

**THE CAPITAL MARKETS (LICENSING REQUIREMENTS)
(GENERAL) REGULATIONS, 2002
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DATE: 09 NOV 2022	
DAY: <u>Wednesday</u>	
TABLED BY:	<u>LOM</u>
CLERK-AT THE TABLE:	<u>Maina Wanjiku</u>

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THE CAPITAL MARKETS ACT
(Cap. 485A)

IN EXERCISE of the powers conferred by section 12(1) of the Capital Markets Act, the Capital Markets Authority makes the following Regulations-

THE CAPITAL MARKETS (LICENSING REQUIREMENTS)
(GENERAL) REGULATIONS, 2002

PART I – PRELIMINARY

Citation.	1. These Regulations may be cited as the Capital Markets (Licensing Requirements) (General) Regulations, 2002.
Interpretation.	2. In these Regulations, unless the context otherwise requires – “Act” includes a reference to the Capital Markets Act and the Regulations and Guidelines made thereunder; “Authority” has the meaning assigned to it in the Act” “close relation” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grand child or spouse of a grandchild; “compensation committee” means the investor compensation committee appointed under regulation 71; “Compensation Fund” has the meaning assigned to it in section 2 of the Act; “Custodian” means a bank licensed under the Banking Act or a financial institution approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets registered in the name of local investors, East African investors or foreign investors or of an investment portfolio; “demutualization” means the separation of the ownership of an exchange from the right to trade on such exchange; “demutualized exchange” means a securities exchange in which ownership and rights to trade are separate; “liquid capital” in relation to a licensed entity, means the amount which the liquid assets of a licensed entity exceed its
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liabilities, as may be prescribed by the Authority;

“private transaction” means a transfer of a listed security outside a securities exchange authorized by the Authority from one security holder to another whether or not it involves any consideration or change of beneficial interest or is otherwise authorized by the Authority under section 31 of the Act;

“professional” means a person giving an opinion in respect of listed securities or in relation to a public offer or listing of securities and includes -

- (a) any person responsible for the incorporation of a listed company;
- (b) an advocate, auditor, accountant, investment advisor or stockbroker, underwriter, valuer, engineer, actuary, analyst, economist, management consultant; and
- (c) other experts whose written opinion with respect to the assets, products or business affairs of the issuer appear in a prospectus or is produced to the Authority.

“rights to trade” means the rights of access to and the use of trading related facilities provided and maintained by a securities exchange which a securities exchange may grant a licensee of the Authority, subject to the rules of the securities exchange on admission of trading participants.

No. 4 of 2000

“securities laws” means the Act, the Central Depositories Act and the regulations and guidelines made thereunder;

“working capital” means the difference between the current assets and current liabilities excluding clients’ accounts which shall not fall below twenty percent of the prescribed minimum shareholders funds or three times the monthly operating costs whichever is higher;

PART II - SECURITIES EXCHANGE

Application for Approval.

3. (1) An application for grant of approval to operate as a securities be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application under paragraph (1) shall be submitted together with -

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(a) the rules, memorandum and articles of association of the applicant which shall be in a form that is satisfactory to the Authority and restricts the applicant to the business of operating a securities exchange and services incidental thereto;

(b) details of the trading system proposed to be adopted by the applicant;

(c) the prescribed fees set out in the Second Schedule; and

(d) such additional documents as may be required by the Authority.

Rules of the
Securities
Exchange

L.N 88/2012

4. (1) The rules to be adopted by an applicant for approval to operate as a securities exchange shall contain provisions in Compliance with the Act on the-

(a) admission to the listing, suspension or de-listing of securities by the securities exchange, through a procedure prescribed by the Authority;

(b) the conditions governing dealing in securities by its trading participants so as to ensure protection of the rights of investors;

(c) prompt disclosure, in a manner that is fair to all investors, of material information of a price sensitive nature and information likely to affect the price of a security including fees on management contracts, to enable appraisal of an issue by investors;

(d) protection of investors against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in the issuing and trading of securities;

(e) prohibition of market manipulation in any form;

(f) investigation into trading in securities and

financial transactions of trading participants and for conducting surprise checks on such trading participants;

- (g) suspension of trading of any security for the protection of investors or for the conduct of orderly and fair trading;
- (h) the conduct of securities trading by trading participants and the manner in which information relating to transactions is to be maintained and reported to other trading participants and customers of the securities exchange;
- (i) segregation from other business accounts of trading participants, of customers funds and securities;
- (j) arbitration of disputes and provision for appeal to the Authority by trading participants, investors and listed companies;
- (k) proper safe keeping of securities in its custody;
- (l) carrying out of the business of the securities exchange with due regard to interest of the investing public;
- (m) trading rights on a securities exchange;
- (n) registration with the securities exchange of full members, associate members, their representatives, authorized clerks and dealers;
- (o) conduct of trading participants, their representatives, authorized clerks and dealers;
- (p) responsibility of trading participants for the actions of their employees and agents in their dealings with the public; and
- (q) the listing of medium and large sized companies in the respective market segments such that investors have a range of investment opportunities in listed securities across all sectors of the economy.

Membership of
securities
exchange.

L.N 88/2012

5. (1) Trading participants of a securities exchange shall be licensees of the Authority with rights to trade at an approved securities exchange.

(1)A. The Authority may prescribe limits on the ownership of a securities exchange by its trading participants.

(2) A securities exchange may, in accordance with the procedures prescribed in its rules, admit as a trading participant, any person who has been licensed by the Authority to exercise rights to trade -

(a) if that person satisfies any admission requirements of the securities exchange; and

(b) on payment of admission fee approved by the Authority under section 29(2) of the Act,

and accord that person the applicable rights to the relevant category of admission:

Provided that, a securities exchange may assess an application for admission by a person seeking a licence from the Authority and issue a confirmation that that person shall be admitted upon securing a license from the Authority.

(3) A trading participant of a securities exchange or a director or a shareholder of a trading participant shall not be a director or hold beneficial interest either directly or indirectly in more than one trading participant of a securities exchange unless the trading participants has been exempted by the Authority on the basis of evidence of adequate internal controls to address conflict of interest.

(4) In case of a listed trading participant of a securities exchange, an interest of fifteen percent or more of the voting shares held directly or indirectly shall be deemed to be a person's beneficial interest for purpose of these Regulations.

Chairman and
chief executive.

L.N. 88/2012

6. (1) A securities exchange shall have a chief executive who shall be in charge of the day to day operations of the securities exchange and administration of sufficient professional capability to carry out trading, clearing and compliance functions of its trading participants and listed companies.

(2) No person shall be qualified for appointment as a chief

executive of a securities exchange, unless such person has –

- (a) at least ten years' experience at a senior management level in matters relating to law, finance, accounting, economics, banking or insurance; and
- (b) expertise in matters relating to money, capital markets or finance.

(3) A securities exchange shall provide in its rules and articles of association -

- (a) a fixed term of office for its chairman and chief executive, which shall include a maximum term of office of two consecutive years for the chairman and four years renewable once for the chief executive.
- (b) a board of directors comprising of the chief executive of the securities exchange and at least one third independent and non-executive directors;
- (c) a maximum two members of the board of directors who shall be elected from among or to represent the trading participants;
- (d) the independent and non-executive directors appointed under subparagraph (b) shall be persons who have knowledge and experience in investments, public service and corporate governance and shall represent the interests of investors and the public interest;

Provided that prior to making any such appointment the securities exchange shall submit the names of the persons proposed to be appointed as directors to the Authority for confirmation that the Authority has no objection to the proposed appointments;

- (e) two members of the board shall be elected by the shareholders of the securities

exchange from nominees of companies listed on the securities exchange to represent the listed companies.

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(4) Subject to paragraph (3) (c), (d) and (e), the other persons appointed to the board of directors shall be elected by the shareholders of the exchange in accordance with the Companies Act.

(5) deleted by L.N 88/2012

Requirements for approval of a securities exchange system

7. (1) A trading system to be adopted by a securities exchange shall be approved by the Authority before such system is implemented.

(2) The trading system referred to in paragraph (1) shall provide trading for -

(a) a trading facility at which all bids to purchase and offers to sell are exposed to each other and at which members of the public are granted an opportunity to witness trading;

(b) a transparent and efficient pricing mechanism which:-

(i) displays the best offer and bid prices;

(ii) provides for automatic matching;

(iii) displays the highest and lowest prices, the latest transactions as well as the volume of securities traded;

(iv) has an audit trail and trace back mechanism for all transactions;

(v) has sufficient internal controls and security measures to ensure that only authorized persons have access;

(vi) provides for integration with a

central depository system; and

- (vii) maintains records of all transactions and retrieves such records as may be necessary.

Submission of
annual budget.

8. (1) A securities exchange shall submit its annual budget to the Authority not later than thirty days before the commencement of its financial year.

(2) Any revisions to the budget shall be submitted to the Authority not later than fifteen days before the commencement of its financial year.

(3) The annual budget shall -

- (a) disclose details of revenue and expenditure as prescribed under these Regulations.
- (b) make provision for a minimum of twenty percent of the total annual listing fees receivable each financial year to support the development of the securities exchange infrastructure and investor education programme.

Self- Regulation.

9. (1) Every securities exchange shall have:-

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- (a) a procedure and appropriate system of exercising self regulation over its trading participants;
- (b) a code of conduct for its trading participants;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

(2) A securities exchange shall implement a system of self-regulation with respect to its trading participants and shall ensure the day to day management of trading, settlement, delivery and all other

activities of its trading participants are in accordance with—

- (a) the rules of the securities exchange approved by the Authority; and
- (b) laws, regulations and guidelines relating to securities issued by the Authority.

(3) The rules of a securities exchange shall, where applicable, support the self-regulatory functions of the securities exchange and in particular shall be designed to—

- (a) promote investor protection;
- (b) promote fair treatment of its trading participants and any person who applies for admission as a trading participant;
- (c) exclude a person who is not fit and proper from being its trading participant or being appointed as its chief executive, director or officer
- (d) promote proper regulation and supervision of its trading participants;
- (e) promote appropriate standards of conduct of its trading participants;
- (f) manage any conflict of interest which may arise between its interest and the interest of investors and the general public;
- (g) ensure that its trading participants and officers duly comply with the securities laws, regulations and guidelines issued by the Authority and where relevant, the rules of the securities exchange, or approved central depository;
- (h) require trading participants to report in a timely manner any breaches of applicable rules;
- (i) prevent the use of any information by its trading participants or officers which may result in such trading participants or officer making an unfair gain;
- (j) expel, suspend, discipline or sanction a trading

participant if a trading participant contravenes securities laws, regulations and guidelines issued by the Authority or where relevant, the rules of the securities exchange, or an approved central depository;

- (k) require a trading participant to report any action, restriction or limitation imposed on its operations by another securities exchange, central depository or the Authority; and
- (l) allow an aggrieved trading participant to appeal against any decision of the securities exchange acting in its capacity as a recognized self-regulatory organization.”

(4) An applicant shall, as a condition for approval to operate a securities exchange—

- (a) exercise self regulatory responsibility over its trading participants; and
- (b) put in place independent management of and budgetary structures for the commercial and regulatory functions of the securities exchange.”

Records to be maintained.

