Adapting Blockchain Technology as a Potent Mechanism for Enhancing Fairness and Transparency in Zimbabwe's Primary Securities Markets

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Abstract

This research submits that modern commercialism is established to a great extent on securities regulation that is designed to get the optimal quantity of information concerning issuers into the hands of investors. The goal of securities regulation is two-sided. On the one hand it is the protection of investors, and on the other the protection of professionals (issuers). This research suggests that, regardless of the specific and dominant theoretical framework, the current priorities and techniques for the regulation of securities markets are meant to enhance market fairness and transparency. The buzz around blockchain technology has induced many experts in the field of technology to suggest that it has an impact beyond its function as an underlying protocol to Bitcoin. Blockchain technology presents numerous appealing features that have the potential to change the way securities markets operate. The securities market consists of the primary securities market and the secondary securities market. This article argues that blockchain technology could be a potent mechanism in enhancing fairness and transparency in Zimbabwe's primary securities market.

Keywords

Securities markets; transparency; fairness; blockchain technology.

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1 Introduction

Contemporary financial technology has emerged from a confluence of factors such as rising consumer expectations, rapid technological advancement, growing consumer mistrust of financial institutions and increased regulatory scrutiny.[1] This includes blockchain technology, which has the potential to fundamentally transform the way securities markets operate.[2] Blockchain technology was initially introduced in November 2008 by a presumed pseudonymous person or persons named Satoshi Nakamoto to serve as the public transaction ledger for the cryptocurrency Bitcoin.[3] However, cryptocurrency and blockchain are not synonymous.[4] According to Grinberg,[5] cryptocurrency is a digital, decentralised partially anonymous currency not backed by any government or other legal entity that relies on peer-to-peer networking and cryptography to maintain its integrity. Blockchain, on the other hand, is a technology involving a digital ledger within which transactions are aggregated permanently and recorded into blocks that are subsequently added in chronological order, creating a chain.[6] While much discussion has ensued on the subject of blockchain technology, many people understand little of it.[7] Blockchain technology

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1 Ducas and Wilner 2017 *International Journal* 539; Santiago *et al.* 2019 *Journal of Legal, Ethical and Regulatory Issues* 1.

2 Ducas and Wilner 2017 *International Journal* 539; Pirotti and Roknifard 2020 *Business Management and Strategy* 232. Blockchain has demonstrated its ability to completely upend he industry as we know it.

3 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 79; Uzsoki 2019 https://www.iisd.org/system/files/publications/tokenization-infrastructure-blockchain-solution.pdf 30.

4 Gupta *Blockchain for Dummies* para 8. Gupta explains that blockchain provides the means to record and store Bitcoin transactions, but has many uses beyond Bitcoin. Cong and He 2019 *Review of Financial Studies* 1754 posits that blockchain was first popularised as a technology behind the cryptocurrency Bitcoin. However, it has since emerged in various other platforms, often with the ability to store and execute computer programmes.

5 Grinberg 2012 *Hastings Science and Technology Law Journal* 160. Litwack 2015 *Temp Int'l & Comp LJ* 315 posits that Bitcoin is a peer-to-peer version of electronic cash.

6 Gonzalez 2022 *Fordham Journal of Corporate and Financial Law* 527; Dimitropoulos 2020 *Wash L Rev* 1127.

7 Dimitropoulos 2020 *Wash L Rev* 1127. Kaal and Evans 2019 *UC Davis Business Law Journal* 91 states that much of the media attention on blockchain has focussed

operates on the basis of cryptographic algorithms,[8] whose main property is to record information about all transactions made by creating block transactions.[9] This article will leverage the key characteristics[10] of blockchain and the extent to which the technology may be adapted to enhance fairness and transparency in Zimbabwe's primary securities market.

The terms securities markets, financial markets or capital markets will be used interchangeably in this article. Castellano notes that the term "securities" is undoubtedly the keystone around which the financial system revolves and its meaning *per se* appears to be quite obscure.[11] The term is a bit cryptic and confusing due to its consistent and yet evolving nature. In *Tcherepnin v Knight* the US Supreme Court held that[12] "in searching for the meaning and scope of the word 'security' in the Act, form should be disregarded for substance and emphasis should be on economic reality."

Section 2 of Zimbabwe's *Securities and Exchange Act*[13] (the Act) identifies certain arrangements as securities, and for the purposes of this article the definition of a security as provided in that enactment will be adopted. Gupta

on its use as a support base for Bitcoin and other currencies. The information generated by the media on blockchain technology skims the surface of the possibilities that the technology can offer. Werbach 2018 *Berkeley LJ* 487 posits that blockchain technology is capable of more than being a support basis for cryptocurrencies; rather, it is a novel solution to the age-old human problem of trust.

8 Mishra 2021 *Legal Spectrum Journal* 1. Cryptography is a means of transforming understandable data into challenging codes which are nearly impossible to decipher. According to Hutchinson 2020 *UNBLJ* 16 this can be termed the *lex cryptographica.* It is an informal governance tool that both enables and puts limitations on what can and cannot be done. Indeed, it is the code and protocols that comprise the network itself that must be trusted.

9 Ducas and Wilner 2017 *International Journal* 539. Dimitropoulos 2020 *Wash L Rev* 1127 defines blockchain as a digital ledger that operates on a decentralised peer-to-peer network of computers (nodes). It is a digital database which takes shape as a sequence of blocks in the form of a chain.

10 Latif *et al.* 2021 *Emerging Telecommunications Technologies* 36 describes the key features of blockchain technology as decentralisation, immutability, non-repudiation, transparency and traceability. Chang 2020 *Technological Forecasting and Social Change* 2.

11 Castellano 2012 *Unif L Rev* 456. Sobieski 1974 *Mercer L Rev* 385 notes that, although the major federal securities law regulation was enacted in 1933, it took the courts up to 1967 to define what constituted a "security".

12 *Tcherepnin v Knight* 389 US 332 (1967) 336. Sobieski 1974 *Mercer L Rev* 385 states that the usual definition of a "security" lists categories of interest and that these categories of interests should be broadly construed. In *SEC v Howey Co* 328 US 293 (1946) the Supreme Court emphasised that in determining the meaning of the term "securities" a broad construction of the term must be applied so as to afford the investing public a full measure of protection.

13 *Securities and Exchange Act* 17 of 2004 [Chapter 24:25] (hereafter the *Securities and Exchange Act*).

suggests that securities are created in the primary market.[14] Fabiola, Ponno and Nusantara reaffirms this position and states that a primary market is the first offering of securities from an issuer to an investor. It is commonly thought of as the initial public offering or going public.[15] On the other hand, a secondary market is a market that deals with securities that have already been issued, where existing investors sell the securities amongst themselves.[16]

The primary market and secondary market are regarded as the two pillars of financial security.[17] The primary market is the first step before securities are issued and it is characterised by very costly and difficult trading processes, information asymmetry[18] and lack of trust,[19] culminating in a lack of fairness and transparency.[20] It has been observed that there is a dearth of literature on the structure of primary financial markets in Zimbabwe and other developing countries as compared to secondary financial markets. This is so for several reasons.[21] First, this gap in the literature is recognised by other scholars and academics who agree that the primary financial market trades in securities that have not yet been listed.[22] Secondly, in primary markets, firms have no established and clear performance records as most of the information about the firm is in the hands of company

14 Gupta 2022 *Jus Corpus Law Journal* 578. Ibbotson and Ritter "Initial Public Offerings" 993 posits that "The primary market is a market where companies conduct transactions before the Initial Public Offering (IPO) and IPO involves the sale of securities in closely-held firms." Gupta 2022 *Jus Corpus Law Journal* 579 endorses this statement, noting that when a private firm first sells stock to the public, it conducts an initial public offering (IPO).

