

LEGAL NOTICE NO. 112

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 (1) of the Capital Markets Act, the Cabinet Secretary to the National Treasury makes the following Regulations:—

THE CAPITAL MARKETS (LICENSING REQUIREMENTS)
(GENERAL) (AMENDMENT) REGULATIONS, 2013

Citation

1. These Regulations may be cited as the Capital Markets (Licensing Requirements) (General) (Amendments) Regulations, 2013.

Sub Leg

2. Regulation 2 of the Capital Markets (Licensing Requirements) (General) Regulations (hereinafter referred to as “the principal Regulations”) is amended by inserting the following new definition in proper alphabetical sequence—

“liquid capital” in relation to a licensed entity, means the amount which the liquid assets of a licensed entity exceed its liabilities, as may be prescribed by the Authority;

3. Regulation 16 of the principal Regulations is amended by deleting paragraphs (3), (4) and (5) and substituting therefor the following new paragraph—

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

4. Regulation 17 of the principal Regulations is amended—

(a) in paragraph (2), by deleting subparagraph (b); and

(b) by deleting subparagraphs (4), (5) and (6) and substituting therefor the following new paragraph—

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

5. Regulation 30 of the principal Regulations is amended by deleting paragraphs (4), (5) and (6) and substituting therefor the following new paragraph—

“(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.”

6. Regulation 44 of the principal Regulations is amended by deleting subparagraphs (3), (4) and (5) and substituting therefor the following new subparagraph—

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

7. Regulation 45 of the principal Regulations is amended by—

(a) deleting paragraph (2) and substituting therefor the following new paragraph—

“(2) An applicant shall be—

- (a) a bank licensed under the Banking Act; Cap 488
- (b) an investment bank or a fund manager;
- (c) an insurance company licensed under the Insurance Act; or Cap 487
- (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.”

(b) inserting the following new paragraph immediately after the new paragraph (2)—

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

(c) renumbering paragraph (3) as (4).

8. Regulation 46 of the principal Regulations is amended by—

(a) deleting paragraph (d)(iii);

(b) inserting the following new paragraphs (c) and (d) immediately after paragraph (b)—

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

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

(c) renumbering paragraphs (c) and (d) as (e) and (f), respectively.

9. The principal Regulations are amended by deleting regulation 47.

10. Regulation 48 of the principal Regulations is amended—

(a) by deleting paragraph (1) and substituting therefor the following new paragraph—

“(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.

(b) by adding the following new paragraph immediately after paragraph (2)—

(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.

11. Regulation 49 of the principal Regulations is amended by inserting the words “in addition to the requirements specified under regulation 48(3)” immediately before the word “every”.

12. The principal Regulations are amended by deleting regulation 50 and substituting therefor the following new regulation—

Report of dealing transactions.

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.

13. Regulation 57 of the principal Regulations is amended by adding the following new paragraph immediately after paragraph (d)—

- (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.

14. Regulation 58 of the principal Regulations is amended by inserting the following proviso immediately after the sentence—

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

15. The Principal Regulations are amended by deleting regulation 59 and substituting therefor the following new regulation—

Application for approval of a private transfer.

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).3 shall apply to all stockbrokers.

16. The Second Schedule of the principal Regulations is amended in Part III—

(a) by inserting the following new paragraph immediately after paragraph (d) -

(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.

(b) in paragraph (i)

(i) by deleting subparagraph (i) and substituting therefor the following new subparagraph

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

(ii) by adding the following new proviso immediately after subparagraph (ii) -

“Subject to a maximum of KSh. 100,000”.

17. The Fifth Schedule of the principal Regulations is amended by inserting the following new item immediately after item 3—

4. Private Transfer Fees

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
	Certificated Securities	55%	45%	NIL
	Immobilized Securities	55%	NIL	45%
Regulation 57(b) or (e) Kshs. 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 Kshs. 10,000, no fee shall be payable) and shared as follows-	Certificated Securities	55%	45%	NIL
	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 18th June, 2013.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.