



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$10.40

WINDHOEK - 1 September 2023

No. 8196

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General Notice

BANK OF NAMIBIA

No. 512

2023

ADVERTISING RULES: VIRTUAL ASSETS ACT, 2023

The Bank of Namibia designated as the Regulatory Authority in terms of section 5(1) of the Virtual Assets Act, 2023 (Act No. 10 of 2023), has in terms of section 51(1) of that Act, read with section 24(4) and section 28(2) of that Act made the Advertising Rules set out in the Schedule.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

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PART 1**DEFINITIONS AND SCOPE OF RULES****Definitions**

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

“advertise” means commercial and promotional materials –

- (a) communicated through any medium and in any form, including:
 - (i) magazines and newspapers;
 - (ii) radio and television;
 - (iii) outdoor advertising, including billboards, window display and signs at public venues;
 - (iv) the internet, including webpages, banner advertisement and social networking;
 - (v) product brochures and promotional fact sheets;
 - (vi) direct mail, by post, facsimile or email;
 - (vii) telemarketing activities; and
 - (viii) seminars and presentations to groups of people;
- (b) used for the marketing or promotion of relevant products or services to consumers in Namibia; and
- (c) which are distributed through any medium currently known or developed future;

“cold call” means advertisement or promotion made during the course of a personal visit, telephone conversation or other interactive dialogue, that the recipient did not initiate or expressly request;

“consumer” means any actual or potential client who is intended to receive an advertisement;

“relevant products or services” means products or services which are provided in connection with, or by reference to, virtual assets;

“Regulatory Authority” means the Bank or any other entity designated under section 5(1) of the Act as the Regulatory Authority for purposes of that Act;

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

Scope of rules

2. (1) These rules apply to persons issued with a licence under the Act to operate as virtual asset service providers or as a token issuers and persons who advertise relevant products or services in Namibia.

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

(3) Unless the context indicates otherwise, these rules do not apply to the following:

- (a) advertising agencies when they are designing advertising materials for licence holders;
- (b) communication professionals, such as media practitioners providing advisory services to licence holders;
- (c) persons printing advertising and marketing materials for licence holders; and
- (d) persons responsible for securing the placement of an advertisement, provided they are not responsible for the contents of the advertisement.

(4) The categories of persons referred to in subrule (5), and who may not, in practice, be deliberately aware of the fact that they may be distributing advertising and marketing materials of financial products, will not be considered as promoting advertising and marketing materials by the Regulatory Authority.

(5) The categories of persons referred to in subrule (4) include but are not limited to the following:

- (a) postal service providers;
- (b) telecommunication service providers;
- (c) broadcasting service providers;
- (d) web hosting providers;
- (e) courier service providers;

- (f) persons employed to hand out or disseminate communications; or
- (g) newsagents who sell newspapers and journals, containing advertisements of financial products or services.

(6) These rules do not apply where a licence holder provides additional information to its existing clients by telephone, helplines, in relation to the products and services already purchased by the clients, without any form of inducement for them to purchase additional products or services of the licence holder.

PART 2

GENERAL REQUIREMENTS

General requirements

3. (1) Advertisements for relevant products or services must be fair, clear, complete, concise, unambiguous and unbiased, and may not be false, misleading nor deceptive.

(2) Advertisements for relevant products or services must contain information that is timely and consistent with any relevant products or services.

(3) Where the contractual or other documentation for relevant products or services contains a special risk warning, any advertisement in relation to those relevant products or services may not suggest that the relevant products or services are low risk.

(4) Advertisements must convey an equitable message in respect of the returns, benefits and risks associated with relevant products or services.

(5) Advertisements must be clearly identifiable, and the media chosen for an advertisement must be suitable for that advertisement.

(6) Before selling any relevant products or services as a consequence of an advertisement, a licence holder must ensure that consumers have received sufficient information regarding such products or services to make an informed decision, this includes ensuring that the Travel Rules published under the Act are complied with.

(7) When assessing whether an advertisement conforms to the principles of these rules, the Regulatory Authority must consider both the spirit and the specific letter of these rules.

Responsibility for advertisements

4. (1) A licence holder may not disclaim its liabilities in respect of the accuracy of an advertisement.

(2) A licence holder must ensure that any person acting on behalf of the licence holder complies with these rules, and the licence holder is liable and responsible for the actions or omission of such persons as if the licence holder had undertaken the relevant action or omission itself.

PART 3**DISCLOSURE REQUIREMENTS****Target audience**

5. (1) Advertisements must be in plain language as to be capable of being clearly understood by the prospective clients and consumers that might reasonably be expected to see it.