10. Every securities exchange shall maintain and preserve the following records and documents, for a period of seven years –

(a) minutes of the meetings of-

L.N 88/2012

- (i) its shareholders;
 - (ii) its board of directors; and
 - (iii) any standing committee or committees of its board of directors;
- (b) register of trading participants including the full names and physical addresses of all directors and shareholders of such trading participants;

- (c) register of representatives, authorized clerks, dealers, authorized assistants and floor traders;
- (d) record of securities transactions by sectors for each market segment;
- (e) statistical information on market turnover and capitalization on a monthly basis for each market segment;
- (f) register of -
 - (i) all listed securities including the names of issuers and number of securities listed by each issuer;
 - (ii) all substantial shareholders;
 - (iii) holders of notifiable interest under regulation 75.
- (g) records of receipts and disbursement of the investors compensation fund;
- (h) annual audited accounts of its trading participants;
- (i) annual reports of all listed companies;
- (j) records containing any trading limits, margin requirements or related financial and operational limits it imposes on its trading participants on a monthly basis;
- (k) financial records of all transactions of the securities exchange including receipts and payouts, cash and bank transactions which shall also be maintained in an electronic form including:
 - (i) ledgers;
 - (ii) journals; and
 - (iii) bank statements and reconciliation accounts.

Deleted by L.N
88/2012

11.

Reporting
obligations.

12. (1) A securities exchange shall within four months after the end of each financial year make available to the Authority, and to the investors, a summary of information on companies listed at the securities exchange.

(2) The information referred to in paragraph (1) shall include the-

- (a) published accounts of companies listed on such securities exchange including balance sheet and profit and loss statements;
- (b) date of incorporation, date of listing, names of directors, share capital, number and value of shares issued, and any changes in the share capital;
- (c) details of securities transacted and the prices (high, low and mid-market) at which such securities have been transacted during the year; and
- (d) earnings per share, dividend per share, shareholding structure (institutional, individual and foreign investors), principal or controlling shareholders and total number of shareholders.

(3) A securities exchange shall maintain information in both print and electronic form, regarding each company listed at the securities exchange and such information shall include the -

- (a) name of the issuer and date of incorporation;
- (b) date of listing;
- (c) names of directors;
- (d) principal/controlling shareholders;
- (e) total number of shareholders;

- (f) authorized and paid-up share capital;
- (g) changes in authorized or paid-up share capital;
- (h) core and auxiliary line of business;
- (i) balance sheet and profit and loss accounts for the last five years;
- (j) volume and price movements (high and low) of the listed security; and
- (k) earnings per share and dividend per share.

(4) A securities exchange shall, by the last day of March in each year, furnish the Authority with a report of its activities during the preceding calendar year and such report shall contain information on -

- (a) changes in its rules and by-laws, if any;
- (b) changes in the membership of its board of directors;
- (c) composition and mandates of all the committees set up and changes (if any) in the membership of its existing ones;
- (d) admission, suspension or expulsion of trading participants;
- (e) disciplinary action against trading participants including appointment of statutory manager;
- (f) arbitration of disputes;
- (g) securities listed, suspended or de-listed;

(h) market turnover and capitalization per sector; and

(i) any other matters that the Authority may request.

(5) A securities exchange shall submit to the Authority, through electronic means, and make public a daily report on the securities transacted, the price movements on each security including low, high and average prices, and the volume of transactions in each security.

(6) A securities exchange shall furnish the Authority within thirty days after the end of each quarter, a report of all securities transactions for each day, including private transactions, the value of each transaction, names of the parties for each private transaction and the holders of notifiable interest disclosed to the securities exchange under Part XI of these Regulations;

(7)(a) A financial statement of a securities exchange shall include the disclosures prescribed in the Third Schedule to these Regulations.

(b) The annual accounts of a securities exchange shall be audited by an independent auditor appointed by the board of directors with the consent of the Authority and such auditor shall not be removed without the approval of the Authority;

(8) A securities exchange shall furnish the Authority with all documents and notices that it issues to its members in connection with the annual general meetings within ten days prior to the date of such meetings.

(9) Communication to investors shall be by way of publication in at least two daily newspapers of national circulation.

(10) A securities exchange shall immediately report to the Authority by telephone and in writing whenever-

(a) there is a delay in the opening or closing of the securities exchange;

(b) there is a default on settlement and delivery;

(c) trading is to be suspended in any security;

(d) there are incidences of violation of the Act or

the securities exchange rules;

(e) there is unusual activity in the market;

(f) the securities exchange receives any non-public information that its chief executive believes could have a material effect on the market in general or on any specific securities; or

(g) the Authority requests for any information.

Listing of securities by a securities exchange.

13. (1) No securities exchange shall admit to listing a security which has not been approved for listing by the Authority.

(2) A securities exchange shall admit to listing without any other conditions all securities approved by the Authority arising out of :-

Amended by LN
32/2008
commencement
date 14th March,
2008

(a) a public offer, on attainment of the total minimum subscription of shares as disclosed in the prospectus approved by the Authority and minimum number of shareholders prescribed for the respective market segment;

(b) an introduction;

(c) rights issue;

(d) scrip dividend offer; or

(e) capitalization of reserves.

(3) A securities exchange shall provide in its listing rules and with respect to each market segment the procedure for admission to listing of securities approved for listing by the Authority.

PART III - STOCKBROKERS AND DEALERS

Application for license.

14. (1) An application for a licence to operate as a stockbroker or a dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application referred to in paragraph (1) shall be accompanied by -

Specific
requirements for
approval.

- (a) the prescribed fees set out in the Second Schedule; and
- (b) the documents, information and declarations specified in regulation 15.

15. (1) The application under in regulation 14 shall be submitted together with -

- (a) the certificate of incorporation;
- (b) the memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and audited accounts for the preceding two years (where applicable);

(d) a business plan containing the particulars on

(i) the management structure;

(ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;

(iii) the shareholding structure which shall disclose whether any of the shareholders will have an executive role to oversee the day to day operations of the business;

(iv) the shareholding structure of a dealer;

L.N. 99/2009

(v) the evidence of paid up share capital of a minimum amount of fifty million shillings in the case of a stockbroker and

twenty million shillings in the case of a dealer;

- (vi) the qualifications, experience and expertise of the chief executive must be relevant to effectively manage or operate the business of a stockbroker or dealer;
- (vii) the proposed management and qualifications of key personnel;
- (viii) the financial projections for three years;
- (ix) the proposed information technology and access to the trading network in compliance with the trading, clearing, delivery and settlement requirements of the securities exchange to which the applicant intends to be admitted as a trading participant under these Regulations;
- (x) one bank reference;
- (xi) two business references;
- (xii) the proposed premises suitably located and equipped to provide satisfactory service to clients in the

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field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;

(xiii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;

(xiv) the proposed independent auditor; and

(xv) a declaration that no person is a director or holds beneficial interest either directly or indirectly in more than one trading participant of a securities exchange.

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(2) Every person who is, or is to be, a director, chief executive, manager or floor dealer of a stockbroker or dealer shall be fit and proper to hold the particular position that he holds or is to hold.

(3) The applicant under paragraph (1) shall –

(a) lodge a security of one million, five hundred thousand shillings or such higher amount with a securities exchange; or a central depository (as the Authority may determine, taking into account the financial position and settlement record of the

applicant); or

- (b) provide a guarantee or a security to a securities exchange or a central depository in a form acceptable or approved by the Authority in respect of which it is a trading participant or has applied for admission as a trading participant.

(4) The eligibility of a dealer's licence shall be restricted to institutions committing funds for investment as principals in securities dealings.

(5) Deleted by L.N 155/2017

(6) Deleted by LN. 88/2012

(7) Deleted by L.N 155/2017

(8) Deleted by L.N 155/2017

(9) Deleted by L.N 155/2017

L.N 88/2012 (10) An application for a stockbroker or a dealer license shall be accompanied by a letter from the securities exchange stating that the applicant meets all the relevant requirements of that securities exchange and that the securities exchange would admit the applicant if licensed by the Authority.

Stockbrokers' financial requirements, L.N. 99/2009 16. (1) The level of shareholders' funds (paid up share capital and reserves) for stock brokers shall not fall below fifty million shillings at any time during the license period.

L.N 88/2012

(2) The minimum paid up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the stockbroker.

L.N 112/2013

(3) A stockbroker shall maintain a liquid capital of thirty million shillings or eight per cent of its total liabilities, whichever is higher.

(4)

Deleted by LN 112/2013
Deleted by LN 112/2013

(5)

Dealers' financial requirements and investment limits.

17. (1) The level of shareholders funds (paid up share capital and reserves) shall not be below twenty million shillings, at any time during the licence period.

(2) A dealer shall:-

(a) set aside investment capital of not less than twenty million shillings [except as provided under paragraph (3)] in cash or portfolio of listed securities, or such higher amount as may be prescribed by the Authority; and

Deleted by LN 112/2013

(b)

(3) Where a dealer is promoted by a stockbroker through a subsidiary, the minimum investment capital committed to dealing operations by the subsidiary shall not be less than five million shillings in cash or listed securities portfolio at market value or such higher amount as may be prescribed by the Authority.

L.N 112/2013

(4) A dealer shall maintain a liquid capital of thirty million shillings or eight per cent of its total liabilities, whichever is higher.

Deleted by LN 112/2013

(5)

Deleted by LN 112/2013

(6)

(7) A dealer shall maintain an investment portfolio out of it's investment capital equivalent to a minimum monthly average of fifty percent in listed equities and the remainder in listed fixed income securities provided that within twelve months from the date of these Regulations, the investment of the minimum monthly average in listed equities shall be adjusted to sixty percent.

(8)(a) At least an average of twenty five percent of the portfolio of securities held by a dealer shall be turned over every quarter and seventy five percent of the portfolio be turned over every twelve months;

(b) Every security held by a dealer shall be turned over at least once every eighteen months.

(9) For the purposes of this regulation "turnover" means the

value of securities purchased or sold during the period.

Financial year.

18. The financial year of stockbrokers and dealers shall end on the 31st of December in each year.

Records to be maintained.

19. (1) A stockbroker and dealer shall maintain and preserve for a period of seven years, the following accounting documents –

- (a) journals or other records of original entry containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all debits and credits; the records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;
- (b) ledgers, (or other records) reflecting all assets and liabilities, income, expense and capital accounts;
- (c) detailed records of nominee accounts;
- (d) all cheque books, bank statements, cancelled cheques and bank reconciliation accounts;
- (e) clients' accounts (or other records) itemizing separately

each account of a client, all purchases, sales, receipts and deliveries of securities and all other debits and credits;

- (f) a memorandum of each client's order received for the purchase or sale of securities; the memorandum shall show orders in chronological sequence, the time of receipt, the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which the order was entered, the time of entry into the market for execution, the price at which the order was executed and, to the extent feasible, the time of execution or cancellation;
- (g) copies of confirmation of all purchases and sales, notices of all other debits and credits for securities and other items for the account of client;
- (h) records on all commissions earned on account of equities, bonds and others;
- (i) contract books or records, showing details of all contracts entered into with trading participants of a securities exchange and duplicates of memoranda of confirmation issued to such other trading participant; and
- (j) any other accounting documents as may be determined by the Authority.

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(2) The accounting documents specified under paragraph (1)

shall be subject to inspection from time to time and without notice, by the Authority or securities exchange of which the stockbroker or dealer is a trading participant.

