeguards are in place;</p> <p>(b) that none of its directors, employees or associates of such directors or employees may hold the position of a director of a GEMS Company for which the firm acts except in their capacity as Nominated Advisors or otherwise exercise comparative power or authority;</p> <p>For purposes of this Sub-rule, “associates” means-</p> <p>(i) in relation to a person, any close relation as defined under Regulation 2 of the Licensing Regulations, anybody corporate of which that person is a director or any person who is an employee of that person; and</p> <p>(ii) in relation to a body corporate, any of its subsidiaries or any employee of those subsidiaries.</p> <p>(c) that neither the Nominated Advisor nor any of its directors, employees or associates of any such directors or employees either individually or collectively, may be a substantial shareholder of a GEMS Company for which the firm acts;</p>

	<p>(d) that neither the Nominated Advisor nor any of its directors, employees or associates of any such directors or employees either individually or collectively may be a significant shareholder of a GEMS company for which the firm acts unless it has satisfied the Securities Exchange that adequate safeguards are in place to prevent any conflict of interest;</p> <p>(e) that if a Nominated Advisor breaches any of the above limits as a result of its underwriting or trading activities, it shall inform the Securities Exchange within twenty four (24) hours of the event and it shall make endeavours to sell down its holding to the acceptable limits as soon as reasonably practicable; and</p> <p>(f) in the event of listing of a Company on GEMS, a Nominated Advisor's holding of securities in the GEMS Company; as well as the contractual basis upon which that holding arose, must be published in the Listing Statement issued at the time of listing of the securities in question.</p> <p>(3) Notwithstanding the provisions of Sub-rule (1), a Nominated Advisor shall comply with any other guidelines or directives with regard to conflict of interest as may be prescribed by the Securities Exchange from time to time.</p>
<p>Transactions involving Nominated Advisor during close period of a GEMS Company</p>	<p><b>27.</b> A Nominated Advisor or a director, employee of a Nominated Advisor or associate of any such director or employee shall not deal in the securities or any related financial product of an GEMS Company for which the firm acts as Nominated Advisor during any Close Period of that Company or otherwise in contravention of any insider trading laws.</p>
<p>Disclosure of Dealings of Nominated Advisor in GEMS Company</p>	<p><b>28.</b> A Nominated Advisor shall disclose and publish all dealings relating to securities of the GEMS Company in the same manner as is applicable to directors and key personnel of the GEMS Company.</p>
<p>Operations and Procedures of a Nominated Advisor</p>	<p><b>29.</b> (1) A Nominated Advisor shall maintain procedures sufficient for the discharge of its obligations under these Rules and shall maintain compliance, operations and procedure manuals in accordance with these Rules.</p> <p>(2) A Nominated Advisor shall, at all times, ensure that it has sufficient staff and Authorized Representatives to discharge its obligations as a Nominated Advisor under these Rules.</p> <p>(3) A Nominated Advisor shall allocate at least two (2) qualified staff to be responsible for each GEM Company for which the Nominated Advisor acts, including at least one (1) Authorized Representative, to ensure appropriate qualified corporate finance staff with knowledge of the GEMS company is available at all times.</p>