15 Fabiola, Ponno and Nusantara 2013 https://www.academia.edu/41695818/PRYMARY_MARKET_VS_SECONDARY_MARKET 2; Noble and Patil 2021 *Revista Gestão Inovação e Tecnologias* 5090.

16 Gullifer and Payne *Corporate Finance Law* 542 define a secondary market as a market in which securities that have been previously sold can be resold. The funds for the securities in a secondary market are received by the seller, not the issuer as is the case in a primary market. Geeks for Geeks 2023 https://www.geeksforgeeks.org.

17 Gupta 2022 *Jus Corpus Law Journal* 578; Gullifer and Payne *Corporate Finance Law* 542.

18 Saxton and Anker 2013 *Journal of Communication* 1055 observed that information asymmetries occur when parties to an exchange possess unique or varied information. Corporate Finance Institute 2023 https://www.corporate financeinstitute.com.

19 Liu *et al* 2021 *IET Blockchain* 68; Schwartz 2019 *Utah L Rev* 1079.

20 Spatt and Srivastava 1991 *Review of Financial Studies* 709 states that potential investors may have some information about the cash flows of the enterprise; there is often considerable residual uncertainty concerning the market's valuation of issues not previously traded.

21 Liu *et al.* 2020 *Management and Organization Review* 947.

22 Liu *et al.* 2021 *IET Blockchain* 68. Ibbotson and Ritter "Initial Public Offerings" 993 posits that at this point the issuing market is subject to the whims of the market, making the IPO process a high stress period.

insiders.[23] Thirdly, most hard information received by the investors is either embellished or edited by company insiders to the firm's advantage. Fourthly, information is the key coordinating feature of financial markets, as it enables efficient price discovery and resource allocation.[24] Fifth, the pricing of securities in a primary market is not transparent and there is a lack of regulatory supervision.[25]

On the other hand, it is recognised that blockchain technology's key design features, characteristics and benefits make it a superior and unique technology. It is also argued that the adaption of blockchain technology in the primary securities market in Zimbabwe could enhance fairness and transparency.

2 Justification for the regulation of securities markets

In this section the authors consider the acceptable reasons, grounds, basis or rationale behind the promulgation of laws to regulate securities markets during the 1929 stock market crash. The justification for the regulation of securities markets should not be confused with the role or purpose of the regulation. However, this article will be inadequate if it does not make a distinction between the regulation of securities markets and the purpose of regulation. In the US in the 1930's, in a bid to overcome the frustrations and challenges of the economic depression, Congress, with the backing of President Roosevelt under the New Deal campaign, enacted three Acts which were the basis for federal securities regulation.[26] The three Acts are briefly examined below.

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23 Liu *et al.* 2020 *Management and Organization Review* 948. Bower 1989 *Journal of Finance* 647 agrees that a firm raising capital in an initial public offering faces the problems of choosing between a firm-commitment and a best-efforts offering and of how to convey information about its value to potential investors.

24 Hanson 2003 *Global Governance* 67. Fama 1970 *Journal of Finance* 383 posits that it is a market in which firms can make production-investment decisions, and investors can choose among the securities that represent ownership of firms' activities under the assumption that security prices at any time "fully reflect" all available information.

25 Houge *et al.* 2001 *Financial Management* 5 states that a IPO is one of the most momentous events in any company. Given no prior trading history and limited financial information, the opinion about a firm's subsequent performance can range from "this is the next Microsoft" to "this dog will not see its first birthday." Bower 1989 *Journal of Finance* 647 states that a firm raising capital in an initial public offering faces the problems of choosing between a firm commitment and a best-efforts offering and of how to convey information about its value to potential investors. The offering method chosen affects both the firm's cost of obtaining capital and investors' perceptions of firm value.

26 *Securities Act* of 1933, and the *Securities Exchange Act* of 1934. Keller 1988 *Ohio LJ* 329 suggests that Hoover felt that the responsibility for the initiation of regulatory action lay with Governor Franklin Roosevelt, as this was properly a state matter and the primary purpose of Hoover's call for investigation was to put pressure on the

The first Act was the *Securities Act* of 1933. The purpose of this Act, which is also known as the "truth-in-securities" Act, was to put the burden of telling the whole truth about new securities offerings on those who offered them for sale.[27] This purpose was to be accomplished through public disclosure of information about new securities issues and the imposition of stiff penalties for failure to obey the law. The second Act was the *Glass-Steagall Act* of 1933. This Act was concerned with the structure and function of banks and its primary aim was to guarantee the solvency of banks and the safety of bank deposits by limiting the amount of resources available in perpetrating fraud and misrepresentation.[28] The provisions of the *Glass-Steagall Act* separated commercial banking from investment banking, such that bankers had to choose between the two.[29] The third Act was the *Securities Exchange Act* of 1934. The Act established the Securities and Exchange Commission to take over the securities registration function from the Federal Trade Commission, to register stock exchanges, to monitor their rules, and to guarantee that stock exchanges were operated in compliance with the spirit of the *Securities Acts*.[30]

The three Acts were designed to regulate the financial markets and restore investor confidence in the US capital markets by ensuring that investors and the markets had reliable information and clear rules to follow. One of the justifications for enacting the Acts was that it met the need to ensure disclosure by issuers of securities about their businesses, the securities offered and the risks involved with investing in such securities. This requirement was coupled with a stiff penalty against transgressors.[31] The mandatory disclosure by issuers is the dominant technique of securities regulation not only in the US but the world over.[32] Secondly, it prohibited

directors of the stock exchange to institute effective measures and reforms so that federal intervention would not be necessary.

27 Keller 1988 *Ohio LJ* 330. The purpose of the *Securities Act* is to regulate the initial distribution of securities by issuers to public investors.

28 Burk 1985 *Social Forces* 1010. The Act empowered the Federal Reserve Board to limit the amount of credit bankers made available for speculative purposes and to reduce the banker's incentive to make risky loans by limiting the payment of interest on deposits. The Act also created the Federal Deposit Insurance Corporation, protecting small deposits.

29 Burk 1985 *Social Forces* 1010.

30 Keller 1988 *Ohio LJ* 348. The *Securities Exchange Act*, 1934 established an independent administrative body to enforce the federal securities laws, regulate stock market practices, and curb the evils in the stock exchanges themselves.

31 Section 24 of the *Securities Act* provides for fines not to exceed $10 000.00 and a prison term not to exceed 5 years.