(3) A stockbroker shall maintain and preserve for each person who becomes a client, records and accounts for a period of seven years containing information on -

- (a) where the client comes through an investor agent, in the agent sub-account and where the client has been attended to by the supervisor or employee of the stockbroker authorized to attend to clients in the stockbroker's account, the client's name, date of birth, address, nationality or citizenship, identification, written instructions of the client, price limit, duration of the instructions and date of order and the name and address of the investor agent (where applicable) and where the client is a company, certified copies of memorandum and articles of association and the certificate of incorporation.
- (b) if the stockbroker, or any of its agents has made any recommendations to the client to purchase or sell any security, the record of such client shall include the client's occupation, identification, investment objectives, other information concerning the client's financial situation and needs which the stockbroker or any of its agents considered in making the recommendation, and the signature and name of the agent who made the recommendation to the client and the date when any order was given to the stockbroker or its agent and any price limit given.
- (c) A record or records with respect to each discretionary account shall include:
 - (i) the client's written authorization to the stockbroker to exercise discretionary power or

authority in the client's account;

(ii) the reason given by the client for granting discretionary power or authority in his account; and

(iii) the written approval of the stockbroker's designated supervisor of each transaction in such account indicating the exact time and date of such approval;

(d) a separate record for all complaints by clients and persons acting on behalf of clients; the complaints shall be filed alphabetically by clients' names and shall include copies of all materials relating to the complaint, and record of what action, if any has been taken by the stockbroker; copies of such materials and record of action taken shall be kept in the office through which the client's account is handled;

(e) a separate record of all securities transactions by the stockbroker's or dealer's employees and directors in their own name or under nominees accounts;

(f) a separate record of all securities transactions between the stockbroker or dealer, and all listed companies in which the directors of the stockbroker or dealer have an interest; and

(g) such other records as the Authority shall determine from time to time.

(4) A stockbroker shall decline to take an order if, after reasonable inquiry, the client decline to furnish such items of information as required in paragraph (3) (a), (b) and (c) and a statement to that effect is placed in the records, provided, however, that the client's records shall state the client's name and address.

20. A stockbroker shall -

- (a) deposit clients' funds in one or more bank account(s), which account(s) shall contain only clients' funds and be clearly marked "clients' accounts". Such client accounts shall not be overdrawn for any reason.
- (b) maintain a separate record for each account showing the name and address of the bank where the account is maintained, the dates, amounts of deposits and withdrawals and also the exact amount of each client's beneficial interest in the account.
- (c) reconcile such accounts on a regular basis to ensure the amount indicated corresponds with the balances in the client account at any given time; and
- (d) ensure that clients' orders for payments made in advance shall be executed according to clients' instructions and in any event not later than one month from the date of receipt of the clients' funds. Orders not executed within one month for whatever reason shall be renewed by fresh instructions from the client.

21.(1) Every stockbroker and dealer shall submit to the Authority and to the securities exchange of which they are trading participants:

- (a) quarterly reports and accounts within fifteen days of the end of each calendar quarter;
- (b) half yearly reports and accounts within thirty days of the end of each half year; and
- (c) audited annual accounts within three

months following the end of the stockbroker and dealer's financial year.

(d) a financial statement complying with the disclosures prescribed under the Fourth Schedule of these Regulations.

L.N. 99/2009

(e) Every stockbroker or dealer shall prepare monthly reports and accounts within fifteen days of the end of each calendar month which shall be made available to the Authority at such times as the Authority may request.

(2) The Authority may require such other form of financial statement as it may from time to time specify.

Conduct of
stockbrokers and
dealers

22. Stockbrokers and dealers shall -

(a) operate independently of any other stockbroker or dealer;

(b) conduct the business efficiently, honestly, and fairly, with the integrity and professional skills appropriate to the nature and scale of activities;

L.N 88/2012

(c) have no formal or informal agreement with a trading participant of the same securities exchange whether through an association or not, relating to the stockbroker's or dealer's trading activity, personnel, commissions or any joint activity that is likely to undermine the competitiveness or fair trade practices and service to clients.

(d) without prejudice to the generality of paragraph (b), in consideration whether a stockbroker or dealer is conducting or will conduct business efficiently, honestly and fairly, regard shall be made to the management and organizational structure, reporting principles and procedures, internal audit procedures, procedures for compliance with the securities laws and risk management policies which the stockbroker or dealer has

adopted or proposes to adopt for its business.

Conducting
business through a
stockbroking agent

L.N 99/2009

22A.(1) A stockbroker may conduct business through a stockbroking agent provided the stockbroking agent has been contracted in writing to render such services.

(2) Every stockbroker shall forward to the Authority, on an annual basis, a register of any stockbroking agents contracted pursuant to paragraph (1) and shall notify the Authority of any amendment to the register of agents within five working days of such change.

(3) A stockbroker shall be responsible for conducting all necessary due diligence to establish the competence, fitness and propriety of any person to be appointed as a stockbroking agent, having specific regard to the past experiences and conduct of any such person, in establishing his capacity to facilitate the purchase and sale of securities as an agent of the stockbroker in the best interests of investors.

(4) A stockbroker shall submit to the Authority for approval the standard form agency agreement they propose to enter with their stockbroking agents and shall thereafter secure the approval of the Authority prior to amending such agreement.

(5) A stockbroker shall not appoint as its agent any person already appointed by another stockbroker as its agent:

Provided that where a stockbroker who, at the commencement of this provision, has appointed an agent who acts for more than one stockbroker shall, within six months of the commencement, comply with the requirements of this provision.

(6) A stockbroking agent shall not handle or deal with clients' funds.

(7) The stockbroker shall be responsible for ensuring that the stockbroking agent conducts its business efficiently, honestly and fairly with the integrity and professional skills appropriate to the nature and scale of activities and in accordance with the requirements of the Capital Markets Act and Regulations issued thereunder.

(8) In the event of any misconduct by the stockbroking agent, the stockbroker who appointed the stockbroking agent shall report

the misconduct to the Authority within forty-eight hours of the occurrence of the misconduct.”

Conduct of
stockbroker.

23. A stockbroker shall -

- (a) execute an order only where the client has made sufficient arrangements for funds or securities with the stockbroker.

An “order” for the purpose of this regulation, shall constitute written instructions by a client to a stockbroker as to the security name, quantity, price or price limits and duration or validity of instructions.

- (b) only accept written orders and shall ensure that the client is not only capable of honouring the order before acting on the order, but has made arrangements with the stockbroker for fulfillment of its obligations arising from such order.
- (c) execute clients’ orders in the chronological sequence of orders received and which have been so recorded in accordance with these Regulations and shall give priority to orders of clients over orders of any shareholder or employee of the stockbroker or related dealer subsidiary, whether directly or indirectly.
- (d) maintain a daily record of orders received from clients showing the name of each client, the specific order and time the order was given, and execute the same in order of receipt.
- (e) exercise due diligence and care at all times so as not to misinform or misdirect clients.
- (f) while accepting an order from a client, inform the client of all constituent parts of an order prior to executing the order and get the client to give a written declaration to confirm the same.
- (g) provide factual and accurate information to clients’

through newsletters and advertisements;

- (h) not recommend to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the stockbroker after reasonable examination of the client's financial records.

Prohibited
dealings.

24. (1) No stockbroker or dealer shall:-

- (a) create a false market in any listed security by way of associations, any artificial device including but not limited to advising clients to buy or sell a particular security while selling or buying through its dealing or related party transactions, without disclosing that fact to the investors;
- (b) establish a corner or trade where a corner has developed in a listed security;
- (c) negotiate on any issue relating to trading with any other person on the trading floor of the securities exchange;
- (d) be party to any trading and price manipulative scheme or device which may directly or indirectly influence or interfere with the market price formation and fair trading process with respect to any listed security;
- (e) make general recommendations to the public on particular securities through publications or statements; or
- (f) sell securities which are not registered in the name of the stockbrokers' client or central depository in the case of a

depository environment.

For the purposes of this regulation, "a corner" shall be deemed to arise when a single interest or group has acquired such control of any listed security that the same cannot be obtained except at prices or on terms dictated by such single interest or group.

Sale of securities.

25.(1) No stockbroker or dealer shall sell securities unless, at the time of the sale -

- (a) the stockbroker or dealer has or, in the case of a stockbroker, its client has; or
- (b) the stockbroker or dealer believes on reasonable grounds, that it has, or in the case of a stockbroker, its client has, an existing exercisable and unconditional right to vest the securities in a purchaser of the securities.

(2) A person who, at any particular time, has an existing exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person.

(3) A right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

(4) For purposes of this Part, a person shall be deemed to sell securities where he -

- (a) purports to sell securities;
- (b) offers to sell securities;
- (c) holds himself out as entitled to sell securities; or
- (d) instructs a stockbroker to sell securities.

Code of conduct.

26. (1) Any proposed code of conduct or agreements to self regulate to be approved the operations of stockbrokers and dealers, shall be submitted to the Authority for prior approval and must be

consistent with these Regulations.

L.N 88/2012 (2) No code of conduct of any associations or agreements of stockbrokers or dealers whether in written form or not shall seek to restrict free negotiation or competition by trading participants with regard to commissions payable on any transactions as provided in the Fifth Schedule.

Payment of transactions.
L.N 88/2012 27. All stockbrokers and dealers shall pay to the Authority and to the securities exchange of which they are trading participants the fees prescribed as payable by and investor every buyer and seller of a security and shall pay to the investor compensation fund the fees prescribed as payable by each buying and selling stockbroker, fund fees or dealer within fifteen days following a transaction.

PART IV - INVESTMENT ADVISERS AND FUND MANAGERS

Application for licence. 28.(1) An application for a licence to operate as an investment adviser or fund manager shall be submitted to the Authority in duplicate in Form 1 set out in the First Schedule.

Specific requirements for approval. 29.(1) The application under regulation 28 shall be accompanied with -

- (a) certificate of incorporation;
- (b) memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);
- (d) a business plan containing the particulars on -
 - (i) the management structure;
 - (ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;

- (iii) the shareholding structure, disclosing whether any of the shareholders will have an executive role to oversee the day-to-day operations of the business;
- (iv) the evidence of a minimum paid-up share capital of not less than two million five hundred thousand shillings for investment advisers and ten million shillings for fund managers;
- (v) the qualifications, experience and expertise of the chief executive;
- (vi) the proposed management and qualifications of key personnel;
- (vii) the financial projections for three years;
- (viii) the particulars of the proposed operating and information technology system;
- (ix) one bank reference;
- (x) two Business references;
- (xi) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;

(xii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;

(xiii) the proposed independent auditor.

(e) the fees prescribed in the Second Schedule.

(2) Every person who is, or is to be, a director, chief executive or manager of an investment adviser or fund manager, shall be fit and proper to hold the particular position which he holds or is to hold;

Inserted by L.N
32/2008

(3) A person shall not carry on or hold out himself as carrying on the business of a fund manager of a registered venture capital company unless that person is a fund manager licensed or licensed by the Authority.

(4) An application for a licence under paragraph (3) shall be made to the Authority in writing and be accompanied by-

(a) a detailed information on qualifications, experience and expertise of the directors, chief executive and senior investment in managing venture capital investments and private equity; and

(b) information proving ability to provide technical and managerial expertise to eligible venture capital enterprises.

(5) The Authority shall publish the names of all fund managers it has licensed to manage registered venture capital companies in the Kenya Gazette.

Financial
requirements.

30. (1) The level of shareholders funds (paid up share capital and reserves) for investment advisers, shall not fall below two million five hundred thousand shillings at any time during the licence period.

(2) The level of shareholders funds (paid up share capital and reserves) for fund managers, shall not fall below ten million shillings at any time during the licence period.