<p>Maintenance of records</p>	<p><b>30.</b> (1) A Nominated Advisor shall maintain sufficient records to ensure there is an audit trail of all the operations and transactions in respect of a GEMS Company for which it acts.</p> <p>(2) A Nominated Advisor shall retain the records maintained under sub-rule (1) for at least seven (7) years notwithstanding where a Nominated Advisor ceases to be registered.</p> <p>(3) The records kept under Sub-rule (1) shall include-</p> <ul style="list-style-type: none"> <li>(a) journals, including cash receipts and disbursement records and any other records of original entry, forming the basis of entries in any ledger;</li> <li>(b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts; and</li> <li>(c) originals of all written communication received from clients and copies of all written communication sent by the Nominated Advisor relating to- <ul style="list-style-type: none"> <li>(i) any recommendations made or proposed to be given;</li> <li>(ii) any receipts, disbursement or delivery of funds or securities.</li> </ul> </li> </ul> <p>(4) The Securities Exchange may, from time to time, inspect the records specified under Sub-rule (3).</p> <p>(5) A Securities Exchange may request information from a Nominated Advisor.</p> <p>(6) A Securities Exchange may share any information received or collected by it in accordance to these Rules, with the Authority.</p>
<p>Submission of reports</p>	<p><b>31.</b> (1) A Nominated Advisor shall submit-</p> <ul style="list-style-type: none"> <li>(a) quarterly management accounts within thirty (30) days of the end of each calendar quarter;</li> <li>(b) half yearly management accounts within thirty (30) days of the end of the half year;</li> <li>(c) audited annual accounts within three (3) months after the end of its financial year;</li> <li>(d) an annual report of the GEMS Companies under its management; and</li> </ul>

	<p>(e) a report on the performance of listing of securities for which the Nominated Advisor has acted within one (1) month after the listing date including details of challenges faced and measures taken to mitigate.</p>
	<p><b>PART VI</b> <b>INSPECTION AND DISCIPLINE OF A NOMINATED ADVISOR</b></p>
Inspection of Nominated Advisors	<p><b>32.</b> (1) A Securities Exchange may, from time to time, inspect a Nominated Advisor to ensure that it is fully discharging its responsibilities under these Rules, the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002 and the Act.</p> <p>(2) A Nominated Advisor shall, during an inspection under Sub-rule (1), ensure that an Authorized Representative who is responsible for a transaction co-operates with the Securities Exchange and is available to answer any questions by the Securities Exchange about any relevant matter.</p> <p>(3) A Nominated Advisor shall, when requested by the Securities Exchange, allow officers of the Securities Exchange to access its records, whether in physical or electronic form, and its business premises.</p>
Disciplinary action Against a Nominated Advisor	<p><b>33.</b> (1) The Securities Exchange may, where it considers that a Nominated Advisor is either in breach of its responsibilities or that the integrity and reputation of the GEMS has been or may be impaired as a result of the conduct or judgment of a Nominated Advisor:-</p> <p>(a) issue a private reprimand;</p> <p>(b) issue a public censure;</p> <p>(c) remove the Nominated Advisor from the register of Nominated Advisors maintained by the Securities Exchange whether for a stated period or permanently;</p> <p>(d) bar the Nominated Advisor from representing a specified party in relation to a stipulated matter or matters on GEMS for a stated period;</p> <p>(e) report the Nominated Advisor's conduct to the Authority or any other relevant regulatory authority in Kenya or elsewhere;</p> <p>(f) require a breach to be rectified or other remedial action to be taken within a stipulated period; and/or</p> <p>(g) take such other action as it considers appropriate in the circumstances.</p>

	<p>(2) If the registration of a Nominated Advisor or an Authorized Representative is revoked, suspended, varied or restricted such that it is no longer permitted to undertake work as a Nominated Advisor or an Authorized Representative respectively, the Nominated Advisor or Authorized Representative, as applicable, shall within twenty four (24) hours inform each of the GEMS Companies for which it acts as Nominated Advisor or Authorized Representative.</p> <p>(3) A Securities Exchange shall, where it has taken any action under Sub-rule (1) above, inform the Authority within twenty four (24) hours of taking such action and the reasons thereof.</p> <p>(4) A Nominated Advisor may appeal to the Authority against a decision of the Securities Exchange to suspend or revoke its registration as a Nominated Advisor.</p>
<p>Suspension or removal of Authorized Representatives from the register</p>	<p><b>34.</b> (1) The Securities Exchange may suspend or remove from the register an Authorized Representative if the Authorized Representative -</p> <ul style="list-style-type: none"> <li>(a) has left the employment of a Nominated Advisor; or</li> <li>(b) has become ineligible to continue operating as an Authorized Representative; or</li> <li>(c) has, following an inspection by the Securities Exchange been found to have failed to act with due skill and care in accordance with these Rules or the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002; or</li> <li>(d) is subject to bankruptcy proceedings in Kenya or elsewhere, or</li> <li>(e) is subject to disciplinary action by another regulator, or</li> <li>(f) has been declared to be mentally incapacitated by a qualified medical practitioner; or</li> <li>(g) otherwise fails to satisfy any fit and proper criteria of the Securities Exchange or the Authority.</li> </ul> <p>(2) A Securities Exchange shall, where it has taken any action under Sub-rule (1), other than (1)(a), within twenty four (24) hours notify the public, by way of a public notice, of any action taken and the reasons for such action.</p> <p>(3) A Nominated Advisor or an Authorized Representative may appeal to the Authority against a decision of the Securities Exchange to suspend or revoke registration of an Authorized Representative</p>
<p>Suspension from acting.</p>	<p><b>35.</b> (1) A Securities Exchange shall, where, it finds a Nominated Advisor-</p> <ul style="list-style-type: none"> <li>(a) no longer meets the requirements of Part I of these Rules; or</li> </ul>

