

# **THE CAPITAL MARKETS EXCHANGE TRADED FUNDS GUIDELINES, 2016**

## *Guidelines*

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## **The Capital Markets Exchange Traded Funds Guidelines, 2016**

### **(Under Section 5 (2) (d&h) of the Capital Markets Authority Act, Cap 84)**

IN EXERCISE of the powers conferred on the Capital Markets Authority (“Authority”) by Section 5 (2) (d&h) of the Capital Markets Act, Cap 84 (“The Act”), these guidelines are made this .....day of ....., 2016.

### **PART 1 – PRELIMINARY**

#### **1. Title**

These Guidelines may be cited as the Capital Markets Exchange Traded Funds Guidelines, 2016.

#### **2. Application**

- (a) The provisions of these guidelines are minimum standard for the regulation of Exchange Traded Funds in Uganda.
- (b) The Provisions of these Guidelines shall apply only to Foreign Exchange Traded Funds.
- (c) The approach of these Guidelines is both prescriptive and non-prescriptive in order to provide for flexibility and innovative dynamism to approval and listing of Exchange Traded Funds in Uganda.

#### **3. Definitions**

In these Guidelines, the following words and expressions shall carry the meaning attributed to them as follows;

- (a) “**Broker/ Dealer Agreement**” means an agreement entered into between the broker/ dealer and the fund manager setting out the terms and procedures by which the broker/ dealer may request the creation and redemption of units;

**(b) “Broker /Dealer”** means a broker or dealer licensed by the Authority who is a member of an approved Securities Exchange and is appointed by the Fund Manager;

**(d) “Exchange Traded Fund (ETF)”** means an undertaking which could be-

(i) a collective investment scheme; and

(iii) any other such structure as may be approved by the Authority, that issues unleveraged securities or units listed on an approved securities exchange and which tracks the performance of a specified security or other assets which includes but is not limited to stocks, basket of assets, indices, commodity prices, foreign currency rates or any other appropriate benchmark approved by the Authority from time to time;

**(e) “Creation Unit”** refers to the specified number of units determined by the Fund Manager and clearly disclosed in the Fund’s offer documents for the creation of ETF units;

**(f) “Foreign Company”** refers to a company incorporated outside Uganda;

**(g) “Foreign ETF”** means an ETF whose primary listing is on an Exchange outside Uganda;

**(h) “Fund Manager”** means an investment adviser licensed under the Act that is permitted by the Authority, as part of its business under a contract or arrangement with a client to undertake on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of a portfolio of securities for the purpose of investment;

**(i) “High net worth persons”** refers to a person including a company, partnership, association or a trustee on behalf of a trust which either alone or with any associates on a joint account subscribes for ETF Securities with an issue price equal to at least 7500 currency points;

**(j) “IOPV (Indicative Optimum Value)”** refers to an a estimated net asset value (NAV) of the portfolio securities of the Fund calculated by the Fund Manager according to a methodology which is clearly stipulated in the Offer documents;

**(k) “Liquid Assets” includes;**

(i) Cash;

(ii) deposits with Banks or other licensed institution approved to accept deposits; and

(iii) any other instrument capable of being converted into cash within five business days as may be approved by the Trustee or fund manager;

**(l) “Offer Documents”** refers to a prospectus/trust deed, or information memorandum or any document for the offer or placement of units;

**(m) “Placement”** refers to the offering of Units to specified persons;

**(n) “Professional Investor”** refers to a person whose ordinary business or regular activity involves the buying and selling of securities as a principal and includes an underwriter, a bank and an insurance company, a fund manager, a broker, a broker’s representative, a dealer, a dealer’s representative, an investment adviser or investment adviser’s representative acting as principal subject to any exception that may be prescribed by the Authority;

**(o) “Portfolio Deposit”** means the deposit of a portfolio constituent of underlying securities together with cash (if applicable) for the purpose of creation and redemption of units;

**(p) “Redemption Unit”** refers to the specified number of units determined by the Fund Manager upon consultation with the trustee and clearly disclosed in ETF offer documents for the redemption of the portfolio deposit;

**(q) “Unit(s) or Security (ies)”** includes a unit, share, debenture or any other instrument or ETF granting an entitlement to the investment or relative income of an ETF

## **PART II – GENERAL CONDITIONS**

### **4. Approval of an ETF**

(1) An ETF shall be subject to the approval of the Authority before any deals in the units of an ETF.