(3) The paid up share capital of the investment advisor or fund manager shall always be unimpaired and shall not be advanced to the directors or associates of the investment advisor or fund manager.

LN 112/2013

(4) An investment adviser shall maintain a liquid capital of one million shillings or eight percent of its total liabilities, whichever is higher, and a fund manager shall maintain a liquid capital of five million shillings or eight percent of its total liabilities, whichever is higher.

(5)

Deleted by LN
112/2013

(6)

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112/2013

(7) The size of the aggregate maximum value of all clients' portfolio managed under the investment adviser's licence as prescribed shall not exceed ten million shillings and any amount in excess of the prescribed aggregate limit shall be managed under the fund manager's licence.

Records to be
maintained.

31. (1) Every investment adviser and fund manager shall maintain and preserve for a period of seven years, the following records -

- (a) journals, including cash receipts and disbursement records and any other records or original entry, forming the basis of entries in any ledger;
- (b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts;
- (c) a record or memorandum of each order given by the investment adviser or fund manager for the purchase or sale of securities, or any instruction received by the investment adviser or fund manager from the client concerning the purchase, sale, receipt or delivery of a particular security and of any modification or

cancellation or any such order or instruction, and the record shall –

- (i) show the terms and conditions of the order, instruction, modification or cancellation;
 - (ii) identify the person connected with the investment adviser or fund manager who recommended the transaction to the client and the person who placed such order;
 - (iii) show the account for which the order was entered, the date of entry, and the stockbroker by or through whom the order was executed, where appropriate; and
 - (iv) show orders entered pursuant to the exercise of discretionary power on account of management of investment portfolios in which case a record of details of such contracts with clients, constituents of the portfolio, transaction fees agreed with the client and value of the portfolio shall be included.
- (d) all cheque books, bank statements, cancelled cheques and cash reconciliation of the investment adviser or fund manager;
- (e) all bills, statements or copies thereof, paid or unpaid relating to the business of the

investment adviser or the fund manager;

(f) originals of all written communication received from clients and copies of all written communication sent by the investment adviser or fund manager relating to-

(i) any recommendations made or proposed to be given;

(ii) any receipts, disbursement or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security; provided, that if the investment adviser or fund manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory services to more than ten persons, the investment adviser or fund manager shall not be required to keep a record of the names and addresses of the persons to whom it was sent except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser or fund manager shall retain a copy of such notice, circular or

advertisement, a record
or memorandum
describing the list and
the source thereof;

- (g) a list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (h) all evidence of granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (i) all written agreements or copies thereof entered into by the investment adviser or fund manager with any client or otherwise relating to the investment adviser's or fund manager's business;
- (j) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser or fund manager circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum from the investment adviser or fund manager (as the case may be) indicating the reasons thereof; all advertisements by the investment adviser or fund manager and all records, worksheets and calculations necessary to form the basis for performance data in such advertisements;
- (k) a record of every transaction in a security in which the investment adviser or fund manager or any of the investment adviser or fund manager's employees acquire any direct or indirect beneficial ownership; the

record shall state the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the stockbroker with or through whom the transaction was effected; and

(l) a copy of each written statement, the amendment or revision thereof, given or sent to any client or prospective client of such investment adviser or fund manager and a record of the dates that the same was given or offered to be given;

(m) any other records as may be determined by the Authority.

(2) The records specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the Authority.

(3) Each investment adviser and fund manager shall preserve and maintain clients' records of securities or funds and if required produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority for a period of seven years and shall -

(a) notify the Authority of the custodian appointed; and

(b) segregate the securities of each client and mark such securities to identify the particular client having the beneficial interest therein.

Reporting obligations.

L.N. 99/2009.

32.(1) Every investment adviser or fund manager shall submit to the Authority -

(a) Quarterly management accounts and reports of the portfolio under its management within fifteen days of the end of each calendar quarter.

Provided that every investment adviser or fund manager shall prepare monthly

reports of the portfolio under its management within fifteen days of the end of each calendar month which shall be made available to the Authority at such times as the Authority may require.

- (b) half yearly reports of the portfolio under its management within thirty days of the end of each half-year, including reports of its own financial performance;
- (c) annual reports of the total value of the portfolio under its management including the number of clients; and
- (d) audited annual accounts for its operations in the form prescribed in the Fourth Schedule within three months following the closure of the financial year;

(2) Notwithstanding the provisions of paragraph (1), the Authority may require such other form of financial statement as it may from time to time specify.

Conduct of
investment
advisers and fund
managers.

33. (1) No investment adviser or fund manager shall -

- (a) recommend to a client to whom investment, supervisory, management or consulting services are provided, the purchase or sale of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser or fund manager after reasonable examination of the client's financial records;
- (b) place an order to purchase or sell a security for the account of a client without written authority to do so;
- (c) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first

having obtained a written third-party authorization from the client;

- (d) exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client;
- (e) induce trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;
- (f) misrepresent to any client, or prospective client, its qualifications or misrepresent the nature of the advisory services being offered or fees to be charged for such service or omit to state a material fact necessary to make the statements regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
- (g) provide a report or recommendation to any client prepared by someone other than the investment adviser without disclosing that fact;
- (h) fail to disclose in writing before any advice is rendered any material conflict of interest relating to the investment adviser or fund manager or any of the investment adviser's or fund manager's employees, which could reasonably be expected to impair the rendering of unbiased and objective advice, including-
 - (i) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - (ii) charging a client an

advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or fund manager or his employees;

- (i) guarantee a client that a specific result will be achieved arising from the advice which will be rendered except in the case of fixed income securities;
- (j) publish, circulate or distribute any advertisement which does not comply with the Act;
- (k) disclose the identity, affairs, or investment of any client to any third party unless required by law, court order or a regulatory agency to do so, or unless consented to by the client; and
- (l) enter into, extend or renew any investment advisory contract unless such contract is in writing and discloses in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or fund manager and that no assignment of such contract shall be made by the investment adviser or fund manager without the consent of the other party to the contract;
- (m) fail to register all securities marketed and offered to clients by the investment adviser or fund manager or otherwise inform the client that the securities offered to them have not been registered with or approved by the Authority.

(2) Any information provided by investment advisers or fund managers to clients through newsletters and advertisements shall be factual and accurate.

(3) No investment adviser or fund manager shall loan money to a client unless the investment adviser or fund manager is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or fund manager.

(4) An investment adviser or fund manager may not contract or engage any advisory or management services on behalf of an investment portfolio without prior written approval of its clients. The investment adviser or fund manager shall remain liable hereunder:-

- (a) for any act or omission of the sub-contracted investment adviser or fund manager;
- (b) the fees and expenses of any such person, which shall not be payable out of the fund of the portfolio investments; and
- (c) any expenses incurred by any such person which if incurred by the investment adviser or the fund manager would have been payable out of the fund of the investment portfolio.

(5) When accepting an order from a client the investment adviser or fund manager shall inform the client of all constituent parts of the service agreement prior to executing the order and get the client to give it a written declaration to confirm the same.

(6) The investment adviser or fund manager shall be fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

Appointment of a
custodian.

34. (1) Every investment adviser and fund manager that manages discretionary funds shall appoint a custodian for the assets of the fund.

Cap. 486.

(2) A custodian of an investment portfolio may in relation to the fund manager or investment adviser be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act or be deemed by the Authority to be otherwise under control of substantially the same persons or consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may revoke the approval of a custodian if at any time thereafter the custodian ceases to satisfy the requirements of these Regulations.

Duties of a
custodian.

35. (1) A custodian shall render custodial services to the investment portfolio managed by the investment adviser or fund manager in accordance with the written service agreement between the custodian and the investment adviser or fund manager as the case may be and such service shall include -

- (a) taking into its custody or under its control all the property of the clients of the investment adviser or fund manager and hold it in trust for the clients in accordance with the provisions of the written service agreement provided that cash and registrable assets shall be registered in the name of or to the order of the clients by the custodian;
- (b) receiving and keeping in safe custody title documents, securities and cash amounts of the investment portfolio;
- (c) opening an account in the name of each client for the exclusive benefit of such investment portfolio;
- (d) transferring, exchanging or delivering in the required form and manner securities held by the custodian upon receipt of proper instructions from the investment adviser or fund manager;
- (e) requiring from the investment adviser or fund manager as the case may be,

such information as it deems necessary for the performance of its functions as a custodian;

- (f) promptly delivering to the investment adviser or fund manager or to such other persons as investment adviser or fund manager may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the fund account, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian, investment adviser or fund manager;
- (g) exercising subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the investment adviser or fund manager;
- (h) exercising the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling obligations in the agreement;
- (i) where title to investments are recorded electronically, ensuring that entitlements of the clients of the investment adviser or fund manager are separately identified in the records of entitlement maintained by the custodian;

(2) A custodian shall in executing its duties under paragraph (1) exercise the degree of care expected of a prudent professional custodian for hire.

(3) A custodian discharging its contractual duties to an

investment adviser or fund manager shall not contract agents to discharge those functions except where a portion of the investment portfolio is invested in offshore investments in which case the custodian may engage the services of an overseas sub custodian approved by the investment adviser or fund manager as the case may be with notification of such appointment to the Authority.

(4) The agreement referred to in paragraph (1) between the custodian and the investment adviser or fund manager shall make provision on the computation of the fee in respect of custodial services which will be disclosed to the clients by the investment adviser or fund manager in the annual report.

Custodian's
records and
reports.

36.(1) A custodian shall keep such records as may be necessary to ascertain -

- (a) the entire fund of the investment portfolio held by the custodian;
- (b) each transaction carried out by the custodian on behalf of the investment adviser or fund manager as the case may be.

(2) The records referred to in paragraph (1) shall be subject to inspection by the investment adviser or fund manager as the case may be or a duly authorized agent of the Authority within the premises of the custodian at any time during business hours.

(3) The custodian shall make available to the fund manager or investment adviser -

- (a) a written statement at agreed reporting dates which lists all assets of the investment adviser or fund manager's clients in the clients' account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;
- (b) an advice or notification of any transfers of property or securities to or from the investment adviser or fund managers clients' account(s) and indicating the securities

acquired for the account(s), the identity of the party having physical possession of such securities;

- (c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the investment manager or fund manager may request in connection with the agreement or the duties of the custodian under that agreement; and

(4) The custodian shall prepare and submit to the Authority an annual report demonstrating how compliance with these Regulations and its service agreement have been achieved.

Retirement of a custodian.

37. (1) A custodian shall not retire voluntarily except upon the appointment of a successor approved by the Authority.

(2) Where a custodian desires to retire or ceases to be registered as a custodian with the Authority, the investment adviser or the fund manager as the case may be may, with the approval of the Authority, appoint another eligible person to be a custodian in its place.

Removal of a custodian.

38. (1) A custodian may be removed by the investment adviser of fund manager by notice in writing where -

- (a) the custodian goes into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation or where a statutory manager or a receiver is appointed over any of its assets;
- (b) the custodian ceases to be an authorized depository or ceases to carry on business as a bank or financial institution;

(c) the custodian fails or neglects after reasonable notice from the investment adviser or fund manager, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or

(d) the directors of the investment adviser or fund manager as the case may be, by extra ordinary resolution resolve that such notice be given, and the investment adviser or fund manager with the approval of the Authority appoints as custodian some other qualified authorized depository.