	<p>(b) does not meet its responsibilities under these Rules; or</p> <p>(c) has insufficient staff contrary to Rule 29 of these Rules; or</p> <p>(d) is the subject of disciplinary action by the Securities Exchange or other regulatory authority, which action renders the Nominated Advisor ineligible to continue the business,</p> <p>suspend the Nominated Advisor from acting until its compliance status is resolved to the satisfaction of the Securities Exchange.</p> <p>(2) Upon suspension under sub-rule (1), the suspended Nominated Advisor shall hand over all the records relating to the GEMS Companies for which it acted within thirty (30) days to the Nominated Advisors appointed by the respective GEMS Companies.</p> <p>(3) A Securities Exchange shall issue a public notice, of any suspension imposed under these Rules within twenty four (24) hours of such action.</p>
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## SCHEDULES

### FIRST SCHEDULE

#### FORMS

##### HOW TO COMPLETE APPLICATION FORM –

1. This application form should be completed by an applicant seeking to become a Nominated Advisor.
2. In accordance with Rule 6 of the Nairobi Securities Exchange (Nominated Advisors) Rules, an applicant must submit a completed **Form 1** together with appropriate supporting documents.
3. In addition to information that is specifically requested on this Form the applicant should submit:
  - (i) in the case of a company, the incorporation documents (Memorandum and Articles of Association) and the Certificate of Incorporation;
  - (ii) a diagram outlining the structure of the Company;
  - (iii) for each of the applicant; Nominated Advisor's Representatives (with any supporting documents);
  - (iv) the company's corporate finance compliance manual (please note that the applicant is required to update its compliance manual to reflect the requirements of the Nairobi Securities Exchange (Nominated Advisor's) Rules before submitting an application).
4. When completing Section 8 (a) of this form with details of the applicant's profile, please provide documentary evidence to support the applicant's assertions. The applicant should include, at a minimum:
  - (i) details of the applicant's principal activities (and of any exceptional factors which have affected these activities);
  - (ii) details of its current trading and prospects including details where the applicant is active in an overseas market;
  - (iii) the business reasons for seeking approval as a nominated advisor;
  - (iv) the extent of the applicant's business relationships with any existing nominated advisors; and
  - (v) details of any legal or arbitration proceedings active, threatened or pending against the applicant or any member of its group which may have a significant effect on the reputation of the applicant.
5. The NSE will keep confidential all information provided to it by the applicant in relation to its application, except to the extent that disclosure of any or all of the information is necessary for the exercise of its regulatory functions, or is otherwise required by law.

**APPLICATION FOR RECOGNITION OF NOMINATED ADVISORS AND AUTHORISED REPRESENTATIVES OF NOMINATED ADVISORS**

Application is made for the recognition of a Nominated Advisor/Authorized Representative of a Nominated Advisor (Delete as appropriate) under the Nairobi Securities Exchange (Nominated Advisors) Rules.