(2) Advertisements may not state or imply that relevant products or services are suitable for a particular class of clients unless the licence holder has assessed that the relevant products or services are suitable for that class of clients and consumers.

(3) If relevant products or services are complex, they must only be directed to the targeted group of persons for which they are appropriate and must not be marketed or promoted to a wider audience.

Disclosure requirements

6. (1) A licence holder must avoid extensive use of technical, legal terminology or complex language and the inclusion of excessive details in an advertisement which may not convey a clear message to the consumers if the likely audience is unfamiliar with the concepts.

(2) A licence holder must ensure that all advertisements –

- (a) include the licence holder's full name and licence;
- (b) are accurate and up to date, do not omit any material relevant facts, and do not make definitive statements that cannot be substantiated;
- (c) which make assumptions, ensure that the assumptions are stipulated;
- (d) use a design and presentation that must be easily and clearly understood;
- (e) use a tone that does not undermine the importance of the risks, and make clear if a consumer's capital is at risk;
- (f) are not given undue prominence of benefits compared to risks, and always give a fair, balanced and prominent indication of any relevant risks when referencing potential benefits;
- (g) only refer to relevant products or services as having regulatory protection where this is accurate and not misleading;
- (h) are consistent with any other information provided by the licence holder;
- (i) where a tax or custom duties law prescribed taxes or custom duties on relevant products and services provided by the licence holder, the licence holder should disclose adequate information concerning all applicable taxes and duties and the impact of such taxes and duties on consumers; and
- (j) inform consumers that it is their responsibility to seek additional and independent advice on tax and custom duties.

(3) Where the information obtained from secondary sources is included in an advertisement and is disclosed as such, the licence holder must ensure that the information is accurate, complete and up-to-date.

(4) A licence holder must ensure that all advertisements do not –

- (a) include words, such as “guaranteed”, “safe”, “secure”, “risk-free”, “protected”, “warranty”, “guarantee” or “promise”, that may lead consumers to believe that they cannot lose money or that capital is guaranteed, save and except where the licence holder can fully and properly evidence that such words are a true, fair and accurate description, including, if applicable, having sufficient resources to support any such claim;
- (b) use phrases such as “best performing” or “first” unless they are appropriately supported by an independent source available to the consumers for verification;
- (c) provide the impression to consumers that their savings or investments will invariably increase in value, and the language used must avoid implying any urgency or emergency for making savings or investments, save and except, where regulatory deadlines apply, and the words including but not limited to “get rich quick”, “greater wealth awaits you”, “you too can be rich”, “invest now before it is too late” must be avoided;
- (d) use unreasonably promising language as regards the potential return to be derived from relevant products or services, and statements such as “high rewards await you”, “you will reap high returns”, “you will be a winner” are not allowed;
- (e) aim to undermine competitors in such a way as might jeopardise the reputation of the virtual asset industry, and the advertisement must be clear and in simple language and, where applicable, contain support graphics;
- (f) suggest that a virtual asset is either a security or not a security where this is misleading or inaccurate.

(5) A licence holder must only make a comparison, reference to past performance or future performance where this can be provided in a way that is clear, accurate, fair, balanced and not misleading, and does not take unfair advantage of the recipient of the communication, for example by creating a fear of missing out.

(6) A licence holder must consider advertisements in the context of the whole of the customer journey, and ensure that advertisements do not disguise, diminish or obscure important statements or warnings.

(7) A licence holder must ensure, where applicable, that any reference to the involvement of the Regulatory Authority in the advertisement is not construed or imply that the Regulatory Authority has approved the advertisement or taken the responsibility for the soundness of the relevant products or services, or that it has recommended relevant products or services, or that statements and opinions expressed in the advertisement are true and accurate.

(8) The logo of the Regulatory Authority and any such licence, authorisation or registration issued by the Regulatory Authority may not appear or be reproduced in an advertisement without the express authorisation of the Regulatory Authority.

(9) A licence holder may not use the name of any regulator, including the Regulatory Authority, in a way that is misleading and may not use the name of any regulator, including the Regulatory Authority, without seeking prior approval with the concerned regulator or the Regulatory Authority.

(10) In addition to the disclosure requirements set out in these rules, licence holders must also ensure that licence holders comply with the disclosure requirements set out in the Act.

