

**DIRECTIVE 2015/22/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

DIRECTIVE OF THE EAC ON CAPITAL MARKETS REGULATED ACTIVITIES

PREAMBLE

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular **Articles 85 (d), 14 and 16;**

WHEREAS Article 31 of the Protocol on the Establishment of the East African Community Common Market provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Protocol on the Establishment of the East African Community Common Market provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing the Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

**ARTICLE 1
INTERPRETATION**

In this Directive, unless the context otherwise requires –

“associate” in relation to:

a) an individual, means:

- (i) that individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;
- (ii) any company of which that individual is a director;
- (iii) any company in which that individual, or any of the persons mentioned in subparagraph (i), has control of twenty percent or more of the voting power in the company, whether such control is exercised individually or jointly; or
- (iv) any employee of that individual;

b) a company, means another company in which the first-mentioned company has control of not less than twenty percent of the voting power in that company, and a reference in this Directive to an associated person or associated company shall be construed accordingly;

“client” means a person on whose behalf a regulated activity is carried on;

“client assets” means money received or retained by, or any other property (including securities) deposited with, a person undertaking a regulated activity in the course of its business for which it is liable to account to its client, and any money or other property accruing there from;

“Community” means East African Community established by Article 2 of the Treaty;

“Competent Authority” means the agency that is the primary regulating entity of securities markets in the Partner State;

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“derivative” means a security or contract whose price is dependent upon or derived from one or more underlying assets;

“fund manager” means by way of business, that person:

(a) manages, offers or agrees to manage a portfolio of securities belonging to another person, whether on a discretionary authority granted by that other person or otherwise;

(b) in relation to:

- (i) a collective investment scheme which is a unit trust, or an investment company which is not self-managed, acts as the management company appointed by the management contract;

(ii) an investment company which is self-managed, acts as that company; and

(iii) acts as a manager of a venture capital company;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;

“regulated activity” means a securities activity specified in Article 5 of this Directive;

“regulated person” means a person licensed, approved, or registered by the Competent Authority to carry on a regulated activity as defined in this Directive;

“representative” means a person, in the direct employment of, or acting for, or by arrangement with, a regulated person, who performs for that regulated person any regulated activity for which the regulated person is licensed, approved or registered;

“securities” means:

- (a) shares of a company;
- (b) any instrument including loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of corporate Institution, Government, local authority and or public agency which is issued or proposed to be issued;
- (c) rights, options, or interests, whether described as units or otherwise, in, or in respect of such shares, debt securities and Government and public securities;
- (d) any right, whether conferred by warrant or otherwise, to subscribe for shares or debt securities;
- (e) any option to acquire or dispose of any other security;
- (f) futures in respect of securities or other assets or property;
- (g) securities and collective investment scheme products structured in conformity with Islamic principles for investments;
- (h) units in a collective investment scheme, including shares in an investment company, or other similar entities whether established in a Partner State or not;
- (i) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (j) the rights under any depositary receipt in respect of shares, debt securities and warrants;
- (k) asset backed securities; or

- (l) any other instrument prescribed by a competent authority to be securities for the purposes of this Directive;

but does not include :

- (a) securities of a private company other than asset backed securities;
- (b) bills of exchange;
- (c) promissory notes other than asset backed securities;
- (d) certificates of deposit issued by a bank; and
- (e) any other instrument prescribed by a competent authority not to be securities for the purposes of this Directive.

“Secretary General” means the Secretary General of the Community appointed under Article 67 of the Treaty;and

“Treaty” means the Treaty for the establishment of the East African Community and any Annexes and Protocols thereto.

ARTICLE 2 OBJECTIVE

The objectives of this Directive are to:

- (a) provide a regulatory perimeter for Competent Authorities;
- (b) provide for regulatory activities to be undertaken by regulated persons in the Partner States’ securities markets;
- (c) assess and address regulatory arbitrage between unregulated and regulated activities in the Partner States’ securities markets;
- (d) identify and address any gaps and duplication in the regulatory framework jurisdiction of financial sector authorities;
- (e) protect the integrity of the securities market against all forms of abuse, fraudulent and unfair practices;
- (f) ensure fair, efficient and transparent securities markets and reduce systemic risks;
- (g) facilitate provision of licensing requirements for markets intermediaries operating in more than one Partner State; and
- (h) ensure protection of investors.