**SECTION I**

**1. For applicants for Registration as Nominated Advisor:**

Name of Applicant Company:		
Date of Incorporation:		
<b>Address of principal place of business and registered office</b> (please add an additional sheet if necessary to provide addresses of all offices providing corporate finance advice)		
Registered Office:		
Tel:	Fax:	Post Office address:

**2. For applicants for registration as Authorized Representative:**

Name of Nominated Advisor:		
Full name of applicant for Registration as an Authorized Representative:		
Tel:	Fax:	Post Office address:

**SECTION II**

**3. With respect to an Authorized Representative, provide details of academic qualifications and professional or business qualifications and/or memberships of any professional bodies, exchanges or trade associations obtained.** (please attach a separate list)

**4. Is the applicant holder of any license by the Capital Markets Authority? If Yes, give details of the license issued (Rule 4(1)(c))** (please include with the application a copy of the current license issued by the CMA):

**5. Has the applicant been operating in a principal corporate finance advisory role for at least three years (for Nominated Advisor) and three years (for Authorized Representative)? (Rule 4(1)(b); 5(1) (b))**

Yes/No
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6. Describe each of the applicant's "relevant transactions" (as defined in Rule 4(1) (b) & 5(1) (b)), in which the applicant has acted in a lead corporate finance advisory role within the last three years\*. (Where applicable, please provide a copy of the public document for each relevant transaction evidencing the role which the applicant has played in each case):

Transaction:	Role performed (where applicable, indicate on which regulated market or securities exchange each transaction took place):	Date of Transaction :

With respect to the relevant transactions in (5) above, please provide any details which the applicant wishes the Securities Exchange to take into account in assessing the commercial and regulatory performance to date of each of the applicant's client companies since the date of relevant transaction.\*

Name of applicant's client	Client's share price at the time of the relevant transaction and at the date of the application:	Any regulatory issues affecting the client company (Yes/No). If yes please provide details on a separate sheet **.

\*Continue on a separate sheet where necessary.

7. Details of the applicant's capital structure (pursuant to Rule 4(1)(d)):

Nominal capital (KShs):	Number of shares:	Paid-up capital (KShs):
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### SECTION III

8. (a) A Profile of the applicant. (Please attach as a separate list)

(b) Directors of the applicant

Name	Identity card/ Passport number	Date of appointment	Date of birth	Address	Academic or Professional Qualification	Number of shares held in the Company

**(c) Names, qualifications and any relevant experience of key employees the applicant company:**

Name	Post	Qualifications	Experience
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9. **Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere?** Yes/No  
 If 'yes', give details

10. **Has any director, secretary or senior management of the applicant been a director of a company that has been:**

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No

**If the applicant answered 'yes', to any of the above questions give details of each:**

11. **Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya?** Yes/No  
 If 'yes', give details

12. **Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)?** Yes/No  
 If 'yes', give details

13. **Name at least two suitably qualified staff and/or experienced Nominated Advisor's Representative**

Title	First name	Surname

14. **State the number of staff who will be involved in an executive capacity in Nominated Advisor activities:**

15. **Please summarize what procedures and controls are in place to ensure that personnel do not act beyond their proper authority? (Please provide page references to the applicant's compliance manual)**


**16. Nominated Advisor’s undertaking (to be signed by applicant)**

**Name of Nominated Advisor applicant**

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The above applicant hereby applies for recognition as a Nominated Advisor for the purposes of the Nairobi Securities Exchange (Nominated Advisors) Rules and NSE Rules for GEMS companies and if the NSE registers the applicant, the Nominated Advisor undertakes to comply with and discharge its responsibilities and obligations as a Nominated Advisor under these Rules with due skill and care, and acknowledges that the NSE may take disciplinary or other action against it as Nominated Advisor in accordance with these Rules.

The above applicant declares that all the information contained in this application form and otherwise supplied is complete, true, accurate and not misleading and that it has read the Rules relating to Nominated Advisors and believes that this application conforms to them (except as specifically notified to you in this application).