Performance information

7. (1) Licence holders must ensure that all advertisements –

(a) do not contain any projection of performance returns based on borrowing plans;

(b) that refer to a comparison, ensure that –

(i) the comparison is meaningful and presented in a fair and balanced way;

(ii) the sources of the information used for the comparison are specified; and

(iii) the key facts and assumptions used to make the comparison are included;

(c) that refer to past performance –

(i) contain a clear and prominent statement that past performance is not an indicator of future performance;

(ii) clearly state the reference period and the source of the information provided; and

(iii) is based on objective information.

(2) For relevant products or services which have been available for a period shorter than 12 months, any description of past performance may not be presented in annualised terms since that includes predicting future performance instead of stating facts from the past, and calculations of annualized performance must be based on historical numbers.

(3) Advertisement for relevant products or services with a track record of less than six months may not refer to past performance.

(4) Advertisements that refer to future performance must ensure that –

(a) the information gives a balanced impression, covering both negative and positive scenarios;

(b) it is clear as to what the basis is on which future performance is predicted; and

(c) there is a clear and prominent statement that such forecasts are not a reliable indicator of future performance.

(5) A licence holder may not provide information on future performance if it is not able to obtain the objective data to substantiate the claim and future performance may not be based on nor refer to simulated past performance.

(6) If there has been, or will be, any change in relation to relevant products or services, the advertisement must state this fact and state also to what extent any presentation of performance information in the advertisement, will be affected by these changes to ensure that the presentation is fair and not misleading.

(7) Where performance awards received are included in an advertisement for relevant products or services, the grantor of the award must be clearly identified, and the award must be explained.

Fees and costs

8. (1) Where a fee or cost is referred to in an advertisement of relevant product or services, it must give a realistic impression of the overall level of fees and costs a consumer is likely to pay.

(2) When a claim about a fee or cost is used in the heading of an advertisement, any exclusions or qualifications must also be contained within the heading or be clearly and prominently noted within the advertisement.

(3) Where an advertisement for relevant products or services makes a claim about the fees or costs associated with advisory services, this must be clearly stated, and any qualification must be clearly and prominently noted in the advertisement.

(4) Where applicable, the disclaimer 'terms and conditions apply' may be included in the advertisement.

(5) The advertisement may not suggest that the advisory service is 'free' or 'low cost' if, in fact, the consumer will pay for the service indirectly through the fees and costs of the relevant products or services, for example, where commissions are derived from product fees and these are not related to the consumer or costs associated with the advisory service.

(6) An advertisement for relevant products or services must state clearly when certain benefits are mutually exclusive, that is, which cannot be simultaneously earned.

(7) No attempts must be made to conceal costs referred to in this rule from the attention of consumers.

Risk and warning disclosures

9. (1) An advertisement must adequately reflect and explain any special or unusual risks associated with relevant products or services.

(2) Where the price of relevant products or services is denominated in a currency other than that of Namibia or in virtual assets, the consumer must be warned that changes to the rates of exchange may have an effect on the value, price or income obtained from relevant products or services.

Cancellation rights

10. Where cancellation rights apply, this right must be adequately disclosed, along with the liabilities attached to the exercise of such right, to consumers in the advertisement or in the terms and conditions of the contract attached to the relevant products or services, and this includes stating what the specific conditions are for exercising a cancellation right.

PART 4**ADVERTISING CONDUCT STANDARDS****Duties of third parties making advertisements**

11. (1) Any person making an advertisement of a licence holder must at all times –

- (a) act responsibly, with honesty, fairness, integrity and professionalism;
- (b) avoid aggressive or offensive sale practices;
- (c) deal respectfully with the consumers and ensure sufficient disclosure is made for them to make informed decisions;
- (d) be at all times transparent regarding the nature of his relationship with the licence holder; and
- (e) preserve confidentiality of the consumer's information, and not take advantage of such information for personal or another person's gain in conformity with the data protection law in Namibia.

(2) Any person acting on behalf of a licence holder must, where appropriate –

- (a) always disclose his full and accurate identity, at the time of introduction with consumers;
- (b) always disclose to consumers before entering into any contract for relevant products or services, all benefits that will be paid to him or her, whether by way of fees, commissions, dividends, directly or indirectly, or otherwise under such contract, based on his relationship and interest that he may share with other parties which are associated with the relevant products or services; and
- (c) only provide information in which he or her is competent and if necessary, recommend additional specialist advice to the consumers, as appropriate.

Inducements

12. (1) A licence holder may not provide or cause to be provided unreasonable inducements or gifts to the consumers and inducements may include entertainment and soft commissions, and inducements are unreasonable if they may constitute a real or apparent attempt to influence the choices or decisions of the consumers.