(2) The issuer of ETF or an authorized representative shall submit the offer documents to the Authority for approval.

(3) The offer documents for the ETF issue shall comply with the Capital Markets (Prospectus Requirements) Regulations or the Collective Investment Schemes Act, 2003 and regulations thereunder as deemed necessary by the Authority.

(4) An issuer of ETF or authorized representative who is a licensed person in Uganda applying for the Authority's approval for issue of the foreign ETF shall confirm:

- (i) The approval or registration of the ETF by the relevant foreign authority;
- (ii) The approval to list the ETF on the primary stock exchange in the foreign jurisdiction;
- (iii) Letters of no objection from the relevant foreign authority and primary stock Exchange;
- (iv) That it has minimum subscribed units as may be prescribed by the Authority from time to time;
- (v) provide constitutive documents including Trust deed or Memorandum and Articles of Association as applicable;
- (vi) That the fund manager of the foreign ETF is in good standing in its country of operation
- (vii) Any other information as may be requested for by the Authority

(5) A foreign ETF issuer operator applying for approval to list a foreign ETF on an approved Stock Securities Exchange in Uganda shall submit to the Authority for review;

- (i) Copy of its approval/registration/license by the relevant foreign authority;
- (ii) Evidence of approval of the foreign ETF by the relevant foreign authority;
- (iii) Copy of the prospectus/offer documents of the foreign ETF approved/cleared by the relevant foreign authority and stock Exchange.

5. The ETF issuer shall on an annual basis provide the Authority with all regulatory and audit filings submitted to its primary regulator and securities exchange.

### **5. Key Features of an ETF**

The units and underlying assets of an ETF shall;

- (a) have proper price formation;
- (b) Have a net asset value (NAV) that is calculated in a transparent manner and clearly published;
- (c) Be freely transferable;
- (d) Be fully covered at all times

## **6. Applicants to Issue ETFs**

The ETF issuer or authorized representative shall;

- (a) Provide evidence to the Authority that it has the relevant expertise to issue an ETF or has access to such expertise; and
- (b) For foreign issuer, it shall appoint a licensed person in Uganda as its authorized representative for purposes of regulation and oversight.

## **PART III – PARTIES TO AN ETF**

### **7. Parties to Issue of ETF**

The parties to an ETF may include;

- (a) Fund Manager
- (b) Trustee
- (c ) Custodian and/or Depository
- (c) Broker / Dealer
- (d) Auditor
- (e) Legal Adviser
- (f) Such other parties as may be necessary from time to time

### **8. Broker or Dealer**

(a) An ETF shall appoint one or more brokers/dealers who may act as authorized representative or sponsor and whose responsibilities will include execute the sale and purchase of units with investors.

(b) The Broker/Dealer shall be;

(i) Duly licensed by the Authority as a broker/dealer and is an admitted member of the relevant approved securities exchange;

(ii) Has adequate and appropriate systems and procedures to execute transactions of the units in a proper and efficient manner;

(iii) Has proper and adequate internal control procedures and satisfactory risk management procedures;

(iv) Possess the necessary expertise and adequate resources to undertake the function of Authorised representative; and

(v) Execute a “Broker/ Dealer Agreement” with the Fund Manager (if applicable).

(c) The Broker dealer acting as authorized representative or sponsor shall maintain adequate capital requirements as may be determined by the Authority.

## **9. Fund Manager**

(1) The ETF issuer may appoint a fund manager to act on its behalf for the purpose of managing the ETF or undertake to manage the ETF.

(2) Subject to the Approved Securities Exchange Rules relating to ETFs, the Fund Manager may;

(a) Act and enter into all arrangements as necessary for the administration of the scheme so as to achieve the investment objectives of the ETF;

(b) Select, purchase, sell, exchange or change any of the assets of the underlying securities in the ETF

(c) Appoint persons to exercise powers and perform duties on its behalf; and

(d) Act on the advice or information obtained from professional advisers and others considered by it to be experts portfolio manager shall be the party



(3) The fund manager may with the written approval of the trustee and the exchange appoint any company qualified to act on its behalf and may assign to such appointee all its rights and duties as manager.