(2) On receipt of the notice referred to in paragraph (1) by the investment adviser or the fund manager, the service agreement between investment adviser or the fund manager as the case may be and the custodian shall be deemed to have been terminated.

(3) In the event of a termination of the service agreement as referred to in paragraph (2) or from the date of winding up order issued by a court against the custodian, the custodian shall hand over, all assets, documents and funds including that from the bank account(s) of the investment adviser or fund manager held by such custodian to the custodian appointed in writing by investment adviser or fund manager (as the case may be) and approved by the Authority within thirty days from the date of such termination.

(4) The custodian shall submit to the Authority an audit report indicating the assets, liabilities and an inventory of the investment portfolio, securities and title documents of the assets which have been handed over, transferred and delivered to the appointed custodian within twenty days from the termination of the service agreement.

PART V - INVESTMENT BANKS

Application for
licence and
specific

39. (1) An application for a licence to operate as an investment bank shall be submitted to the Authority in Form 1 set out in the

requirements for
approval.

First Schedule.

(2) The application referred to in paragraph (1) shall be submitted together with -

- (a) the certificate of incorporation;
- (b) the memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and applicant's audited accounts for the preceding two years (where applicable);
- (d) a business plan containing the particulars on:
 - (i) management and shareholding structure of the investment bank;
 - (ii) directors, including their qualifications, addresses and details of other directorships;
 - (iii) evidence of paid up share capital of a minimum amount of two hundred and fifty million shillings;
 - (iv) qualifications, experience and expertise of the chief executive and dealers that must be relevant to effectively manage or operate the business of an investment bank;
 - (v) proposed operating systems including dealing infrastructure suitably located and equipped to provide satisfactory service to clients; and

L.N 99/2009

(vi) staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available.

(e) the fees prescribed in the Second Schedule.

L.N 99/2009

(f) the name of the proposed independent auditor.

Inserted by L.N
88/2012

(3) An Investment Bank which intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange which the applicant is seeking admission as a trading participant confirming the admission of that applicant upon securing a license from the Authority.

Authorized
functions.

40. Investment banks shall be non deposit taking institutions and shall carry out all or any of the following functions:

(a) offering advisory services on-

(i) public offering of securities;

(ii) corporate restructuring, takeover, mergers, acquisitions and privatization;

(iii) corporate finance, options, including issuance of equity or debt securities or loan syndication.

(b) engaging in the business of stockbroker subject to regulation 42;

(c) engaging in the business of a dealer;

(d) promoting or arranging underwriting or

issuance of securities;

(e) promoting and acting as a fund manager of collective investment schemes;

(f) providing investment advisory services and contractual portfolio management.

Admission to a securities exchange.

L.N 88/2012

41. (1) A person licensed by the Authority as an investment bank shall be eligible to apply for admission as a trading participant with a securities exchange:

Provided that the licensed investment bank complies with the eligibility requirements of the admitting securities exchange.

Deleted by L.N. 88/2012

42.

Conduct of investment banks.

LN. 99/2009

43. Investment Banks shall comply with the provisions on client accounts, records to be maintained, reporting obligations, conduct, prohibited dealings and associations, investment requirements and appointment of custodian, relating to stockbrokers, stockbroking agents, dealers, investment advisers and fund managers and payment of transaction and investor compensation fees relating to stockbrokers and dealers as set out in these Regulations, where applicable.

Financial requirements.

L.N 99/2009

L.N. 88/2012

44. (1) The level of paid-up share capital shall not fall below two hundred and fifty million shillings at any time during the licence period and in addition, shareholder's funds (paid up share capital and Reserves) shall at no time fall below two hundred and fifty million shillings:

Provided that any investment bank whose paid-up share capital is below the required amount at the time of commencement of this paragraph shall comply by the 31st December 2010.

(2) The minimum paid up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the investment bank.

(3).

Deleted by LN 112/2013

(4) An investment bank shall maintain a liquid capital of thirty million or eight per cent of its total liabilities, whichever is

LN 112/2013

higher.

(5)

Deleted by LN
112/2013

PART VI- AUTHORIZED SECURITIES DEALERS

Application for
license.

45. (1) An application for a licence to operate as an authorized securities dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

Cap 488

Cap 487

LN 112/2013

(2) An applicant shall be-

(a) a bank licensed under the Banking Act;

(b) an investment bank or a fund manager;

(c) an insurance company licensed under the Insurance Act; or

(d) any other person who meets the requirements of this Part and approved by the Authority,

and who shall demonstrate effective capacity and expertise in dealing in securities.

Inserted by LN
112/2013

(3) An applicant under paragraph (2) shall demonstrate effective capacity and expertise in dealing in securities.

LN 112/2013

(4) An authorized securities dealer who intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange, which the applicant is seeking admission to as a trading participant, confirming that applicant shall be admitted into the securities exchange upon securing a license from the Authority.

Specific
requirements for
approval.

46. The application under regulation 45 shall be submitted together with -

(a) the certificate of incorporation;

(b) the memorandum and articles of association;

Inserted by LN
112/2013

(c) evidence of the minimum paid up share capital prescribed by the Authority;

Inserted by LN
112/2013

(d) evidence of the minimum financial resources and financial capability prescribed by the Authority;

(e) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);

(f) a business plan containing the particulars on:

(i) management and shareholding structure of the applicant;

(ii) directors, including their qualifications, addresses and details of other directorships;

(iii))

(iv) qualifications, experience and expertise of the chief dealer which must be relevant to effectively manage or operate the business of dealing in fixed income securities;

(v) the proposed operating system including dealing infrastructure suitably located and equipped to effectively carry out its operations.

(e) the fees prescribed in the Second Schedule.

Deleted by LN
112/2013

Deleted by LN
112/2013

47.

L.N 112/2013

Functions and membership on a securities exchange.

48. (1) An authorized securities dealer shall be-

(a) restricted to dealing in fixed income securities whether listed on an approved exchange or not;

(b) entitled to trade on behalf of others as well as on their own account in such segment; and

(c) required to implement necessary operational, trading and settlement procedures and systems necessary to minimize

settlement and counter party risk and manage conflicts of interest.

L.N 88/2012

(2) A person licensed by the Authority as an authorized securities dealer shall be eligible to apply to be admitted as a trading participant with a securities exchange:

Provided that the authorized securities dealer meets the eligibility requirements of the admitting securities exchange.

Inserted by L.N
112/2013

(3) An authorized securities dealer shall comply with the provisions on client accounts, conduct of business, prohibited dealings and associations and investment requirements and appointment of custodian relating to stockbrokers, stockbroking agents, dealers, investment advisers and fund managers and payment of transaction and investor compensation fees relating to stockbrokers and dealers as set out in these Regulations, where applicable.

L.N 112/2013

Records of
transactions.

49. In addition to the requirements specified under regulation 48(3) every authorized securities dealer shall maintain a record of its daily dealing transactions which shall include particulars on-

- (a) type of security;
- (b) value of trade;
- (c) counter party; and
- (d) nature of account.

Report of dealing
transactions

L.N 112/2013

50. (1) Every authorised securities dealer shall, in respect of all its transactions in securities, whether or not such securities are traded on an approved exchange, submit to the Authority-

- (a) monthly reports and accounts within fifteen days of the end of each calendar month;
- (b) quarterly reports and accounts within fifteen days of the end of each calendar quarter;
- (c) half yearly reports and accounts within thirty days of the end of each half year;
- (d) audited annual accounts within three months following the end of the authorized securities dealer financial year; and

- (d) a financial statement complying with the disclosures prescribed under the Fourth Schedule of these Regulations.
- (2) The Authority may require such other form of financial statement as it may from time to time specify.
- (3) The reports referred to in paragraph (1) shall include particulars on the—
 - (a) type of securities;
 - (b) total value of securities traded in terms of sales and purchases during the relevant period; and
 - (c) average yield of the total value of securities traded during the relevant period.

PART VII – GENERAL REQUIREMENTS FOR LICENSING

Renewal of
licence.

51. (1) An application for the renewal of a licence shall be submitted to the Authority in Form 1 set out in the First Schedule by the 30th of November of each year.

L.N 99/2009.

(2) The application under paragraph (1) shall be submitted together with -

- (a) the fees set out in the Second Schedule;
- (b) where the application is for the renewal of a licence, management accounts for the period upto 30th November of each year not later than 15th December in the same year.

(3) Authorised securities dealers shall submit the annual accounts and report the dealings operations as may be required by the Authority.

(4) The audited accounts for each year shall be submitted to the Authority not later than the 31st day of March.

(4A) The financial year of every licensed person shall be the period of twelve months ending on the 31st December in each year:

Provided that where the financial year of a licensed person is different from that prescribed in this paragraph at the commencement of this paragraph,

the licensed person shall comply therewith within twelve months of such commencement.

Financial
Statements
L.N 99/2009.

51A. (1) All financial statements prepared by licensees shall be prepared in accordance with International Financial Reporting Standards.

(2) Collective investment schemes, stockbrokers, dealers, fund managers and investment banks shall publish in at least two daily newspapers of national circulation-

(a) half-year unaudited financial statements within two months after the end of the first half of the financial year; and

(b) full-year audited financial statements within three months after the end of the financial year.

Professional
indemnity
Insurance.
L.N 99/2009.

51B. (1) Stockbrokers and Investment Banks shall obtain professional indemnity insurance to secure an amount not less than five times their daily average turnover.

For purposes of paragraph (1), the daily average turnover shall be calculated based on the firm's turnover for the previous year, where applicable, or such amount as the Authority may determine.

(1) Fund Managers shall obtain professional indemnity insurance to secure such amount as the Authority may determine based on the portfolio under the management of the Fund Manager.

Display of audited
balance sheet.
L.N. 99/2009

51C. "Every licensed stockbroker, fund manager and investment bank shall display throughout the year in a conspicuous position in every office and branch in Kenya copies of its last audited balance sheet and profit and loss statement which shall be in conformity with the minimum financial disclosures requirements prescribed from time to time by the Authority, and shall include a copy of the auditor's report together with full and correct names of all persons who are directors of the licensee.

Determination of suitability.

52. In determining whether a person is fit and proper to hold any particular position, regard shall be had to -

- (a) his probity, competence and soundness of judgment in fulfilling the responsibilities of that position;
- (b) the diligence with which he is fulfilling or likely to fulfill those responsibilities;
- (c) whether the interests of customers, are or are likely to be in any way threatened by his holding that position, by virtue of past convictions or offences, involvement in irregularities, misappropriation of funds or manipulation of securities markets transactions.
- (d) has contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transacting with marketable securities;
- (e) was a director of a brokerage firm that has been liquidated or in under liquidation or statutory management;
- (f) has taken part in any business practice that, in the opinion of the Authority, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
- (g) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment.

Insertion of (d), (e), (f) & (g) by L.N 99/2007

Commencement date January 1, 2008.

L.N 99/2009

(h) Whether he has been convicted of an economic crime under the Anti-Corruption and Economic Crimes Act.

No. 3 of 2003

Key Personnel of full and associate members.

53. (1) All trading participants of a securities exchange shall register with the Authority all key personnel annually including any changes thereto.

(2) For the purposes of this regulation "key personnel" includes employees and directors of a trading participant who have direct dealings with clients and carry on trading activities on behalf of clients.

L.N 88/2012

Designation of compliance officer.

53A. Every licensed person shall, in writing, designate a compliance officer to coordinate all compliance matters with the Authority.

L.N 99/2009.

