

**THE CAPITAL MARKETS (INVESTOR COMPENSATION FUND)
REGULATIONS, 2015**

ARRANGEMENT OF REGULATIONS

Regulations

PART I – PRELIMINARY

1. Short Title and Commencement
2. Interpretation
3. Application
4. Purpose of Fund

PART II – ADMINISTRATION OF THE FUND

5. Composition of the Fund
6. Investments
7. Accounts
8. Payments out of the Fund
9. Annual Report
10. Records

PART III – CLAIMS FOR COMPENSATION

11. Who may claim
12. Compensatable claims
13. Time Limit
14. Waiver of Time Limit
15. Submission of claim
16. Particulars of claim
17. Dismissal of claim
18. Right of Appeal

PART IV – PROCESSING OF CLAIMS

19. Supporting Evidence
20. Investigations
21. Summons to Broker
22. Determination of claim
23. Notice of Determination
24. Payment of Compensation
25. Authority to exercise discretion
26. Authority of Board

27. Processing of claims

The Capital Markets (Investor Compensation Fund) Regulations
(Under section 101 of the Capital Markets Authority Act, Cap 84)

IN EXERCISE of the powers conferred on the Capital Markets Authority (“Authority”) by sections 5 and 101 of the Capital Markets Authority Act, Cap 84 (“Act”), these Regulations are made this _____ day of _____ 2015.

PART 1-PRELIMINARY

1 Short title and commencement

These Regulations may be cited as the Capital Markets (Investor Compensation Fund) Regulations, 2015 and shall come into force on _____ of _____ 2015.

2 Interpretation

In these Regulations unless the context otherwise requires-

(a)

“Act” means the Capital Markets Authority Act, Cap 84;

“Fund” in these regulations means the Investor Compensation Fund established under section 81 of the Capital Markets Authority Act

(b) Any word, term or expression which has been defined in the Act shall have the meaning assigned to it by the Act.

3 Application

These Regulations shall apply to the operation of an Investor Compensation Fund established under section 81 of the Act.

4 Purpose of the Fund

The purpose of the Investor Compensation Fund is to compensate investors for pecuniary loss suffered in the case of insolvency, bankruptcy, winding up or any other eventuality, suffered by a broker, the result of which would amount to the failure of the broker to meet their contractual obligations.

For the avoidance of doubt, a broker has the primary responsibility to settle all claims of investors who are their customers.

PART II- ADMINISTRATION OF FUND

5 **Composition of the Fund**

The fund shall consist of monies received by the Authority from the following sources as defined in section 81(2) of the Capital Markets Authority Act;-

- (a) Contributions by the Authority from the General Fund,
- (b) Such monies as are required to be paid into the compensation fund by licensed persons,
- (c) Such sums of money as are paid under section 89 as penalties and compensation,
- (d) Such sums of money as accrue from interest and profits from investing monies from the Compensation Fund,
- (e) Such sums of money recovered by or on behalf of the Authority from entities whose failure to meet their obligations to investors results in payments from the Compensation Fund and
- (f) Fines and penalties collected by the Authority.

Such sums of money as are received for purposes of the compensation fund from any other source approved by the Minister.

6 **Investments**

The monies in the Investor Compensation Fund shall be invested by the Authority in a manner determined by the Authority.

7 **Accounts**

The Authority shall maintain a separate account for the Investor Compensation Fund and the fund shall meet its own audit costs.

8

Payments out of the fund

- (a) There may be paid out of the Fund;-

Money required by the Authority to pay compensation to investors.

- (b) Any expenses relating to management and investment of the monies constituting the Fund.

9

Reporting

Management shall present to the Board on a quarterly basis, a report on the status of the Fund.

10

Records

(a) The Authority shall cause proper records in respect of the funds to be kept and shall ensure that;-

(b) The records disclose with reasonable accuracy, the financial position of the Fund;

(c) The records explain in detail all the transactions relating to the Fund; or

The records required to be kept shall be kept for a period of ten years.

PART III – CLAIMS FOR COMPENSATION

11.

Who may Claim

An investor who suffers pecuniary loss as a result of failure of a broker to meet their contractual obligations may submit a claim to the Authority for compensation out of the Investor Compensation Fund.

Provided that a person making a claim for compensation shall furnish the Authority with evidence of having made a claim against the broker and that the broker has refused or failed or neglected to respond to such claim.

12.

Compensable claims

(1) The compensable claims under the Investor Compensation Fund are;-

(a) claims for losses resulting from failure of a broker to settle a transaction; and

(b) claims for losses resulting from failure of a broker to account for funds due and owing to an investor

A claim is not compensable unless;

(2)

(a) it relates to a properly documented transaction between an investor and a broker;

(b) It has not been extinguished by operation of the law;

(c) It has not been satisfied or settled by any other means between the broker and the investor; and

(d) It has not been settled by any other scheme or policy including that operated by the Approved Securities Exchange

13. **Time Limit**

(a) A claim for compensation shall be submitted to the Authority within six months of the investor establishing that due to the reasons provided in 11 (1) above, the broker is unable to meet their contractual obligations.