32 Mahoney *Economics of Securities Regulation* 6. Companies that issue securities must make company-specific disclosures at the time of the sale. Ferrell 2007 *Brook J Corp Fin & Com L* 82 observes that a number of countries have adopted mandatory disclosure requirements for their publicly traded firms in the last decade.

fraud and manipulation, which had the effect of reducing verification costs.[33] Mahoney emphasises that these prohibitions pertained to more conduct and more potential defendants than common law fraud, and that Congress was motivated to enact the three Acts by the impression that it had previously proved difficult to sue successfully for common law fraud in connection with securities transactions.[34] Third, the ban on insider trading was aimed at regulating the conduct of speculative trading. Through enacting the *Securities Exchange Act,* Congress totally barred many practices, introduced registration and disclosure requirements even for listed securities, and introduced the licensing of stock exchanges, which is another standard technique in securities regulation.[35]

Contemporary explanations of the role of securities regulation have concentrated on its role in financial markets.[36] Academics disagree on the role of securities regulation. It is claimed that when the original laws were passed, a major argument in their favour was that they were a necessary response to market failure as displayed by the stock market crash in 1929.[37] Goshen and Parchmovsky claim that the ultimate goal of securities regulation is to ensure that financial markets are efficient and thus to improve the allocation of resources in the economy.[38] On the other hand, Sethi contends that while improving the efficiency of markets can improve social welfare by facilitating investment decisions that increase investor utility, emphasis should also be on the expansion of opportunities for wealth accumulation across different sectors of the population.[39]

3 International regulatory frameworks of securities regulation

Several soft laws have been enacted at international level, and the International Organization of Securities Commissions (IOSCO) was established in 1974.[40] The nations of the Western Hemisphere, largely under the leadership of the United States, organised the Inter-American

33 Goshen and Parchmovsky 2006 *Duke LJ* 741; Velikonya 2013 *Wm & Mary L Rev* 1903.

34 Mahoney *Economics of Securities Regulation* 6; *Dura Pharmaceutical Inc v Broudo* 544 US 336 (2005). The US Supreme Court relied on common law to formulate causation requirement in federal securities fraud litigation. In *Stoneridge Investments Partners, LLC v Scientific-Atlanta Inc* 128 S Ct 761 (2008) 769 the Supreme Court rejected the interpretation of the reliance requirement based on common law fraud.

35 Burk 1985 *Social Forces* 1013; Mahoney *Economics of Securities Regulation* 7.

36 Sethi 2011 *Fordham Journal of Corporate and Financial Law* 783; Goshen and Parchmovsky 2006 *Duke LJ* 713.

37 Burk 1985 *Social Forces* 1015.

38 Goshen and Parchmovsky 2006 *Duke LJ* 713.

39 Sethi 2011 *Fordham Journal of Corporate and Financial Law* 783.

40 Sommer 1996 *Northwestern Journal of International Law and Business* 17; IOSCO Date Unknown https://www.iosco.org/v2/about/?subsection=about_iosco.

Association of Securities Commissions to provide a forum for the consideration of securities regulation matters of common interest and to assist capital formation.[41] In 1987 IOSCO transformed into a worldwide organisation and was incorporated by an Act of the Quebec Parliament as a non-profit corporation under Quebec law.[42] In 1998 IOSCO adopted a comprehensive set of Objectives and Principles of Securities Regulation,[43] which are now recognised as the international regulatory benchmarks for all securities markets.[44] The three main objectives of IOSCO include investor protection, ensuring a fair, efficient and transparent market, and the reduction of systemic risk.[45] These objectives dovetail with the historical basis and role of securities regulation, as explained above. There are thirty-eight principles of IOSCO which fall into nine categories; principles relating to the regulator,[46] principle relating to self-regulation,[47] principles relating to enforcement,[48] principles relating to issuers,[49] principles for auditors, credit rating agencies, and other information service providers, principles relating to collective investment schemes, principles relating to market intermediaries, and principles relating to secondary and other markets.[50]

41 Sommer 1996 *Northwestern Journal of International Law and Business* 17; IOSCO Date Unknown https://www.iosco.org/v2/about/?subsection=about_iosco.

42 IOSCO https://www.iosco.org/v2/about/?subsection=about_iosco. A year later, non-American agencies in counties such as France, Korea, Indonesia and the United Kingdom joined the new organisation. In July 1986 IOSCO held its first annual conference in Paris, and its members, by consensus, created a permanent General Secretariat.

43 IOSCO Date Unknown https://www.iosco.org/v2/about/?subsection=about_iosco. The exhaustive set of objectives and principles under IOSCO consists of thirty-eight principles categorised into eight different groups, and these require implementation under the relevant legal framework in order to achieve the three main objectives.

44 OECD 2023 https://www.oecd.org/gov/regulatory.

45 IOSCO Date Unknown https://www.iosco.org/v2/about/?subsection=about_iosco.

46 The responsibilities of the regulator should be clear and objectively stated. The regulator should be operationally independent and accountable in the exercise of its functions and powers.

47 IOSCO 2017 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf. Various models of self-regulatory organisations (SROs) exist, and the extent to which self-regulation is used varies. The common characteristics of SROs in most jurisdictions are a separation from the regulator (although government oversight and authorisation generally exist), and the participation of business, industry and, if appropriate, investors in the operations of the SRO.

48 IOSCO 2017 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf. The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts.

49 Issuers should disclose to investors current and reliable information necessary to make informed investment decisions on an ongoing basis. The principle of the full, timely and accurate disclosure of current and reliable information material to investors is directly related to the objectives of investor protection and fair, efficient and transparent markets. IOSCO 2002 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD132.pdf.

50 There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and

IOSCO is the leading international grouping of securities market regulators.[51] Its current membership comprises regulatory bodies from over one hundred jurisdictions that have routine responsibility for securities regulation and the administration of securities laws.[52]

4 The regulatory and institutional framework of primary securities markets in Zimbabwe

4.1 The regulatory framework

4.1.1 Constitution of Zimbabwe

In terms of section 71(2) of the *Constitution of Zimbabwe* (Amendment No. 20) (hereafter the *Constitution*), and subject to section 72,[53] every person has a right in any part of Zimbabwe to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property,[54] either individually or in association with others. In essence, the above section gives everyone a right to acquire or trade in securities in Zimbabwe.

4.1.2 Securities and Exchange Act

The *Securities and Exchange Act* establishes the Securities and Exchange Commission,[55] and provides for its objectives, functions and powers. In terms of section 4 of the *Securities and Exchange Act* the objectives of the Commission are clearly spelt out to include *inter alia* high levels of investor protection, to reduce systemic risk, to promote market integrity and investor confidence, to prevent market manipulation, fraud and financial crime, to ensure transparency in capital and securities markets and to promote investor education. Section 4(2) of the Act furnishes the Commission with various roles, which include regulation, supervision, licensing and advising different market participants. This encourages the development of free, fair and orderly securities markets in Zimbabwe. This discussion will be restricted to the objective of ensuring market integrity and transparency in capital and securities markets as expressed in section 4(1)(c) and (e) of the Act, focussing on primary securities markets. Securities sold in a primary financial market can be in the form of a public offer which involves a sale of securities to the public by a company for the first time[56] or a rights issue in

equitable rules that strike an appropriate balance between the demands of different market participants.

51 IOSCO Date Unknown https://www.iosco.org/v2/about/?subsection=about_iosco.

52 IOSCO 2017 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD562.pdf.

53 Section 72 of the *Constitution of Zimbabwe Amendment (No 20)* Act 1 of 2013 (the *Constitution*) provides for the right to agricultural land.