Change of shareholders, directors, etc

53B. (1) Any person licensed by the Authority shall not change its shareholders, directors, chief executive or key personnel except with the prior confirmation, in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions imposed by the Authority.

L.N 99/2009

(2) Where any person proposed to be appointed under paragraph (1) is found to be a former employee or otherwise connected with another licensee of the Authority, details of the reasons for their departure shall be forwarded in support of any request for no objection.

(2) Every licensee shall lodge with the Authority in every year and update the same within five days of any change thereto, a list of all key personnel working with the licensee which shall include the individual's full name, national identity card number, job designation and description of responsibilities and, where they have worked with other licensees of the Authority, details of their former employers.

Branch or new place of business.

53C. (1) A licensed person shall not open a branch or a new place of business in Kenya, or change the location of a branch or existing place of business, without the approval of the Authority.

L.N 99/2009.

(2) A licensed person shall not close any of its places of business in Kenya without first giving the Authority a three months'

written notice of its intention to do so or such shorter period of notice as the Authority may allow.

Alteration of memorandum or articles of association.

54. Every licensed person shall submit to the Authority any alterations to its memorandum or articles of association within thirty days of passing the resolution approving such alteration.

Change to capital structure.

L.N 99/2009.

54A. Every licensed person shall notify the Authority of any changes to its capital structure within five working days from the date of the change.

Qualifications of Secretary.

Cap. 534

55. No licensed person shall engage as Secretary a person who is not qualified under the Institute of Certified Public Secretaries of Kenya Act.

Auditor.

L.N 99/2009.

55A (1) A licensed or approved person shall not appoint or remove its auditor except with the prior written approval of the Authority at least one month prior to such appointment or removal.

(2) If the auditor of a licensed or approved person, in the course of the performance of his duties under the Act, is satisfied that-

- (a) There has been a serious breach of or non-compliance with the provisions of the Act or the Regulations, made thereunder, guidelines or other stipulations of the Authority; or
- (b) A criminal offence involving fraud or other dishonesty has been committed by the licensed person or any of its key officers or employees; or
- (c) Serious irregularities have occurred which may jeopardize the security of investors or creditors of the licensed person; or
- (d) He is unable to confirm that the claims of investors and creditors of the licensed person are capable of being met out of the assets of the licensed person,

he shall immediately report the matter to the Authority.

(3) where an auditor of a licensed or approved person fails to comply with the requirements of paragraph (2) above, the Authority shall disqualify him from appointment as an auditor of its licensees and approved persons.

(4) A duty to which an auditor of a licensed or approved person may be subject to shall not be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by it or any information or opinion on a matter to which this regulation applies and which is relevant to any function of the Authority under this Act or Regulations made thereunder.

(5) This regulation shall apply to any matter of which an auditor becomes aware in his capacity as an auditor or in discharge of his duties under these Regulations and which relates to the business or affairs of the licensed or approved person or any associated persons.

(6) A person appointed as an auditor shall serve for a maximum period of four (4) consecutive years.

(7) The Authority may arrange trilateral meetings with a licensed person and its auditor from time to time discuss matters relevant to the Authority's supervisory responsibilities including relevant aspects of the licensed person's business, its accounting and control system and its annual accounts.

Notice to the
Authority by the
Auditor.

L.N 99/2009

55B. (1) An auditor of a licensed or approved person shall forthwith give written notice to the Authority where he-

- (a) resigns from office;
- (b) does not seek to be appointed; or
- (c) includes in his report or draft report on the licensed or approved person's accounts any qualification which did not appear in the accounts for the preceding financial year.

Marketing securities.

56. No person shall market securities in Kenya, whether the securities have been issued in Kenya or not, through advertisement, solicitation, invitation or by other means in whatever form or manner with an aim of reaching the general public or a section thereof unless such a person is licenced under these Regulations.

PART VIII - TRANSACTIONS OF LISTED SECURITIES OUTSIDE A SECURITIES EXCHANGE

Nature of transaction.

57. An application to the Authority for approval of a private transaction shall be considered if the transaction is for the -

- (a) transfer to a close relation in the form of a gift;
- (b) settlement of a will or estate of a deceased person;
- (c) restructuring, mergers or acquisitions in a scheme which has been approved by the Authority; or
- (d) transfer of an exceptional nature of a listed security that the Authority considers to be proper and acceptable with respect to a strategic investor and serves the investor or public interest.
- (e) transfer not resulting in any change in beneficial ownership otherwise than for purposes of regulation 57(c), (d) or section 31(1A)(ii) of the Act.

Inserted by L.N
112/2013

Brokerage Commission.

58. Where a private transaction is authorized, no brokerage commission shall be payable on the transaction, except a fee prescribed by the Authority.

Inserted by L.N
112/2013

Provided that a private transfer under regulation 57(a) shall be subject to the prevailing prescribed brokerage commission

59. (1) Where it is intended to effect a private transaction of a listed security under regulation 57 (a), (b) and (e), a stockbroker representing the proposed transferee shall assess, endorse and submit a written application with the required information and supporting documents—

(a) in the case of certificated securities, to the securities exchange where the security is listed, and

(b) in the case of immobilized securities, to the central depository at which the security is immobilized,

stating reasons why the proposed transaction is eligible to be transferred in a private transaction.

(2) Where an application is made under regulation 57(a) or (b), the securities exchange or a central depository, as the case maybe, shall notify the stockbroker within seven days of receiving the application whether the securities exchange or the central depository objects to the private transaction or not, after examining and satisfying itself that the proposed transfer is eligible for consideration as a private transaction in accordance with these Regulations.

(3) The securities exchange or a central depository, as the case maybe, shall, upon determination of any application made under regulation 57(a) or (b), approve and simultaneously notify the Authority that the application complies with regulation 57 (a) or (b).

(4) The securities exchange or the central depository shall, upon receipt of an application made under regulation 57(e), forward the application together with its recommendations to the Authority for approval.

(5) The securities exchange and the central depository shall jointly submit to the Authority, guidelines for approval in respect of the processing requirements of a private transfer under regulation 57(a) and (b).

(6) The guidelines stipulated under subparagraph (5) shall apply to all stockbrokers.

Approval fee.

60. The approval fee for any transaction of a listed securities outside a securities exchange shall be at the rate prescribed by the Authority.

Private transactions.

61. (1) With respect to an application for approval of a private transaction, falling under regulation 57 (c) or (d) or section 31 (1A) (ii) of the Act, the applicant shall submit to the Authority for approval a detailed draft information memorandum or a circular to be distributed to the shareholders containing information on -

- (a) the name and address of the applicant;
- (b) the date of incorporation;
- (c) the particulars of core activities, directors, management and major shareholders;
- (d) the details of any agreements entered or proposed to be entered into and the cost;
- (e) a statement by the financial adviser managing the transaction that to the best of its knowledge and belief the application constitutes full and true disclosure of all material facts about the offer and issuer and where appropriate it has satisfied itself that the profit forecasts have been stated by the directors after due and careful inquiry;
- (f) the details of any proposed merger, takeover, acquisitions, share swap, reorganization or restructure scheme and the relevant shareholders and/ or board resolutions;
- (g) a declaration by the directors of the applicant in the following form:

“This application has been approved by the directors of the company all of whom jointly and severally accept responsibility for the accuracy of the information given and confirm that after making all reasonable inquiries and to the best of their knowledge and belief, there are no facts the omission of which would make any statement herein misleading”.

- (h) any other matters as may be requested by the Authority.

(2) The applicant shall make a public announcement of its intention to apply to the Authority for approval of the proposed transfer and reasons therein and a copy of the transfer form for the proposed transaction shall be submitted to the Authority together with the application.

PART IX- DESSMINATION OF INFORMATION TO THE PUBLIC AND SHAREHOLDERS

Disqualification of professionals.

62. The Authority may -

- (a) disqualify any person from giving professional opinion on matters related to listed securities, public offer or issue of securities; or
- (b) otherwise penalize any professional who in the opinion of the Authority has given a professional opinion that is false or misleading or has omitted to give an opinion where such omission is likely to be misleading in the circumstances in which the professional opinion is given or omitted as the case may be.

Content of public communication and circular to shareholders.

63. (1) All circulars to shareholders and the public including advertisements, offer documents and any other communication by listed companies, professionals and persons licensed under the Act shall be factual and statements made shall be for the purpose of-

- (a) assisting in the evaluation of a particular security, or type of securities;
- (b) promoting the industry, the service offered or the desirability of investing in securities in general; or
- (c) providing shareholders or the public with accurate and adequate information about the listed company or securities transaction and market activity.

(2) No material fact or qualification may be omitted if such omission would cause a shareholders' circular, advertisement or offer document to be misleading in the context of other information presented to the shareholders, investors or the general public.

(3) In making a recommendation with respect to any security a licensed person, issuer or analyst shall:-

(a) disclose the price at the time of the recommendation and, if applicable, the fact that such licenced person or analyst makes a market in the securities recommended (where applicable);

(b) recommend a buy or sell action and shall disclose the basic facts and assumptions in support of such recommendation and whether the licenced person or analyst or person associated to it owns more than a nominal amount of such securities.

(c) highlight all risk factors that such licenced person or analyst has taken into consideration in the recommendation; and

(d) state the source of the facts and the recommended time frame for the validity of assumptions.

(4) Any offer of a report, analysis including their updates or other service without any charge must be provided as such without any condition or obligation other than what is clearly described in the offer.

(5) No claim with respect to research or analysis, capacity or expertise under which the facilities are available, may be made beyond those in actual possession of the person making the claim.

(6) All statements made in a circular to shareholders and an

advertisement directed to the general public shall be supported by facts the source of which shall be disclosed therein.

(7) All circulars, advertisements or offer of securities to shareholders of listed companies shall be submitted to the Authority for approval prior to distribution, provided that the Authority may require the inclusion of such additional information which in its opinion is relevant to the shareholders or investors.

(8) For the purposes of this regulation -

(a) "analyst" includes business, economic, financial or any other analyst by whatever name who analyses and expresses opinions or recommendations about securities or public listed companies;

(b) "nominal" in relation to a security means a value of ten thousand shillings or less.

PARTX- INVESTOR COMPENSATION FUND

Contribution by
licenceses.

L.N 88/2012

64. (1) Every buying or selling stockbroker or dealer that is a trading participant of a securities exchange shall contribute to the Compensation Fund such amount as shall be prescribed from time to time by the Authority.

(2) All monies contributed to the Compensation Fund shall be credited to a bank account established by the Authority for that purpose.

Management and
audit of the
compensation
fund.

65. (1) The Compensation Fund shall be managed by the Authority as a separate fund and disclosed as such in the Authority's annual balance sheet as an asset and liability.

(2) The Authority shall keep proper accounts and records of the Compensation Fund and in every financial year, prepare a statement of accounts showing the movement and financial position of the Fund in the Authority's annual report.

(3) The accounts referred to in paragraph (2) shall include the income and all sources of contribution to and expenses or disbursements of the Compensation Fund including the fees charged by the Authority for the management of the Fund and any

investments of the Fund.

(4) The accounts and records of the Compensation Fund shall be audited by the auditor appointed by the Authority for the Authority's annual accounts.

Trustees of the
Compensation
Fund.

66. Members of the Authority shall act as the trustees of the Compensation Fund and may appoint a committee of the Board to oversee its management.

Meetings of the
Compensation
Fund.

67. A special meeting of the members of the Authority shall be convened by the Chief Executive of the Authority whenever the business of the Compensation Fund so requires and the Board of the Authority shall determine the procedure for such meetings.