**This undertaking must be signed by two directors or duly authorised officers of the applicant nominated advisor.**

Signature of a director or duly authorized officer, for and on behalf of the applicant:		
Name of signatories in block capitals:		
Date:		

## SECOND SCHEDULE

### NOMINATED ADVISOR'S FEES

#### Nominated Advisors NOMAD Application and Licensing Fees

<b>Description</b>	<b>NSE (Kshs)</b>
Application fee (non refundable)	2,500
Initial Registration fee	25,000

#### Nominated Advisors (NOMAD) Annual License & Renewal Fees

<b>No. of GEMS Clients</b>	<b>NSE Annual Compliance Fee-(Kshs)</b>
0-5	25,000
6-15	50,000
16-30	75,000
31 and above	100,000

**NOMINATED ADVISOR RESPONSIBILITIES**

The responsibilities set out in this Schedule consist of numbered principles which appear in bold and are followed by a list of actions. The numbered principles must be fulfilled in all cases. The actions which follow each principle represent a non-exhaustive list of tasks that a Nominated Advisor is also expected to fulfill. Other actions may be added in order to satisfy each overriding principle or the Nominated Advisor may decide that a particular action set out below is not appropriate. The reasons for such decisions should be recorded as part of the record keeping duties under Regulation 25 in order to evidence to the Securities Exchange that a Nominated Advisor has acted with due skill and care.

**LISTING RESPONSIBILITIES**

These apply to a Nominated Advisor that is acting for a company that intends to list on GEMS including in relation to the company's acting on a reverse takeover of a company listed on GEMS and a listed applicant in respect of its listing on GEMS.

**The Applicant and its Securities**

- 1. In assessing the appropriateness of an applicant and its securities for listing on GEMS, a Nominated Advisor shall achieve a sound understanding of the applicant and its business.**

To achieve this, the Nominated Advisor shall-

- (a) ensure it has, or has access to, appropriate knowledge of the applicant's area of business, including using specialists where necessary to achieve this;
- (b) assist in preparing or consider the applicant's sector, proposition, feasibility report, business plan or similar, historical financial information and other corporate information, including the due diligence performed further to Rule 3;

The feasibility report and the Business Plan shall contain the following particulars:

Contents of Feasibility Report

- (i) Summary of the report
- (ii) Detailed technical, distribution and financial description of the intended project, service or product including expected-
  - Production technology ;
  - Distribution channel;
  - Marketing strategy;
  - Distribution area coverage
- (iii) Financial projection including the possibility of dividend distribution or capital gain;
- (iv) Nominated Advisor's comments/ opinion on the technical and financial feasibility of project;
- (v) Conclusion and recommendations.

Contents of the Business Plan

Executive summary;  
Introduction (Vision and Mission);  
Products and services;  
Implementation strategies;

Action Plan;

- (c) undertake a visit to the applicant's material site(s) of operation and meet the directors and key managers including, if necessary, meeting any other relevant material shareholders;
- (d) satisfy itself that the issuer or company intending to list has or will have the necessary operational infrastructure;
- (e) consider appointing its own legal advisors who are independent from the issuer or company intending to list to assist in the Nominated Advisor's understanding of the applicant and to provide advice to the Nominated Advisor that is independent of the applicant;
- (f) determine the price at which the shares of the applicant company will be offered to the public.
- (g) where applicable, financial projections for the last two years immediately preceding the date of the application for listing.