(b) Where the broker is unable to meet their contractual obligations due to suspension or revocation of license by the Authority, a notice shall be published inviting members of the public to submit their claims within 60 days of the notice.

Provided that such notice shall be published in not less than two English newspapers of nationwide circulation.

14. **Waiver on Time Limit**

The Authority may allow an investor to submit a claim for compensation outside the stipulated time where the investor shows sufficient cause as to why the claim could not be submitted in the stated time.

15. **Submission of Claim**

A claim for compensation shall be submitted by an investor who has suffered loss or their lawfully appointed representative.

16. **Particulars of claim**

A claim shall contain all the particulars of a transaction and all the necessary information including but not limited to;-

- (i) Particulars of the investor (name, address, age and occupation)
- (ii) Particulars of the broker or dealer
- (iii) Nature of transaction
- (iv) Amount of money involved
- (v) Contract note
- (vi) Any claim made to the broker
- (vii) Any information received from the broker in respect of the transaction in which the investor has suffered loss

17. **Rejection of claim**

A claim may be rejected if it is found to be lacking in any material particular or where the claimant refuses or neglects to provide sufficient

information in respect of the claim to the Authority.

Provided that the Authority shall before rejecting a claim for compensation, write to the claimant requesting for additional information.

18

Right of Appeal

Any person aggrieved by the decision of the Authority in relation to compensation under the Investor Compensation Fund may within thirty days after he or she is notified of the decision, appeal to the Capital Markets Tribunal or Court whose decision on the matter is final.

PART IV– PROCESSING OF CLAIMS

19.

Supporting Evidence

- (a) A claim shall be supported by sufficient proof of the transaction between the broker and the loss suffered by the investor.
- (b) Such proof shall include contract notes, receipts for any money paid to the broker and any other evidence.

20.

Investigations

Where the Authority receives a claim, it shall within 21 days proceed to investigate the claim.

Provided that where the Authority has not received sufficient information from the claimant, investigations shall not commence until the claimant has submitted the necessary information as required under regulation 17.

21.

Summons to broker or dealer

- (a) The Authority shall inform the broker against whom a claim is made and request the broker to respond to the allegations in the claim within 14 days.
- (b) If after 14 days the broker has not responded to the allegations in the claim, the Authority shall proceed ex parte to determine the merits of a claim.

22. **Determination of claim**
- (1) The Authority shall, in relation to a claim for compensation, determine;-
 - (a) Whether there has been a breach of contractual obligation by a broker;
 - (b) Whether the investor has suffered loss
 - (c) Whether the investor is entitled to compensation
- If the Authority determines that there has been a default by a broker and that the investor is entitled to compensation, it shall determine the amount
- (2) of compensation in accordance with regulation 23.
23. **Notice of Determination**
- (1) Subject to subsection (2), where the Authority makes a determination under regulation 20, it shall issue a notice of determination to the claimant as soon as practicable thereafter.
- Where the Authority determines that compensation should be paid to an
- (2) investor, it shall specify the following in the notice of determination;-
 - (a) the name of the broker in default
 - (b) the amount of compensation as determined under regulation 23
24. **Payment of compensation**
- (1) Subject to sub regulation (2) the amounts to be paid to an investor out of the Compensation Fund shall be as specified in the notice determination in regulation 21.
 - (2) The total amount of compensation payable to a claimant under sub regulation (1) shall not exceed the maximum amount of compensation prescribed under regulation 23.
 - (3) In determining the total amount of compensation to be paid to a claimant under sub regulation (1) and in applying the limits on the maximum amount of compensation prescribed by regulation 23, the Authority may aggregate separate claims for compensation by a claimant, or a number of claimant or parts of those claims representing the loss sustained by one person.
25. **Authority to exercise discretion**
- Where it is established that an investor has suffered loss resulting from

the failure of a licensed broker to meet his contractual obligations, the Authority shall exercise its discretion to determine the amount of compensation payable to an investor taking into account the following factors;-

- (a) the loss suffered by the investor,
- (b) Any attempts by the investor to recover the money from the broker or dealer, and
- (c) The availability of funds in the Investor Compensation Fund.

26. **Authority of Board**

No compensation shall be paid out to an investor without the approval of the Board of the Authority.

27. **Processing of claims**

- (1) Claims duly submitted to the Authority shall be processed within a period of 60 days from the time that the claim was submitted.
- (2) Where the Authority is unable to process any claim within 60 days, it shall give notice to the investor stating the reasons for the delay in processing the claim.

Grace Jethro Kavuma
Chairperson, Capital Markets Authority