Report to the
Minister.

68. The Authority shall include information relating to the Compensation Fund in its annual report to the Minister for the time being responsible for Finance.

Compensation of
investors.

69. Whenever an investor has suffered pecuniary loss due to the failure of a stockbroker, dealer or on investment bank carrying out stockbroking business or dealing operations, to meet its contractual obligations, which loss has not been compensated -

L.N 88/2012

- (a) from the bank guarantee or securities furnished by such licensed person to the securities exchange or central depository as the case may be of which such licensed person is a trading participant; or
- (b) from the Compensation Fund of the securities exchange of which such licensed person is a trading participant; or
- (c) from any payment made by a statutory manager appointed under section 33 A (2) (a) of the Act;

(hereinafter referred to as "the net loss") the investor shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss.

Maximum
compensation.

70. (1) The net loss to an investor shall be subject to a maximum of fifty thousand shillings.

(2) The statutory manager shall recommend to the Authority the net loss that the investor may claim from the Compensation Fund.

Investor
Compensation
Committee.

71. (1) The Authority shall establish an Investor Compensation Committee.

(2) The Compensation Committee shall include the Chairman and the Chief Executive of the Nairobi Stock Exchange and any other persons who may be appointed by the Authority to be members of that Committee.

(3) The Compensation Committee shall, after examination of the evidence produced in support of a claim, make any recommendation to the Authority with respect to whether allow the claim, an assessment of the amount payable including any pro rata allocation of any such limit prescribed for every defaulting stockbroker or dealer or the size of the fraud, as applicable.

(4) While determining the amount to be paid in compensation to an investor, the Compensation Committee shall take into account the total amount available in the Compensation Fund.

(5) The Authority shall give notice of its decision to the investors in writing or by other means of appropriate notification.

Notification of
pecuniary loss.

72. (1) Every investor who has suffered a pecuniary loss shall notify the statutory manager of the licensed person liable for the loss within sixty days of the appointment of the statutory manager.

(2) The statutory manager shall pay all valid claims within six months of its appointment.

Submission of
claims.

73. (1) The statutory manager shall submit to the Authority a list of investors to be compensated as well as the supporting documents.

(2) The Authority shall convene a meeting of the Compensation Committee within twenty-one days of receipt of submission of a claim by the statutory manager.

Payment of claims.

74. (1) Where payment has been made out of the Compensation Fund on behalf of a licensed person, such licensed person shall be liable to the Compensation Fund for an amount equal to the payment made out of the Fund.

(2) In the event of liquidation of a licensed person, the liquidator shall pay the Compensation Fund any money paid by the Fund to investors on behalf of the insolvent person under these Regulations to the extent of such payment.

PART XI - DISCLOSURE OF INFORMATION

Disclosure of
interest in shares.

75.(1) Where any person-

- (a) by his knowledge acquires a notifiable interest in shares in a listed company's share capital, or ceases to be interested in such shares; or
- (b) becomes aware that he has acquired a notifiable interest in the relevant shares of a listed company or that he has ceased to be interested in such shares in which he was previously interested;

such person is under an obligation to notify the listed company of the interest which he has, or had in its shares.

(2) Every listed company shall make a monthly report to the securities exchange giving particulars of-

- (a) all persons from which the listed company has received a notification under paragraph (1);
- (b) all directors holding one percent or more in the relevant share capital;
- (c) cumulative holding of the relevant share capital by directors.

(3) A person is taken to be interested in shares:

- (a) if he is an employee of the listed company;
- (b) if he is a director or chairman of the listed company;
- (c) in which his spouse, any infant child or step child

of his is interested; or

(d) if a body corporate is interested in them and-

(i) the body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) the person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of the body corporate; or

(iii) the person is a director or a shareholder of the body corporate.

(4) The existence of the obligation in a particular case depends -

(a) on circumstances obtaining before and after whatever is in that case the relevant time; and

(b) in a case within paragraph (1)(b), the time at which the person became aware of the facts in question.

(5) In this regulation -

(a) a "director" means a director of a listed company;

(b) "relevant share capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company; and

(c) a "notifiable interest" means three percent or more of the relevant share capital of a listed company.

76. (1) Every person notified by the Authority pursuant to section 13 of the Act shall provide any specified information in the form and content as required by the Authority, with regards to the information on orders, purchases, sales or trading and settlement of securities including documentation relating to such transactions and disclosure of beneficial ownership of securities and such information may be shared with other regulatory agencies for the sole purpose of ensuring compliance, enforcement and any other matters pursuant to a bilateral or multilateral memorandum of understanding.

(2) The information sought from any person under paragraph (1) shall be submitted to the Authority in a written form within the time specified by the Authority and such information shall include statements made under oath.

(3) Where information has been submitted to the Authority under paragraph (2), the Authority may seek to verify such information and the person in possession of such information and documentation shall avail it without obstruction to the authorized personnel of the Authority.

(4) The Authority shall enter into a memorandum of understanding pursuant to section 11(3) (q) of the Act either on a bilateral or a multilateral basis with other regulatory organizations or agencies on a reciprocal basis to facilitate exchange of information for the purposes of development of the capital markets and for enforcement and compliance with the laws and regulations of capital markets applicable in the jurisdictions party to the memorandum of understanding.

(5) Where the Authority does not have within its jurisdiction information or documents requested under a bilateral or multilateral memorandum of understanding the Authority shall seek to collaborate with other relevant agencies to obtain such information with a clear understanding with such other agencies that the information may be shared with other regulatory agencies pursuant to the memorandum of understanding.

(6) The information obtained under paragraphs (1) and (5) shall be used by the Authority for regulatory purposes including enforcement and compliance and sharing with other regulatory agencies pursuant to the memorandum of understanding.

(7) The Authority may include information obtained under paragraphs (1) and (5) by the Authority for its internal regulatory

purposes or exchange such information pursuant to section 11(3) of the Act.

Preservation of
finance and other
records.

77. Every issuer of securities to the public or a section thereof approved by the Authority and every person licensed by the Authority, shall preserve all financial and other records whether such records are maintained in an electronic or manual form, relating to transactions conducted by the licensee or to the offer of securities by an issuer, including daily, weekly, monthly, quarterly and annual transactions and other relevant records including minutes of all meetings on account of such transactions and registers of securities, for a period of seven years.

Destruction of
financial or other
records.

78. No person shall at any time within the prescribed period interfere, deface or destroy the records referred to in regulation 77, in any manner that will lead to the alteration of any facts or content therein including the date, amount and names of all persons party to the transactions whether such person is a licensee of the Authority, an issuer of securities to the public or a section thereof, an auditor of such licensee or issuer or any professional who is or will be involved directly or indirectly in the transactions.

PART XII – MISCELLANEOUS PROVISIONS

Deleted by LN
99/2007

79.

Prevention of
money laundering
and other illicit
activities.

80. (1) Every licensed person shall obtain through a client information questionnaire details from a client or a potential client with respect to the following –

- (a) the identity of the client or a potential supported by documentary evidence;
- (b) nature of business activities of the client or potential client;
- (c) origin and sources of funds used or to be used for investment in securities. Where the money or funds originate from outside Kenya a confirmation from the remitting entity of the nature of its business and of the source of the moneys or funds;

(d) a written declaration by the client or potential client confirming -

- (i) the accuracy of all information given under paragraphs (a) to (c); and
- (ii) that the moneys or funds used for the investment in securities is not arising out of the proceeds of any money laundering or other illicit activities.

L.N. 99/2009

(e) a licensed person shall maintain at least the following information in respect of their clients and shall ensure that they can link each transaction to the beneficial owner:

- (i) where the client is a natural person, any person on whose behalf the client is acting, whether as nominee, trustee or any other capacity;
- (ii) where the client is a limited partnership, the name of the general partner (and where the general partner is a body corporate, the information as prescribed under sub-regulation (iv) shall be maintained);
- (iii) where the client is an unlimited partnership, the names of the other partners;
- (iv) where the client is a body corporate, the names of all individuals who have direct or indirect interest amounting to thirty per

cent or more of the equity;

(v) where the client is a trust, the name of the settlers, trustees, protectors and principal named beneficiaries;

(vi) where the client is a legal arrangement other than a trust, the name of the owner or the controller.

(f) where the customer is a financial institution, such as a bank, insurance company, pension fund or collective investment fund and is conducting business collectively on behalf of a large number of underlying customers, and where the institution is subject to rules or regulations that require the financial institution to conduct customer due diligence, the licensee is permitted to rely on the financial institution to hold beneficial ownership information and need not hold that information itself.

(2) The client information under paragraph (1) shall be obtained by the licensed person every time a client places an investment order with the licensed person.

(3) The client information obtained under paragraphs (1) and (2) shall be maintained by the licensed person as part of the records required under regulations 19, 31, 43 and 49.

L.N. 99/2009

No. 4 of 2000.

(3A) The licensed person shall make such information available to the Authority on request and also to the central depository for the purpose of answering an enquiry made of it under Section 58 of the Central Depositories Act.

L.N No 429 of
1992

81. The Capital Markets Authority Rules 1992 are amended by deleting Parts II, III, IV, V, VI, VII, VIII, IX, X and XIII.

L.N 232 of 1994.

82. The Capital Markets Authority (Amendment) Rules 1994 are revoked.

L.N. 428 of 1992.

83. The Capital Markets Regulations are revoked.

**FIRST SCHEDULE
THE CAPITAL MARKETS ACT**

(Cap. 485A)

Form 1 (r.3, 14, 28, 39, 45 & 51)

**THE CAPITAL MARKETS (LICENCING REQUIREMENTS) (GENERAL)
REGULATIONS, 2002**

**APPLICATION FOR A LICENCE/ RENEWAL OF LICENCE TO CONDUCT THE
BUSINESS OF A SECURITIES EXCHANGE, STOCKBROKER, DEALER,
INVESTMENT ADVISER, FUND MANAGER, INVESTMENT BANK OR
AUTHORISED SECURITIES DEALER**

Application is made for a securities exchange/stockbroker/ dealer/ investment adviser/ fund manager /investment bank/authorized securities dealer (tick as appropriate) licence/renewal of licence (delete where inapplicable) under the Act and the following statements are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office.....

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7. Location, address and telephone number of branch offices

8. Details of capital structure:

- (a) Nominal capital (Kshs.)
- (b) Number of shares
- (c) Paid-up capital (Kshs)

9. Shareholders (or investors in the case of a securities exchange) (please attach a list)

Name	Address & telephone number	Number of shares held
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10(a) Directors (please attach a list)

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address & telephone number	Academic or professional qualification	Number of shares held in the company
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(b) Secretary

Name

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address & telephone number	Academic or professional qualification	Number of shares held in the company
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11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

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

.....

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

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

.....

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

.....

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

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or

Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

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

17(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/ No. If 'yes', give details.

(2) Have any of the above persons been -

(a) refused admission as a trading participant of any securities organization? Yes / No. If 'yes', give details

(b) expelled from or suspended from trading on any securities organization? Yes/No. If 'yes' give details

(c) subjected to any other form of disciplinary action by any stock exchange? Yes/No. If 'yes', give details.

18. Business references:

Name	Address	Telephone number(s)	Occupation
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19. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
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20. List the office facilities of the applicant

21. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority.