54 Section 71(1) of the *Constitution* defines property as property of any description and any right or interest in the property.

55 Section 3 of the *Securities and Exchange Act*.

56 The offer is usually made via a prospectus which is a heavily regulated document provided for in s 103 of the *Companies and Other Business Entities Act* 4 of 2019

which a publicly traded company issues new securities to its existing shareholders or a private placement wherein the issuance of securities is made to institutional investors or selected individuals rather than the public at large[57] and preferential allotment which involves the issuance of shares to a specific group of investors.[58] All these forms are provided for in the *Companies and Other Business Entities Act* (hereafter the *COBE Act*). Notwithstanding, for purposes of evaluating the current strategies in supervising the primary securities markets in Zimbabwe, this exploration will focus on initial public offerings. An initial public offering (IPO) is one illustration of a primary securities market and it is popular and referable in the capital markets platform.

There is no definition of an initial public offering either in the *Securities and Exchange Act* or the *COBE Act* and this lack of interpretation negatively impacts on robust regulation of the process of an initial public offerings. According to Gullifer and Payne, an IPO means the issuing of new securities and the funds raised are received by the firm or company as new capital.[59] In terms of section 98 as read with section 96 of the *COBE Act* the board of directors may resolve to issue shares of the company at any time. Section 2 of the *Securities and Exchange (Listings Requirements) Rules* defines an offer for sale as[60] "an invitation to the public by, or on behalf of, a third party to purchase securities of the issuer already in issue, or to be issued and may be in the form of an invitation to tender at or above a stated price."

In terms of section 98 of the *Securities and Exchange (Listings Requirements) Rules* the offer for sale or subscription will be underwritten.[61] After choosing an underwriter, the firm or issuer is expected to conduct due diligence, which will become the foundation of its pre-listing statement[62] and

[Chapter 24:31] (hereafter the *COBE Act*) and Part VI ss 88 and 89 of the *Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules*, 2019 (SI 2019-134).

57 This involves an investment bank obtaining firm commitments to take up shares in the company. Generally the commitments will be from the bank's institutional investor clients.

58 Section 115 of the *COBE Act* provides for the allotment of shares. In preferential allotment, financial intermediaries take up the offer for the purpose of allocating the securities to their own clients.

59 Gullifer and Payne *Corporate Finance Law* 549. The IPO helps companies raise capital from a broader range of investors than the existing shareholders.

60 Section 2 of the *Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules*, 2019 (SI 2019-134) (hereafter the *Securities and Exchange (Listings Requirements) Rules*).

61 Tamm and Varma 2014 *Journal of Financial Education* 170. The formal IPO process starts with a firm hiring an underwriter. Hanley 2017 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3046256.

62 Section 98 of the *Securities and Exchange (Listings Requirements) Rules*.

its prospectus distributed to potential investors.[63] Section 104 as read with Part 1 of the 8th Schedule to the Act provides for the contents of a prospectus. In terms of Part VII of the *Securities and Exchange (Listings Requirements) Rules* the directors of a company collectively and individually accept full responsibility for the accuracy of the information provided in the prospectus. Information pertaining to directors' interest in securities, transactions, borrowings, loans, shareholders and company's share capital must all be contained in the prospectus.[64] Ibbotson and Ritter insist that at this stage, some of the shareholders may possess non-public information which may lead to classic challenges of information asymmetry.[65] Liu *et al.* corroborate this fact and observe that investors are expected to evaluate relatively new firms during the IPO process with imperfect firm-specific information at their disposal.[66]

Section 129 of the *Securities and Exchange (Listings Requirements) Rules* stipulates that the offer for sale or subscription must state the price to be tendered for securities. Unlike in secondary markets where price is determined by market forces, in primary securities markets it is predetermined, and as a result under-pricing is a common phenomenon.[67]

A myriad of disclosure items is required in terms of the *Securities and Exchange (Listings Requirements) Rules*.[68] While the mandatory disclosure requirements as stipulated by the Zimbabwe Stock Exchange (ZSE) listing requirements seem to cover all the information about a company seeking to sell its securities for the first time, the firm's economic potential cannot be deciphered from the paperwork.[69] Bowler endorses that a firm raising capital in a primary securities market faces the problems of choosing between a firm-commitment and best-efforts offering on how to convey information about its value to its potential investors.[70] It is very clear that the ecosystem of the primary financial markets in Zimbabwe is fragmented and its

63 Section 2 of the *COBE Act* defines a prospectus as a prospectus, notice, circular or advertisement, in print or electronic form, inviting the public to subscribe for or to purchase any shares or debentures of the company. A prospectus is a formal legal document that provides details about an investment offering for sale to the public.

64 Part VIII of the *Securities and Exchange (Listings Requirements) Rules* provides for the listing particulars.

65 Ibbotson and Ritter "Initial Public Offerings" 993 posited that at this point the issuing market is subject to the whims of the market, making the IPO process a high-stress period. Liu *et al.* 2020 *Management and Organization Review* 947.

66 Liu *et al.* 2020 *Management and Organization Review* 946; Schwartz 2019 *Utah L Rev* 1071.

67 Liu *et al* 2020 *Management and Organization Review* 947; Spatt and Srivastava 1991 *Review of Financial Studies* 710.

68 Sections 6 and 12 of the *Securities and Exchange (Listings Requirements) Rules*.

69 Houge *et al.* 2001 *Financial Management* 5.

70 Bowler 1989 *The Journal of Finance* 647.

framework is not as entrenched as one for secondary financial markets.[71] Further, the provisions relating to initial public offerings, which is a form of primary securities market, are scattered across various pieces of legislation - the *COBE Act* and the *Securities and Exchange (Listings Requirements) Rules, for instance* - a fact that validates the claim that at this stage the stocks or bonds are in their raw state, as it were without any standardisation or review.[72] This poses challenges for robust regulation.

4.2 Institutional framework

The Securities and Exchange Commission of Zimbabwe (SECZIM) (hereafter the Commission) plays an oversight role in regard to securities markets in Zimbabwe. The securities market is comprised of several market participants who are supervised by various entities.[73] This section will explore each entity and the functions thereof.

4.2.1 Securities and Exchange Commission

The SECZIM is established in terms of section 3 of the Act. Section 4(1) provides for the objectives of the Commission, which have to do with investor protection, the reduction of systemic risk, and ensuring that the market is fair, transparent and effective. In order to achieve its functions the Commission has a responsibility in terms of section 4(2) of the Act to regulate trading and dealing in securities, to register, supervise and regulate securities exchanges, and to encourage the development of free, fair and orderly capital markets in Zimbabwe.[74] In terms of section 38 of the Act the Commission has a duty to license several institutions which are under its regulation. The several entities form part of the securities market as a whole.[75]

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71 Liu *et al* 2021 *IET Blockchain* 68; Tamm and Varma 2014 *Journal of Financial Education* 175 posits that pricing an IPO is as much an art as it is a science. Also see Szabo 1996 *Extropy* 1-11.