(4) Where it is imminent that the manager will be liquidated, the trustee shall take immediate steps for the appointment of the new fund manager.

## **10. Trustee**

(1) The ETF issuer shall appoint a trustee who shall have the primary responsibility of protecting the interests of investors.

(2) The powers, authority, obligations and responsibilities of the trustee shall be detailed in the trust deed and shall include the following among others:

(a) hold the underlying assets of an ETF on behalf of the Exchange Traded Fund.

(b) the trustee's powers necessary to protect the interests of investors and to perform its functions

(c) that the trustee shall be liable to make distributions to unit holders only out of funds held by or paid to it for the purpose under the ETF Rules

(d) the trustee shall take delivery of and retain in safe custody and under its supervision and control the documents of title to the assets.

## **PART IV – OFFERING & LISTING UNITS OF AN ETF**

### **11. Methods of offering units of an ETF**

(a) An ETF may issue/offer units by any of the following ways:

- (i) An offer for subscription to Professional investors and High net worth persons;
- (ii) Public offer of securities
- (iii) Such other methods as may be acceptable or prescribed by the Authority from time to time

(c) On approval of the ETF issue by the Authority, the ETF shall list on the approved Stock Exchange and shall comply with the listing requirements of the relevant approved stock Exchange.

## **12. Notification on material terms and conditions**

The Fund manager shall notify the Authority of all events which in the reasonable opinion of the fund manager materially affect the acceptability of the underlying asset, security or portfolio of the ETF.

## **13. Creation and Redemption of an ETF**

(1). Instructions to create or redeem ETF Units shall be in writing as stipulated in the offer documents.

(2). All provisions relating to creation and redemption of units shall be adequately and clearly disclosed in the Offer documents

## **14. Revocation of authorization**

The Authority may withdraw the approval or authorization of the offer of ETF if it violates its investment objectives and other matters as identified by the Authority.

## **PART V – LISTING OF FOREIGN ETF**

### **15. Listing of Exchange Traded Funds**

(a) An ETF shall not be listed on any approved securities exchange in Uganda without the prior approval of the Authority.

(b) The listing of the ETF on an approved Securities Exchange shall be guided by the Rules of the Approved Securities Exchange approved by the Authority.

(c) The approved securities exchange shall provide the first line supervision and surveillance of the ETF listed on its exchange.

(d) The issuer of a Foreign ETF shall ensure that it provides for investor protection which should be equivalent to that provided for under Ugandan Capital Markets laws.

## **PART VI – PRICING AND DEALING OF UNITS**

### **16. Setting of Issue Price**

- (a) The Fund Manager shall not issue units other than at the price calculated in accordance with the basis disclosed in the offer documents and/or trust deed. The issue price shall be on a basis approved by the Authority and shall not include management charges and other fees.
- (b) The price of the units shall be based on market principles, and at a level which is in the best interest of the ETF and the Unit holders.
- (c) The calculation of the IOPV per unit and the end of day NAV by the Fund manager shall be based on a formula and process which is consistently applied, and which leads to valuations that are objective and independently verifiable.

### **17. Continuing Obligations**

The ETF Issuer or Fund Manager shall provide the following information to the public;

- (a) all material changes and developments likely to affect their valuation and operations immediately
- (b) Submit notification and seek the approval of the authority for alterations to capital structure
- (c) Ensure equal treatment of unit holders
- (d) Changes in fund's investment strategy
- (e) IOPV per unit – at the close of day;
- (f) Portfolio and NAV per unit – on daily basis;
  
- (g) Number of units in circulation – on a monthly basis;
- (h) Index level or underlying asset price (as applicable) – for the preceding day;
  
- (i) The constitution of any index basis – on a quarterly basis; and
- (j) Other information as requested for by the authority.

### **18. Valuation of Units**

The valuation basis for the units shall be the market price.