22. State securities exchange at which the applicant intends to seek admission as a trading participant

23. Any other additional information considered relevant to this application:

We(Director), (Director)
and (Secretary) declare that all the information given
in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence:

- a) memorandum and articles of association.
- b) certificate of incorporation
- c) business plan complying with the requirements of regulation 15 (1)(d) (stockbroker & dealer), regulation 29(1)(d) (Investment adviser and fund manager), regulation 39(2)(d) (investment banks) regulation 46(d)(authorized securities dealers) of the Capital Markets Authority (Licensing Requirements) (General) Regulations.
- d) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in the case of application of licence), management accounts upto the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);
- e) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application –
 - (i) the business of the company has, in their opinion, been satisfactorily maintained;
 - (ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries.
- f) a copy of the bank guarantee to be lodged with the securities exchange or the central depository (where applicable).
- g) a declaration by persons authorized as prescribed to accompany the application form;
- h) an application fee of Kshs. 2,500

SECOND SCHEDULE (r.3(2), 14, 29 (1), 46, 51)
THE CAPITAL MARKETS AUTHORITY FEES STRUCTURE
AS APPROVED BY THE MINISTER FOR FINANCE PURSUANT TO SECTION
36(1)(a) OF THE CAPITAL MARKETS ACT.

PART 1 – APPROVAL AND ANNUAL FEE

(s11) (3)(d)(ii), 23(3) Act)

- (a) Securities Exchange annual fee 1% of the gross earnings
Section 20(7) Capital Markets Act payable, excluding the
transaction fees
- (b) Credit Rating Agency - approval fee 200,000
- (c) Central Depository Systems - approval and annual fee 200,000
- Amended by LN(d) Registered venture -approval fee 250,000
32/2008 Capital Company”
- (e) Fund of a registered -approval and 250,000
Venture capital annual fee (subject to
Company (payable per a maximum
fund) annual fee
of Kshs.
500,000
- payable by
anyregistered
venture capital company)
- (f) Collective Investment Schemes - approval and annual fee 150,000
Section 30(3)(c) Capital Markets Act

PART II - LICENCE AND RENEWAL FEES

(s. 11(3)(d)(ii) of the Act)

- (a) Stockbroker or Dealer 100,000
- (b) Investment Adviser 100,000
- (c) Fund Manager 100,000
- (d) Fund Manager registered with Retirement Benefit Authority 50,000
- (e) Authorized Depositories 100,000
- (f) Authorized Securities Dealers 200,000
- (g) Investment Banks 250,000
- (Application fees for approvals, licence or renewal of all licences is Kshs. 2,500)

PART III – OTHER FEES

(s.11(3)(d)(ii) of the Act)

- L.N. 99/2009 (a) Issuer of securities to the public or a section of public 0.15%
(percentage of the value of the issue) subject to a maximum fee of

Kshs.30 million.

L.N. 32/2008

- (b) Approval of listing by introduction- 0.25 *percentage of value of the issue*)” subject to a maximum of KShs. 5,000,000.

Amended by
L.N.35/2016

- (c) Issuer of Capitalization or rights issue Kshs 50,000 or (percentage of the value of the issue) 0.25% which ever is higher subject to a maximum fee of Kshs.30 million.

- (d) Issuer of commercial paper and corporate bonds – approval and renewal (percentage of the value of the issue) 0.1% subject to a maximum of Kshs.30 million.

Inserted by
L.N 112/2013

- (dd) Issuer of regional fixed income securities-each East African Partner State regulator approving the issue shall receive an equal share of the evaluation fee of 0.1% of the value of the offer subject to a maximum of the local currency equivalent to United States of America dollars 200,000 and a minimum of the local currency equivalent to United States of America dollars 20,000.

- (e) Approval of listing of Government Securities 0.075% (percentage of the amount raised) subject to a maximum of Kshs.50 million.

- (f) Market Development fees to support investor education and market infrastructure development:

Amended by
L.N.35/2016

- (i) Amount payable by listed companies to the Authority 0.01% (percentage of market capitalization as at subject to a minimum fee of November 30 of each year) Kshs 50,000 and a maximum of Kshs. 100,000 per year

- (ii) Amount payable directly to the Authority by issuers 0.005% with respect to listed fixed income securities, subject to a minimum fee of including the Government and corporate securities Kshs.100,000 per year and a on the Fixed Income Market Segment maximum of Kshs 2.5 of a securities exchange million (percentage of the aggregate value of the listed securities as at November 30 of each year).

LN 190/2010 (g) Amount payable by each buyer and seller of a listed security –

- (i) shares 0.12%.
(ii) fixed income securities 0.0015%.

LN 190/2010 (h) Amount payable by each buying and selling stockbroker –

(i) shares 0.01%.

(ii) fixed income securities 0.004%.

(percentage of the consideration payable to the investor compensation fund) Section 18 (2)(a) Capital Markets Act

L.N 112/2013 (i) Approval fee payable by the transferee for transactions of listed securities outside the securities exchange authorized under Section 31 (1A) (i) and (ii) as follows:-

(i) transfer in settlement of an estate of a deceased person or a transfer not resulting in a change in beneficial ownership otherwise than for purposes of (ii) and (iii) below. KSh. 1,500 per application (including an application relating to a portfolio of securities), provided that where the total value of securities in the application is below KSh. 10,000, no fee shall be payable.

(i) Transfer, arising out of the re-organisation of the share capital of a listed company, that does not result in a change of beneficial interest in such share capital. 0.1% (percentage of the nominal value of the shares)

**Inserted by L.N
112/2013**

Subject to a maximum of KSh. 100,000

(ii) Any other transfer that results in a change of beneficial interest in the shares capital of a listed company, including any transfer under a take-over scheme, merger or acquisition, approved by the Authority 0.5% (percentage of the market value of the shares)

THIRD SCHEDULE

(r.12(7))

DISCLOSURE BY A SECURITIES EXCHANGE IN THE FINANCIAL STATEMENT

The accounts shall be prepared in accordance with the International Accounting Standards

I. The following shall be disclosed in the income statement.

a) Income -

- (i) listing fees
- (ii) transaction fees
- (iii) finance income
- (iv) other income

b) Expenditure -

- (i) personnel costs including separate disclosure of consolidated pay, pension and gratuity
- (ii) staff training
- (iii) rent and maintenance
- (iv) investor education
- (v) directors' fees
- (vi) annual fees payable to Capital Markets Authority
- (vii) committee members' expenses
- (viii) audit fees
- (ix) depreciation
- (x) general administrative expenses
- (xi) legal and professional expenses
- (xii) others expenditure

2. The following shall be disclosed in the balance sheet

- (a) property, plant and equipment
- (b) motor vehicles
- (c) goodwill
- (d) investments
- (e) listing fees receivable
- (f) deferred tax
- (g) members fund
- (h) revenue reserves
- (i) compensation fund.

FOURTH SCHEDULE

(r. 21(1)(d), 32 (1)(d), 43, 51)

DISCLOSURES BY OTHER LICENSEES INCLUDING STOCKBROKERS, INVESTMENT ADVISERS, FUND MANAGERS, DEALERS AND INVESTMENT BANKS IN THE FINANCIAL STATEMENT

I. The following shall be disclosed in the income statement where applicable

a) Income

- (i) stock brokerage commission
- (ii) consultancy income
- (iii) dealing income
- (iv) advisory income including restructuring, and corporate finance
- (v) asset management fees
- (vi) underwriting fees
- (vii) other services income
- (viii) finance income

b) Expenditure

- (i) directors' emoluments
- (ii) staff costs
- (iii) rent and maintenance
- (iv) depreciation
- (v) audit fees
- (vi) administrative expenses
- (vii) finance expenses

2. The following shall be disclosed in the balance sheet

- (a) property, plant and equipment
- (b) motor vehicles
- (c) investments
- (d) deposits and prepayments
- (e) share capital
- (f) revenue reserves
- (g) directors' loans
- (h) shareholders loans
- (i) amounts due to clients

**FIFTH SCHEDULE
BROKERAGE COMMISSION AND FEES**

(r. 26)

1. FOR NEW ISSUES

(a) Fees:

(i) Sponsoring stockbrokers: Sponsoring fee as negotiated with the issuer.

(ii) The issuer shall pay a marketing fee not exceeding Kshs 25,000 each to all stockbrokers subject the stockbroker placing securities of a minimum value of Kshs 250,000.

(b) Placing Commission:

(i) Stockbrokers: 1.5% of the value of the successful application subject to a minimum of Kshs 100/=.

(ii) Participating banks (as agents of the issuer): 1% of the value of successful applications.

2. FOR SECONDARY TRADING , (Amended by Legal Notice No.35 of 2016)

Consideration (Transaction Value)	Net Brokerage Commission %	Transaction Fee			Investor Compensation Fund Fee and Central Depository Guarantee Fund Fee		Maximum Total Cost to Investor %
		NSE %	CMA %	CDSC%	CDSC Guarantee Fund %	CMA Investor Compensation Fund %	
Upto Kshs 100, 000	1.76*	2	0.12	0.08	0.01*	0.01*	2.10
Above Kshs 100,000	Open to negotiation subject to a maximum of 1.36%	2	0.12	0.08	0.01*	0.01*	1.70

1. * Stockbrokerage commission is net of contribution by the stockbroker or investment bank of 0.02% to the CMA Investor Compensation Fund and CDSC Guarantee Fund Fee.

2. Stockbrokerage commission shall be limited to Kshs 100 for all odd lots transactions up to Kshs 3,000 excluding statutory fees. Odd lots transactions in excess of Kshs. 3,000 shall be charged a commission at the prescribed rate of 1.76% excluding statutory fees.

3. FOR DEBT INSTRUMENTS (SECONDARY MARKET) *(Amended by Legal Notice No. 190 of 2010), (Amended by Legal Notice No.35 of 2016)*

NET BROKERAGE COMMISSION%	Transaction fee			ICF %	Total %
	NSE %	CMA %	CDSC %		
0.024	0.0035	0.0015	0.002	0.004	0.035

*

*Stockbroker commission is net of contribution by the market intermediaries trading in the secondary market (stock brokers, investment banks and authorized securities dealer) of 0.004% to the investor compensation fund.

4. PRIVATE TRANSFER FEES *(Inserted by Legal Notice No. 112 of 2013)*

Regulation 57 (a) fees levied at 2.1% of the value of transaction (being prescribed brokerage commission) where transaction value is below Kshs. 100, 000 (subject to a maximum of 1.5%) and shared as follows-		BROKERS & INVESTMENT BANKS.	NSE	CDSC
	Certified Securities	55%	45%	NIL
	Immobilized Securities	55%	NIL	45%
Regulation 57(b) or (e) Kshs. 1,500 per application	Certified Securities	55%	45%	NIL

(including an application relating to a portfolio of securities), (provided that where the total value of securities in the application is below Kshs. 10,000, no fee shall be payable) and shared as follows-	Immobilized Securities	55%	NIL	45%
Regulation 57 (c)..... Transfer arising out of the re-organisation of the share capital of a listed company that does not result in change of beneficial interest in such share capital.....0.1% (percentage of the nominal value of the shares) and payable to the Authority.				
Regulation 57 (c) or (d).....Any other transfer that results in change of beneficial interest in the shares capital of a listed company, including any transfer under a take-over scheme, merger or acquisition, approved by the Authority at 0.5% (percentage of the market value of the shares) and payable to the Authority				

Made on the 4th July 2002.

D. D. AFANDE
Chairman
Capital Markets Authority.

P. K. MELLY
Chief Executive
Capital Markets Authority.