72 Kaplan and Stromberg 2009 *Journal of Economic Perspectives* 121.

73 Goshen and Parchmovsky 2006 *Duke LJ* 711 submits that the capital market consists of five main groups: insiders, information traders, liquidity traders, noise traders and market markers and that insiders have access to inside information due to their proximity to the firm; they also have the knowledge and ability to price and evaluate this information.

74 Sections 4 and 5 of the *Securities and Exchange Act*.

75 Stock exchanges, Financial Securities Exchange (FINSEC), ZSE and Victoria Falls Stock Exchange (VFEX), securities dealing firms, securities dealers, securities authorised dealers, securities client liaison officers, securities transfer secretaries, securities trustees, securities custodians, securities investment advisors, securities multiple service providers and central depositories. SECZIM 2023 https://seczim.co.zw/central-securities-depository/.

4.2.2 Central Securities Depository

In terms of section 2 of the Act, "central security depository" means a facility or system for holding securities, which is established in terms of section 69 of the Act.[76] It enables transfers and other transactions relating to securities to be effected by entries in a record or account, whether electronically or otherwise, and provides facilities for the reporting and comparison of data. Currently there are two licensed central securities depositories in Zimbabwe.[77] Four main functions of the depository appear from the reading of section 2. In terms of section 68 of the Act,[78] a deposited security means a security (whose definition is provided in section 2 of the Act) that has been deposited with the central depository and not by way of an instrument of transfer.

It is not clear from the reading of section 68 whether the term "deposited security" also refers to securities created in the primary market. Notwithstanding, if the Central Security Depository is used effectively it can be used to enhance fairness and transparency in Zimbabwe's securities market.

4.2.3 Investor Protection Board

The Board is established in terms of section 86C of the Act and consists of not fewer than three or more than six members appointed by the Commission. Its main functions are provided for in section 86D of the Act and include administering the Investor Protection Fund,[79] levying contributions from contributors and paying compensation to protected investors for losses incurred by them as a result of malpractice on the part of the contributor.[80] It is not clear, however, which investors are eligible for compensation.

4.2.4 The Reserve Bank of Zimbabwe

The Reserve Bank of Zimbabwe is a financial institution established in terms of section 4 of the *Reserve Bank Act*.[81] Section 7(e) of the Act, which

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76 VFEX 2024 https://www.vfex.exchange/faqs-depository states that the institution keeps custody of securities in electronic form.

77 SECZIM 2023 https://seczim.co.zw/central-securities-depository/.

78 Section 68 of the *Securities and Exchange Act*.

79 Section 86B of the *Securities and Exchange Act* provides that the Fund shall consist of all contributions and income from investments of the Fund and monies borrowed on behalf of the Fund in terms of s 86D(2)(c) and moneys received by the Fund under any insurance in terms of s 86D(2)(a) and any other monies that may vest or accrue to the Fund whether in terms of this Act or otherwise.

80 Section 86A as read with section 86G defines a contributor as every registered stock exchange and licensed person. Licensed persons are defined in s 38 of the Act.

81 *Reserve Bank Act* 5 of 1999 [Chapter 22:15] (hereafter the *Reserve Bank Act*).

provides for the powers of the Reserve Bank, states that it buys and sells securities. Nothing more, nothing less.

4.2.5 Security or Stock Exchanges

Section 2 of the Act defines a security exchange as

> meaning a person or entity that constitutes, maintains or provides *a* market place or facility, including an electronic trading system at which or by means of which;
>
> a) Buyers and sellers of securities can be brought together
>
> b) Offers to buy, sell or exchange securities can be regularly made and additionally or alternatively, accepted[82]

In order to perform its oversight role over security exchanges, the Commission requires in terms of section 63(1)(b) of the Act that every registered securities exchange shall ensure that no dealings on the exchange take place in any security that is *not listed* on the official list (my own emphasis). Section 63(3) as read with section 65 provides that the requirements for the listing of securities on an official list shall be prescribed in the rules of the registered securities exchange.[83] The ZSE, Financial Securities Exchange (FINSEC) and Victoria Falls Stock Exchange (VFEX) play pivotal roles in the regulation of securities markets in Zimbabwe. The ZSE, FINSEC and VFEX publish listing requirements which are amended periodically.[84]

5 Fairness and transparency in securities markets

One of the major considerations for having securities regulation is the protection of market integrity or fairness. This resonates with the functions of the Securities and Exchange Commission as set forth in section 4 of the Act.[85] Aitken *et al* defines a fair market as a market in which prohibited trading behaviours are minimised.[86] Sarra on the other hand emphasises that while fairness denotes the capacity to take the perspective of another in order to achieve more equitable outcomes, the notion of fairness in securities markets is limited to creating an equal opportunity to participate

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82 Section 2 of the *Securities and Exchange Act*.

83 For example, the *Securities and Exchange (Listings Requirements) Rules*, *Exchange Control (Special Provisions for Securities Listed on Victoria Falls Stock Exchange) Regulations*, 2020 (SI 2020-196) and Financial Securities Exchange FINSEC. FINSEC has introduced List by Introduction (LIB), which allows a company to apply for listing without the conduct of an initial public offering prior to the initial listing of a company's securities.

84 The ZSE Listing Requirements were first published in 1998, amended in 2002, and in 2019 through SI 134 of 2018; Chitimira 2014 *PELJ* 937.

85 The Commission must promote market integrity and ensure transparency in securities markets (s 4(c) and (e) of the Act).

86 Aitken *et al* 2018 *Journal of Business Ethics* 6.

in the market.[87] Market fairness started its course to becoming one of the key objectives around securities regulation during the Wall Street Stock Market Crash in 1929. According to Austin it was during the 21st century that other countries followed the lead of the US and adopted market fairness as a key objective of securities regulation.[88] Currently market fairness is classified as one of the indispensable objectives of securities regulation under the auspices of IOSCO.[89]

In contrast, "transparency" is defined in the Cambridge Dictionary as the characteristic of being easy to see through.[90] As maintained by the Technical Committee of IOSCO, market transparency is generally defined as the ability of market participants to obtain information about the trading process.[91] Pagano and Röell reaffirm that transparency is the extent to which market makers can observe the size and direction of the current order flow.[92] Despite its popularity, the term transparency is a stubbornly ambiguous concept with many facets.[93] Concerning the securities markets it is pertinent to consider the concept of transparency from the perspective of all market participants involved in the trading process. Thuesen substantiates the fact that the transparency debate has many participants.[94] Accordingly, transparency encompasses all the information that may impact prices and transactions in securities markets and conceivably information concerning the issuer, the issue, the market and the market set-up. Parallel

87 Sarra 2014 *Forum on Public Policy* 1; Veryzhenko, Jonath and Harb 2022 *Financial Innovation* 2 asserts that to promote market fairness a regulatory framework should be established to guarantee fair and unimpeded competition.

88 Austin 2017 *Wm & Mary Bus L Rev* 223 emphasises that by market integrity we mean that markets are unimpaired, uncorrupted and sound, whereas fairness means markets are impartial and equitable.

89 IOSCO 2010 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf policy statement.

90 Cambridge Dictionary 2023 https://dictionary.cambridge.org/dictionary /english/transparency. Meijer 2013 *Public Administration Review* 430 claims that transparency is lifting the veil of secrecy or the ability to look clearly through the window of an institution.