### **Board and Key Management Staff**

**2. A Nominated Advisor shall assess the appropriateness of the board of directors and key management staff of an applicant for listing of its securities on GEMS.**

To achieve the above, the Nominated Advisor shall-

- (a) issue and review key management staff and directors' questionnaires and review their respective CVs, in order to determine their suitability and experience in relation to their respective roles in the company;
- (b) extend these investigations and considerations as appropriate to consultants or advisors who are included in the listing document;
- (c) consider undertaking such investigations in relation to substantial shareholders as appropriate, especially where there is uncertainty as to their identity or where they are not established institutions, in particular to enquire about the existence of persons exerting control over the applicant;
- (d) analyze any issues arising from these investigations, in particular how such issues could affect the company's appropriateness to offer securities to the public and be listed on GEMS;
- (e) consider the management and Board of Directors as a whole in relation to the company's needs, for example given its type, size, expected profile in light of the listing requirements;
- (f) Together with the directors of the issuer or company intending to list, consider the adoption of appropriate corporate governance measures.

## **Due Diligence**

- 3. The Nominated Advisor shall oversee the due diligence process, satisfying itself that it is appropriate to the company and transaction and that any material issues arising from it are dealt with or otherwise do not affect the appropriateness of the applicant for listing on GEMS.**

In achieving this, the Nominated Advisor shall-

- (a) Ensure that appropriate financial and legal due diligence is undertaken by an appropriate professional firm(s);
- (b) Ensure the appropriate working capital and financial reporting systems and controls reviews are undertaken (usually including reports or letters from accountants to the applicant);
- (c) agree to the scope of all such due diligence and reports including, consider whether commercial, specialist (e.g. intellectual property) and/or technical due diligence is required and be satisfied that it is undertaken where required;
- (d) review and assess the due diligence, reports and advisors comfort letters, consider any material issues, recommended actions or adverse analysis raised and be satisfied that appropriate actions have been undertaken to resolve such matters or otherwise be satisfied that such matters do not affect the appropriateness of the company for listing on GEMS.

## **Listing Document**

- 4. The Nominated Advisor shall oversee and be actively involved in the preparation of the Listing Statement, satisfying itself (in order to be able to give the Nominated Advisor's declaration) that it has been prepared in compliance with the law with due verification having been undertaken.**

In achieving this, the Nominated Advisor shall-

- (i) ensure that the applicant issuer is guided and advised as to the application of the listings requirements for GEMS
- (ii) Manage the submission of all documentation to the Securities Exchange and ensure its completeness and correctness before submission. The Nominated Advisor must confirm to the Authority or the Securities Exchange, as the case may be, that:
  - (a) the applicant issuer complies with all the conditions for listing set out in the listing requirements;
  - (b) the information contained in the Listing Statement is accurate and complete in all material respects and not false or misleading;
  - (c) there are no other matters, the omission of which would make any statement in the Listing Statement false or misleading;
  - (d) statements of fact and opinion expressed by the directors in the Listing Statement have been arrived at after due and careful consideration on the part of the directors and are founded on bases and assumptions that are fair and reasonable; and

- (e) the directors of the new applicant have made sufficient enquiries so as to enable them to give the confirmations set out in the "responsibility statement" contained in the Listing Statement.
- (iii) satisfy itself as to the credentials of the reporting accountants, auditors, competent persons, valuers, providers of opinions, and any other party responsible for a prospectus as required under paragraph A.02 of the disclosure requirements;
- (iv) prior to the submission of any documentation that requires approval by the Securities Exchange, satisfy itself, to the best of its knowledge and belief, having made due and careful enquiry of the applicant issuer and its advisors:
  - (a) about the eligibility and disclosure requirements for listing on the GEMS market segment, and
  - (b) that there are no material matters, other than those disclosed in writing to the Securities Exchange, that should be taken into account by the Securities Exchange in considering the application;
- (v) provide to the Securities Exchange any information or explanation known to it in such form and within such time limit as the Securities Exchange may reasonably require for the purpose of verifying whether the listing requirements are being and have been complied with by it or by an applicant issuer;
- (vi) advise the Securities Exchange immediately if they are aware or have reason to suspect that any of their clients have or may have breached the listing requirements.
- (vii) Submit all documents to Securities Exchange, ensuring that where such documents or where any announcements required, are in compliance with the continuous listing obligations.
- (viii) The Nominated Advisor must take all reasonable steps to brief all new appointments to the board of directors of the issuer as to the nature of their responsibilities under the listing requirements, other applicable regulation and the general nature of their obligations in relation to shareholders. The Nominated Advisor must also ensure that:
  - (a) The directors of the applicant issuer have completed the Directors Induction Programme (DIP) prior to listing or must complete the same within six months after listing; and
  - (b) all new appointments to the board of directors of the issuer complete the DIP within six months of appointment.
- (ix) The Nominated Advisor shall, prior to publication, review with the issuer all periodic financial information announcements, and any other documentation with a view to ensuring that the directors of the issuer after due and careful consideration understand the importance of accurately disclosing all material information to shareholders and the market.
- (x) The Nominated Advisor must ensure that at least one of its Authorized Representatives attends all meetings of the Board Audit Committee of the issuer in an advisory capacity to ensure that the issuer conducts their meetings in compliance with the listing requirements and any applicable regulations.
- (xi) carry out any other activities relating to the applicant issuer or GEMS as may be requested by the Securities Exchange from time to time;
- (xii) In the discharge of its responsibilities in these regulations, a Nominated Advisor shall observe due care and skill, ensuring at all times that its conduct or judgment does not impair the integrity and reputation of GEMS