## **PART VII – OFFER DOCUMENTS**

### **19. Contents of the ETF Offer documents**

An ETF Offer document shall contain the following information;

- (a) The legal and commercial name of the ETF issuer and or the Fund Manager;
- (b) The place of registration of the issuer and its registration number;
- (c) The date of incorporation and length of life of issuer, except where indefinite
- (d) The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, website and contact details (address/telephone) of the registered office
- (e) Particulars of Directors and Shareholders of the ETF Issuer
- (f) For index ETFs, the underlying asset of the ETF should have been in existence for at least 3 years
- (g) specific details of on the type of ETF to be issued; name of the promoter of the ETF,date of establishment of the ETF;
- (h) information on the computation behind the number of block/portfolio securities to make up ETF units and the targeted unit holder category;
- (i) A justification for issuance of the stated type of ETF;
- (j) The ETF units creation and cancellation process;
- (k) A detailed explanation of the anticipated institutional, human resource and infrastructural arrangements to be used in the ETF units' creation, trading and cancellation process;
- (l) The Identity and competence of the party or parties that shall be involved in sponsoring and /or calculating the ETF;
- (m) Pricing, dividend distribution and tracking approach;

- (n) The fund or portfolio's constituent assets/securities on which the ETF shall be structured (if applicable);
- (o) Fees to be charged to the stakeholders and their justification;
- (p) Comprehensive report on potential risks associated with the ETF issue and risk mitigation measures;
- (q) A disclaimer statement on the inside cover/ first page that:

*“The Valuation approved or accepted by the Authority shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be considered as an endorsement by the Authority of the value of the subject assets for any other purposes”*

- (r) A summary page which shall include, where applicable;
  - (i) The underlying index, security(ies) or asset(s) which the ETF intends to track or replicate as well as a description of the market sector the index, security(ies) or asset(s) represents;
  - (ii) The ETF's investment strategy and, if an ETF is tracking an index, state whether it will invest in all (full replication) or a representative sample (sampling) of component securities or commodities of the underlying index. If the ETF invests in a representative sample of component securities or commodities, it shall disclose how the sample is constituted;
  - (iii) The ETF's policy on investment income
  - (iv) Circumstances that may lead to tracking errors and strategies to be employed in addressing and minimizing such errors
  - (v) The material risks of investing in the ETF and mitigants;
  - (vi) The weightings of the major component securities or commodities of the underlying index. Where a representative sample of the component of the underlying index is used to track or replicate the index, the weightings of the major securities or commodities in the sample shall be disclosed;
  - (vii) Procedures in relation to creation and redemption of units;
  - (viii) A statement that there is no guarantee or assurance of exact or identical replication at any time of the performance of the index (if applicable);

(s) The details of pricing of units, basis for determination of the issue/offer price, basis of determination of the IOPV and the means by which investors may obtain and update relevant information or details on the underlying asset/security of a unit; and

(t) Any other information as may be requested for by the Authority

## **PART VIII – REPORTING AND AUDIT**

### **20. Reporting Requirements**

(a) Quarterly reports of an ETF shall be submitted to the Authority within 15 days after the end of each quarter and shall be published on the ETF Issuer or fund manager’s website within one month after issuing the report.

(b) The Fund Manager shall prepare and present the financial statements of the ETF, in accordance with approved accounting standards, relevant applicable laws and regulations and the constituent documents relating to the ETF. The financial statements shall be in Ugandan shillings.

(c) The financial statements of the ETF shall be audited annually by an auditor appointed by the Fund Manager with the approval of the trustee or in accordance with the constituent documents of the ETF.

(d) The Annual Report of the ETF shall be submitted to the Authority within three (3) months of the Fund’s financial year end.

(e) The custodian/depository of an ETF shall on a quarterly basis conduct and submit a report or reconciliation of all units as well as the underlying assets to the Authority.

(f) The Annual Report of the ETF shall be published and distributed to unit holders within three months of the Fund’s financial year end or such period as prescribed by the Authority.

### **21. Fees**

The Applicable fees for approval of a Foreign ETF will be as follows;

(1) The submission of offer documents for approval in case of ETF public offer, the ETF issuer or authorised representative shall pay 0.2% of the value of the issue subject to a minimum of UGX.50, 000,000 and a maximum of UGX.1, 000,000,000.

(2) For re-submission of offer documents due to material omissions or discrepancies identified by the Authority after the initial review at the first submission UGX. 4,000,000.

Issued this .....day of ..... 2016.

**JETHRO GRACE KAVUMA**

**CHAIRPERSON, CAPITAL MARKETS AUTHORITY**