91 IOSCO 2001 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD124.pdf in its broadest sense describes information regarding current opportunities to trade and completed transactions which is provided to a defined range of recipients via agreed dissemination methods and according to predetermined time frames. Madhavan 2000 *Journal of Financial Markets* 233 states that transparency is the ability of market participants to obtain information about a trading process. Information in this context can refer to knowledge about prices, quotes, volumes or sources of order flow and the identities of market participants.

92 Pagano and Röell 1996 *Journal of Finance* 579. Zúñiga, Jenkins and Jackson 2018 https://www.jstor.com/stable/resrep20498 attempt to define transparency, emphasising different dimensions of the concept.

93 Ala'i 2015 *ASIL Proceedings* 319; Ui Date Unknown https://www.bis.org/publ/cgfs11ui.pdf. Transparency has many dimensions because a market has many kinds of market participants.

94 Thuesen 2004 https://www.nationalbanken.dk/media/nfgivvvm/2004-mon4-s65-transparency.pdf.

to fairness, the term explored in the preceding section, transparency is considered as a key principle of securities regulation by IOSCO.[95] In evaluating the concept of transparency in securities markets a contrast is drawn between two types of information; pre-trade and post-trade information. Schwartz reaffirms the fact that companies are legally required to disclose certain specified information to public investors and that this is the cornerstone of modern securities law for both primary securities markets and secondary securities markets.[96]

5.1 The notions of fairness and transparency in Zimbabwe's primary securities markets

The *Securities and Exchange Act* or any subsidiary legislation does not define the concepts of market fairness and transparency. Such definitions are also absent from the *COBE Act* or the *Securities and Exchange (Listings Requirements) Rules,* a shortcoming which contributes to a distorted perspective on whether the present regulatory approaches enhance an understanding of the concepts. It is argued that there is a dearth of literature concerning the structure of primary financial markets in Zimbabwe as compared to the secondary financial markets, as witnessed by the lack of definitions in the different pieces of legislation referred to in this discourse.[97] Consequently an investigation of whether the current regulatory framework of Zimbabwe's primary securities markets enhances fairness and transparency will be gauged by utilising interpretations or rationales from other jurisdictions and various scholars in the field of financial markets, including the interpretations provided in the IOSCO Objectives and Principles.

The primary market is where new securities are created and issued for the first time and it is characterised by very costly and difficult trading processes, information asymmetry[98] and lack of trust,[99] culminating in a lack of fairness and transparency.[100] It is argued that the paucity of knowledge of the structure of primary financial markets in Zimbabwe as compared to

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95 IOSCO 2010 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf principle 27.

96 Schwartz 2019 *Utah L Rev* 1069.

97 Schwartz 2019 *Utah L Rev* 1072 submits that secondary markets receive much more academic attention than primary securities markets.

98 Saxton and Anker 2013 *Journal of Communication* 1055 observed that information asymmetries occur when parties to an exchange possess unique or varied information; Corporate Finance Institute 2023 https://www.corporate financeinstitute.com.

99 Liu *et al*.2021 *IET Blockchain* 68; Schwartz 2019 *Utah L Rev* 1079.

100 Spatt and Srivastava 1991 *Review of Financial Studies* 709 state that potential investors may have some information about the cash flows of the enterprise. In regards to issues not previously traded, there is often considerable residual uncertainty concerning the market's valuation of these cash flow.

the secondary financial markets exists for several reasons.[101] First, this gap in the literature is endorsed by other scholars and academics who acknowledge the fact that the primary financial market trades in securities that have not yet been listed and that information pertaining to those securities remains in the hands of the issuers.[102] Secondly, investors have no established and clear performance records in the primary markets as most of the information about the firm is in the hands of company insiders.[103] Thirdly, most firm information received by the investors is either embellished or sifted by company insiders to the firm's advantage. Fourthly, information is the key coordinating feature of financial markets and in primary financial markets, not all participants have an equal opportunity to gain access to all the information about a trading process.[104] Fifth, the pricing of securities in a primary market is not transparent and there is lack of regulatory supervision, unlike in a secondary securities market, where the value of securities is subject to the market forces of supply and demand.[105] The Act itself does not differentiate between primary securities markets and secondary securities markets; nor does it identify the forms of primary markets and the regulation that relates to it. The most common type of primary securities market, IPO, is not defined in any part of the Act. Securities exchanges are authorised to deal with listed securities indirectly, excluding those in the primary securities markets. The pricing of securities in a primary market is left to the parties, and hence the century-old challenge of under-pricing and overpricing is a common phenomenon in primary securities markets. Information pertaining to a firm is in the hands of very few shareholders and managers who may voluntarily withhold some of it and they contribute to information asymmetry.

101 Liu *et al.* 2020 *Management and Organization Review* 945-946.

102 Liu *et al.* 2021 *IET Blockchain* 68. Ibbotson and Ritter "Initial Public Offerings" 993.

103 Liu *et al.* 2020 *Management and Organization Review* 945-946. Bowler 1989 *TJF* 647 endorses that a firm raising capital in an initial public offering faces the problems of choosing between a firm commitment and a best-efforts offering and of how to convey information about its value to potential investors.

104 Hanson 2003 *Global Governance* 67. Fama 1970 *Journal of Finance* 383 posits that it is a market in which firms can make production investment decisions, and investors can choose among the securities that represent the ownership of firms' activities under the assumption that security prices at any time "fully reflect" all available information.

105 Houge *et al.* 2001 *Financial Management* 5; Bower 1989 *Journal of Finance* 647. The offering method chosen affects both the firm's cost of obtaining capital and investors' perceptions of firm value.

6 Adapting blockchain technology in Zimbabwe's primary securities markets

6.1 Blockchain technology's key features and benefits

The confusion relating to the interpretation of blockchain technology arises from the fact that there are disparate ways of implementing the technology, each one creating different adaptations in terms of efficiency, reliance on existing intermediaries, and administration generally.[106] According to Grinberg,[107] Bitcoin is a digital, decentralised, partially anonymous currency not backed by any government or other legal entity but relies on peer-to-peer networking and cryptography to maintain its integrity. Blockchain, on the other hand, is a technology defined as a decentralised or distributed electronic registry of reliable and constant data,[108] which operates based on cryptographic algorithms,[109] whose main property is to record information about all transactions made by creating block transactions.[110] Blockchain operates through a network of computers that records, verifies, and distributes the ledger according to a specific computer programming code known as a "protocol". Typically, the more decentralised a blockchain network is, by distributing and replicating the digital ledger on each node, the more valuable it is. This is because decentralisation eliminates a central point of failure, which ensures the network is fraud free and continuously operational.[111]

The core features or key characteristics and benefits of a blockchain technology are critical to the superiority and uniqueness of this technology.[112] Baiod, Light and Mahanti identifies six characteristics of

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106 Catalini 2018 *Georgetown Journal of International Affairs* 36. Mohanty 2019 *India International Centre Quarterly* 197 states that blockchain is used in special scenarios where multiple parties or organisations need to work together to execute complex business transactions.

107 Grinberg 2012 *Hastings Science and Technology Law Journal* 160.

108 Santiago *et al.* 2019 *Journal of Legal, Ethical and Regulatory Issues* 1. In addition, Brake 2020 *Me L Rev* 162 states that blockchain is a technology that allows computers connected over the internet to reach agreement over shared data. A block is a defined storage space over a distributed network of such computers.