## **Compliance with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002 Securities Exchange**

- 5. The nominated advisor shall satisfy itself that the company has in place sufficient systems, procedures and controls in order to comply with the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002 and shall satisfy itself that the company understands its obligations under the Regulations..**

In achieving this, the Nominated Advisor shall-

- (a) be satisfied that procedures within the company have been established to facilitate compliance with the prescribed law, e.g. release of unpublished price sensitive information, notifications, regulation of close periods, etc
- (b) be satisfied that the directors have been advised of their and the company's continuing responsibilities and obligations under the law and that the directors are aware of when they should be consulting with or seeking the advice of the Nominated Advisor.

## **CONTINUOUS RESPONSIBILITIES**

These apply on a continuing basis in respect of any Nominated Advisor who acts for a company listed on GEMS.

### **Regular contact between the Company and Nominated Advisor**

- 6. The Nominated Advisor shall maintain regular contact with a listed company for which it acts, in particular so that it can assess whether-**
  - (a) the nominated advisor is being kept up-to-date with developments at the company;**
  - (b) The company continues to understand its obligations under the law.**

To achieve this, the Nominated Advisor shall-

- (i) maintain regular contact with the company, in particular to be satisfied that the Nominated Advisor is kept up-to-date in order that it can advise the company on its obligations under the Listing Requirements; and
- (ii) attend the Board Audit Committee meetings of the company.

### **Review of Notifications**

- 7. The Nominated Advisor shall undertake a prior review of relevant notifications made by a listed company with a view to ensuring compliance with the prescribed law and procedure**

In achieving this, the Nominated Advisor shall-

- (a) review in advance all notifications to be made by the company for which it acts to ensure as far as reasonably possible that they comply with the law; and
- (b) include the Nominated Advisor's name and a contact name on all such announcements that a Nominated Advisor reviews.

## **Change of Directors**

**8. The Nominated Advisor shall advise the company on any changes to the board of directors that the company proposes to make, including –**

- (a) investigating and considering the suitability of proposed new directors; and**
- (b) considering the effect any changes have on the efficacy of the board as a whole for the company's needs.**

**In each case to ensure that the composition of the company's board of directors complies with the listing requirements at all times.**

In achieving this, the Exchange shall require the Nominated Advisor to –

- (a) in relation to new directors, consider the requirements of Rule 2 and take the appropriate actions including issuing and reviewing director's questionnaires, reviewing the director's CV and testing such information;
- (b) consider whether such proposed directors are suitable to be directors of a publicly listed company and consider the effect of the appointment on the efficacy of the board as a whole for the company's needs;
- (c) in relation to the removal of directors, consider how this affects the efficacy of the board as a whole for the company's needs, make any recommendations it thinks fit to the company and considering whether this in turn affects the company's appropriateness for GEMS.