(2) A licence holder must apply an objective test to determine the level of an inducement by taking into account all relevant criteria, including whether the gift or inducement –

- (a) is reasonable and proportionate;
- (b) is of a limited scale and nature, taking into account any other benefits offered; and
- (c) does not need to be exclusively relied upon by the promoters in the future, in order to continue to service consumers;
- (d) complies with provisions of either paragraph (b) or (c).

(3) A licence holder must take all reasonable steps to ensure that the licence holder or any staff or representative acting on behalf of the licence holder, does not offer, give, solicit or accept an inducement which may conflict, in a significant way and adversely, with the responsibilities and accountabilities that the licence holder owes in relation to fair treatment towards consumers.

PART 5

INTERNET ADVERTISEMENTS

Internet advertisements

13. (1) As regard the approval of advertisements on the internet, the following principles and standards must be followed:

- (a) a licence holder must take all reasonable steps to ensure that any electronic advertisements of relevant products or services are identical to the most up-to-date paper versions;
- (b) there must be a prominent statement on the relevant web pages, which is capable of being seen or read with reasonable ease by the consumer accessing the electronic copies of such advertisements, to the effect that printed copies of the same are also available, as well as where and how they can be obtained;
- (c) any advertisements on the relevant web pages must remain available for as long as it is necessary for the consumers of the relevant products or services to have a reasonable opportunity to read or access them; and
- (d) consumers must also be given the opportunity to retain the information through printing or downloading.

(2) Where special software is necessary for the viewing of an advertisement, the software must be provided for download, free of charge, before the consumers can gain access to the relevant web pages.

Bad internet advertising and marketing practices

14. (1) A licence holder must, amongst other things, abstain from the following bad internet-based advertisement practices when making an advertisement over the internet:

- (a) hiding essential information by the close proximity of promotional images and additional text or promotional images or additional text;
- (b) reducing risk warnings in importance due to their location outside of the main advertisement border;
- (c) diminishing some statements which diminish through the use of small font sizes and unclear type styles;
- (d) hiding important information within, or in some cases absent from, the respective internet landing page and only accessed through significant scrolling down and multiple page links or scrolling down or multiple page links;
- (e) due to positioning, making risk warnings easy to overlook, resulting in consumers being taken directly to an application form, for example, by clicking on a banner advertisement or accepting a cookie;

- (f) containing risk statements within a 'pop-up' box that only appears on the consumer's initial visit to the relevant website;
- (g) obscuring key information or warnings, such as fees or exclusions, within the internet website or placed under a separate section or heading, such as 'FAQs', 'Legal Information' or 'Disclaimers';
- (h) not taking into account the different-sized browsers of consumers when positioning risk information, for example it is necessary to scroll down to access the information; and
- (i) superimposing important information, statements or warnings across coloured or patterned backgrounds which lessen their visual impact.

Non-written and direct marketing

15. (1) A licence holder may not make a cold call unless the recipient has an established existing client relationship, and the relationship is such that he or she or it has consented to respond to the cold call.

(2) If any non-written marketing communication is initiated with consumers, the licence holder must ensure that the person making the communication –

- (a) only does so at a mutually convenient time of the day;
- (b) clearly discloses his full and accurate identity at the time of introduction with consumers and makes clear the purpose of the communication;
- (c) clarifies if the consumer wishes to continue with or to end the communication, and terminate the said communication at any time that the consumer so requests; and
- (d) provides a place of contact to the consumer with whom the communication is made.

(3) The Regulatory Authority is not responsible and liable for any nonwritten communication which is made during the course of personal visit, telephone conversation or other interactive dialogue by a licence holder and this must be clearly conveyed to consumers, in any direct marketing or promotional materials.

PART 6

RECORD KEEPING AND FILING OF ADVERTISEMENTS

Record keeping

16. A licence holder must maintain every record of its advertisements, including details of who signed off each advertisement and when it was signed off, for the period of five years after the advertisement ceases to be available to consumers, or such other period which the Regulatory Authority may request and in writing communicate to the licence holder.

Filing of advertisements

17. (1) Advertisements targeting the general public must be filed with the Regulatory Authority, 15 days before their publication or issue, along with –

- (a) a statement of who approved the advertisement and when it was approved; and
- (b) a statement that the contents of the advertisement are in conformity with these rules.

(2) The Regulatory Authority may require that any advertisement be amended before its publication or issue, or that it may not be published or issued.

PART 7

ENFORCEMENT

Enforcement

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

PART 8

SHORT TITLE

Short title

- 19.** These rules may be cited as Advertising Rules.

PART 9

EFFECTIVE DATE

Effective date

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