109 Mishra 2021 *Legal Spectrum Journal* 1. It is an informal governance tool that both enables and puts limitations on what can and cannot be done. Indeed, it is the code and protocols that comprise the network itself that must be trusted.

110 Ducas and Wilner 2017 *International Journal* 539.

111 Gonzalez 2022 *Fordham Journal of Corporate and Financial Law* 527. Cong and He 2019 *Review of Financial Studies* 1760 asserts that in its simplest form entails a distributed database that autonomously maintains a continuously growing list of public transaction records in units of "blocks", secured from tampering and revision. Each block contains a time stamp and a link to a previous block. Other forms of blockchains have emerged subsequently with different designs on exclusivity, transparency, and the maintenance of the records.

112 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81; Dimitropoulos 2020 *Wash L Rev* 1119.

blockchain technology.[113] Firstly, blockchain technology has a distributed ledger through which every participant on a network has the same copy of the record.[114] All users of a blockchain can access the entire system, see all transactions in the distributed ledger, and verify its transaction partners' records.[115] There is no central authority or any trusted third party for transaction verification or settlement. The truth of data is confirmed by consensus among all blockchain participants. Peers communicate directly, not via a central node.[116] The computers connected to the network, store and spread information to each other (peer-to-peer transmission).[117]

Secondly, once blocks are created, added to the chain, ordered accurately and time-stamped, an immutable record of the sequence and timing of the blocks in the chain is created.[118] All users of a blockchain can access the entire system, see all transactions in the distributed ledger, and verify their transaction partners' records.[119] There is no central authority or any trusted third party for transaction verification or settlement.[120] Thirdly, as an innate feature of the platform, users (nodes) cannot be publicly identified.[121] Each party can use the blockchain with a generated address without the participant's real identity being revealed.[122] Users interact using blockchain addresses.[123]

Fourth, previous records can be easily verified and traced as transactions are validated and recorded with a timestamp, making data stored in a blockchain traceable and transparent.[124] Computational algorithms are employed to ensure the permanence and chronological order of the recording on the ledgers and the availability of this recording to all network

113 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 80.

114 Cong and He 2019 *Review of Financial Studies* 1754.

115 Mohanty 2019 *India International Centre Quarterly* 197.

116 Kulhari *Building-Blocks of a Data Protection Revolution* 16 submits that the chronological database of transactions in blockchain is recorded by a network of computers. These computers are called "nodes".

117 *Kulhari Building-Blocks of a Data Protection Revolution* 16.

118 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81.

119 Ducas and Wilner 2017 *International Journal* 546 asserts this verification process can be costly. It hinges on expending computational processing power to solve complex cryptographic problems, often in the form of "proof-of-work" processes.

120 Catalini 2018 *Georgetown Journal of International Affairs* 36.

121 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81.

122 Kulhari *Building-Blocks of a Data Protection Revolution* 16; Ryan and Donohue 2018 *The Business Lawyer* 88.

123 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81. In addition, blockchain technology does not identify the sender or the receiver, unlike more traditional banks.

124 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81; Ryan and Donohue 2018 *The Business Lawyer* 88.

users.[125] Blockchain technology is underpinned by protocols that require users to confirm transactions as a precondition for posting, as this ensures the validity of the transaction.[126]

Fifth, the powerful cryptography in a blockchain gives users ownership of addresses and the associated crypto assets in an assortment of public and private keys.[127] There is no direct association between these addresses and users' identities, eliminating identity theft. Additionally, as hashes link blocks, tampering with data within any given block does not change other connected blocks. Therefore, users' information and transaction data are well secured within the blockchain technology.

Sixth, anyone can create a block in a publicly distributed ledger. The prerequisite is a unique chain of blocks and a way to decide which blocks can be trusted.[128] This means that in order to ascertain the legitimacy of transactions recorded into a blockchain, the network has to confirm the validity of new transactions.[129] Therefore, a new block of data has to be added to the end of an existing blockchain only after the nodes on the network arrive at a consensus regarding the validity of the new transaction. This consensus is achieved through different voting mechanisms within a network.[130] The most common voting mechanism, which is also used for Bitcoin blockchain, is the proof-of-work consensus protocol, which depends on the amount of processing power donated to the network.[131]

Although blockchain technology is still embryonic it has changed many businesses and has become an appealing technology for many industries even in this formative stage.[132] There are several vital benefits of blockchain technology. In a blockchain a complete history of transactions is

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125 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81; Ryan and Donohue 2018 *The Business Lawyer* 88.

126 Pilkington "Blockchain Technology" 225-253 explains that a hash function is a mathematical algorithm that takes an input and transforms it into an output, and it is a result of cryptographically transformed original information. A hash function is critical to blockchain technology because it is extremely difficult to recreate the input data from its hash value alone.

127 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81.

128 Kulhari *Building-Blocks of a Data Protection Revolution* 17; Ryan and Donohue 2018 *The Business Lawyer* 88.

129 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664. Ryan and Donohue 2018 *The Business Lawyer* 88 submit that blockchain technology is seen as a "trustless" mechanism for the verification of all transactions or assets on the network.

130 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664; Kulhari *Building-Blocks of a Data Protection Revolution* 17.

131 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664.

132 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664.

permanently maintained and simultaneously available to all network users. All users involved in a transaction are aware of any actions taken on any data or transactions executed, thus promoting increased transparency. In addition, the availability and continuity of the services provided is a crucial requirement for all businesses. The absence of a vulnerable single failure point in the blockchain technology means that the system is never down, thus supporting business continuity. Furthermore, blockchain technology's infrastructure of decentralisation enables a significant level of disintermediation.[133] Technology protocols and elements can replace intermediaries, enhance efficiency, and reduce friction-related direct and indirect costs between individuals and organisations due to decreased trust.

Moreover, the underlying concept of blockchain technology is the establishment of a trustworthy record between untrusted parties.[134] The design of blockchain embedded protocols and cryptography property compels trust and eases its verification.[135] In addition, some functionality can be added to the ledgers, as most blockchain applications provide scripting languages. Smart contracts are self-executed and automate the execution of credible transactions and actions without an intermediary, as the terms of agreements are fulfilled.[136] Smart contracts cannot be utilised in traditional systems, thus data integrity and data availability to all parties makes blockchain the right technology platform to leverage smart contracts.[137]

6.2 Blockchain technology's capacity to transform Zimbabwe's primary securities markets to enhance fairness and transparency

Blockchain's transparent and decentralised nature allows the development of an immutable data record. It has the potential to replace all

133 Catalini 2018 *Georgetown Journal of International Affairs* 36; Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81.

134 Kiviat 2015 *Duke LJ* 574 submits that blockchain is a "trustless" technology. "Trustless" means for the first time in history exchanges for value over a computer network can be verified, monitored and enforced without the presence of a trusted third party or central institution. See Noble and Patil 2021 *Revista Gestão Inovação e Tecnologias* 5089.

135 Baiod, Light and Mahanti 2020 *Journal of International Technology and Information Management* 81.

136 Ducas and Wilner 2017 *International Journal* 547 insists that coupled with blockchain technology, smart contracts bypass the need for traditional intermediaries with the ability to self-execute, self-enforce, self-verify and self-constrain the performance of a contract. Mohanty 2019 *India International Centre Quarterly* 198 reaffirms the fact that a smart contract is a computer protocol or computer programme that digitally verifies or enforces the rules and regulations of a physical contract. It leads to the automatic execution of complex multiparty transactions between parties, minimising human intervention, saving time, cost, and the complexity of maintaining data.

137 Wright 2021 *Stanford Journal of Blockchain Law and Policy* 1; Ryan and Donohue 2018 *The Business Lawyer* 92.

intermediaries, allowing trade to occur on computers around the world. Noble and Patil suggest that the elimination of intermediaries from the securities markets speeds up the settlement process, enables greater precision in trade, and improves information accuracy, leading to fair and transparent securities markets.[138] Avgouleas and Kiayias assert that distributed ledger technology has already been reliably introduced in the trade finance environment with significant gains expected in terms of time and the transaction costs of document processing.[139] Dimitropolous verifies this fact by stating that blockchain technology is very much a system that assumes that individuals are rational and allows for the automation of transactions.[140]

In view of the fact that blockchain technology is borderless and frictionless, it is submitted that it can provide a cheaper, faster infrastructure for exchanging units of value.[141] Blockchain is not simply about money.[142] Blockchain technology is not just fuelling digital currencies but enabling the creation of smart contracts.[143] Prior to the invention of blockchain technology, coordinating individual activities over the internet without a central body monitoring the data was impossible.[144] Blockchain technology resolves this problem by forcing information travelling over a network of computers to become more transparent and verifiable using mathematical algorithms that require significant computational power to solve.[145] Wright and De Filippi emphasise that in some instances smart contracts represent the implementation of a contractual agreement whose legal provisions have been finalised into a source code.[146]

It is submitted that, should the above-mentioned benefits of blockchain technology be channelled towards enhancing transparency and fairness in primary securities markets, all the information pertaining to a firm's previous

138 Noble and Patil 2021 *Revista Gestão Inovação e Tecnologias* 5089; Kiviat 2015 *Duke LJ* 577.

139 Avgouleas and Kiayias 2019 *EBOR* 83.

140 Dimitropoulos 2020 *Wash L Rev* 1125.

141 Kiviat 2015 *Duke LJ* 574.

142 Wright 2021 *Stanford Journal of Blockchain Law and Policy* 1. Kiviat 2015 *Duke LJ* 588 submits that the blockchain not only moves value but also integrates several components of the trading-clearing settlement value chain in an elegant, efficient, and mathematical way.

143 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664 states that smart contracts are among the truly disruptive technological advancements to the practice of law since the invention of the printing press.

144 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664.

145 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664.

146 Wright and De Filippi 2015 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664.

records will be available unadulterated. The primary securities market's trading platform will be certain, and all the participants in a transaction will have an equal opportunity to participate in the trading process. In addition, the participants in the market will be able to obtain all the information they want about a trading process through blockchain technology. Compliance with the listing requirements will be undemanding as compared to the current state of affairs. For instance, assuming Econet Wireless is offering securities for the first time to the public through an IPO and using blockchain technology, the use and application of blockchain technology information pertaining to Econet Wireless as an issuer will be uploaded pseudonymously and confirmed by other participants.[147]

Consensus is a key characteristic of blockchain technology, and until the participants agree to verify the information it will be difficult to upload the information. On the other hand, investors will have access to the information through blockchain technology. Indirectly this will create a trading platform for the primary securities markets which does not exist at present. All the information relating to compliance with the requirements of the ZSE will be made available through the use of blockchain technology and will be available for, even so for the ZSE to verify. It is further submitted that the verified information will become immutable. None of the parties will be able to change the information, thereby creating an equal opportunity to participate and an ability to obtain all the relevant information which makes it unexacting to place value on the securities listed.

It is now necessary to consider the eventual benefits and some of the risks of the introduction of blockchain technology into primary securities markets in Zimbabwe. Considering the nature and function of the primary securities market - to originate, underwrite and distribute new securities - there is a lack of standardised regulation from both the legal and institutional frameworks point of view. The *Securities and Exchange Act* itself does not differentiate between primary securities markets and secondary securities markets and does not identify the forms of primary markets and the regulation that relates to it. The most common type of primary securities market, IPO, is not defined in any of the Acts. Securities exchanges are authorised to deal with listed securities indirectly, excluding those in the primary securities markets.

It is therefore submitted that the notions of transparency and fairness elucidated above fit hand in glove with the key characteristics of blockchain technology. The landscape of the primary securities markets is such that information is in the hands of the issuers and they decide what information to reveal and what to conceal. The requirement of disclosure in terms of the

147 Some of the employees of Econet Wireless responsible for uploading information.

Securities and Exchange (Listings Requirements) Rules is inadequate. The negotiations that take place between the issuer and the underwriter are not recorded and do not form part of the regulatory requirements. The possibility that the issuer may portray a favourable frame of the firm cannot be underscored.

7 Conclusion

Accordingly, law reform is recommended on the structure of primary securities markets in Zimbabwe, which requires attention. Blockchain technology has a wide range of application possibilities in the area of securities trading. Firstly, it can be implemented as a procedural technology prior to the commencement of a trading process wherein all market participants' information is uploaded into the system. Secondly, blockchain technology can be used as a data storage or exchange during trading for the purposes of issuing and transferring securities. Third, it can be used as an identification technology post trade for the purposes of registration, repository, exchange, settlement and data sharing. In terms of section 4(2)(e) and (f) of the Act, SECZIM may exercise any other function that may be conferred upon it by the Act or any other enactment. This provision gives a wide discretion to the Commission to bring all matters that concern the status of the securities markets to the government. By virtue of this provision, SECZIM may establish a research and development department in the field of securities law to propose the reforms required in this area of law.

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List of Abbreviations

ASIL Proceedings	American Society of International Law Proceedings
Berkeley LJ	Berkeley Law Journal
Brook J Corp Fin & Com L	Brooklyn Journal of Corporate, Financial and Commercial Law
COBE Act	Companies and Other Business Entities Act
Duke LJ	Duke Law Journal
FINSEC	Financial Securities Exchange
EBOR	European Business Organization Law Review
IET Blockchain	The Institution of Engineering and Technology Blockchain
IOSCO	International Organization of Securities Commissions
IPO	initial public offering
Me L Rev	Maine Law Review
Mercer L Rev	Mercer Law Review
OECD	Organisation for Economic Co-operation and Development
Ohio LJ	Ohio Law Journal
PELJ	Potchefstroom Electronic Law Journal
SECZIM	Securities and Exchange Commission of Zimbabwe

SRO	self-regulatory organisation
Temp Int'l & Comp LJ	Temple International and Comparative Law Journal
UNBLJ	University of New Brunswick Law Journal
Unif L Rev	Uniform Law Review
US	United States
Utah L Rev	Utah Law Review
Va J Int'l L	Virginia Journal of International Law
VFEX	Victoria Falls Stock Exchange
Wash L Rev	Washington Law Review
Wm & Mary L Rev	William and Mary Law Review
Wm & Mary Bus L Rev	William and Mary Business Law Review
ZSE	Zimbabwe Stock Exchange