**ARTICLE 4
PRINCIPLES**

This Directive is based on the following principles:

- (a) protection of investors;
- (b) ensuring that the securities markets are efficient, effective and transparent;
- (c) reduction of systemic risk; and
- (d) market development.

**ARTICLE 4
SCOPE**

This Directive shall apply to all regulated activities or any other transactions incidental to regulated activities in the Partner States' capital markets.

**ARTICLE 5
REGULATED ACTIVITIES**

1. A regulated activity shall include :

- (a) dealing in securities;
- (b) dealing in derivatives;
- (c) investment advisory services in securities;
- (d) investment or fund management;
- (e) corporate finance advisory services or investment banking;
- (f) share registrar services;
- (g) trustee services;
- (h) custodial services;
- (i) underwriting services; and
- (j) credit rating services.

2. A person shall be regarded to be dealing in securities if that person whether as principal or agent:

- (a) acquires, disposes, subscribes for or underwrites securities; or
- (b) makes or offers to make with any person, or induces or attempts to induce any person to enter into or to offer to enter into–

- (i) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

- (ii) any agreement, other than a derivative contract, the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities.

3. A person shall be considered to be dealing in derivatives, whether as principal or agent, if that person makes or offers to make, or induces or attempts to induce any person, or solicits or accepts any order for, or otherwise:

- (a) enters into, or takes an assignment of the derivative;

- (b) takes or causes to be taken, action that closes out the derivative, whether or not on another person's behalf;
 - (c) in relation to an option:
 - (i) exercises any right under the option; or
 - (ii) allows any right under the option to lapse, whether or not on another person's behalf; or
 - (d) initiates, originates, or issues over-the-counter derivatives.
- 4. A person shall be considered to be an investment advisor in securities if that person -
 - (a) advises on the terms and conditions on which securities may be bought, sold, exchanged or subscribed for; or
 - (b) issues analysis or reports on specific securities that may be bought, sold, exchanged or subscribed for.
- 5. A person shall be considered to be undertaking the business of investment or fund management if that person has a contractual obligation with a client whether on a discretionary authority granted by the client or otherwise.
- 6. Investment and fund management in sub article (5) shall include the management of;
 - (a) a portfolio of securities for the purpose of investment;
 - (b) a collective investment scheme which is a unit trust, or an investment company which is not self-managed, acts as the management company appointed by the management contract;
 - (c) an investment company which is self-managed, acts as that company;
or
 - (d) a venture capital company.
- 7. A person shall be considered to undertake corporate finance advisory service or investment banking if that person is licensed or approved by a Competent Authority to enter into a contractual undertaking with a client to advise on:
 - (a) offers of securities to the public or a section of the public;
 - (b) take-overs, mergers and acquisitions;
 - (c) corporate restructuring involving companies listed or quoted on a securities exchange;
 - (d) privatization of companies listed or to be listed on a securities exchange;

or

(e) underwriting of securities issued or to be issued to the public.

8. In relation to publicly offered or listed securities, offering share registrar services includes:
 - (a) receiving and recording all applications in respect of subscriptions for an offer of securities;
 - (b) implementing the allotments of an offer of securities;
 - (c) maintenance of securities holders' register;
 - (d) deposit and transfer of securities;
 - (e) split or consolidation of securities;
 - (f) dividend entitlements and payments to security holders;
 - (g) bonus shares issuance to security holders; and
 - (h) custody of undelivered certificates and dividend warrants.
9. A person undertakes trustee services where a legal arrangement exists where that person holds the legal title to securities or administers securities for the benefit of third parties including collective investment schemes, securitisation or any other fiduciary relationship in securities markets.
10. A person shall be considered to undertake custodial services if that person is licensed or approved by a Competent Authority to;
 - (a) hold assets including securities, cash and other properties in custody;
 - (b) transfer, exchange, or deliver securities on instructions from a fund manager or client;
 - (c) exercise subscription, purchase or other similar rights represented by securities;
or
 - (d) deliver information on securities from issuers for purposes of corporate monitoring.
11. A person shall be considered to undertake underwriting services if that person is licensed or approved by a Competent Authority to enter into an agreement with or without conditions to subscribe to the securities of an issuer where the existing shareholders of the issuer or the public do not subscribe to the securities offered to them.
12. A person shall be considered to undertake credit rating services if that person is licensed or approved by a Competent Authority to offer an objective and independent assessment of the general creditworthiness of issuers or potential issuers of debt instruments or with respect to particular debt or financial obligation and the issuers'

ability to meet obligations in a timely manner over the life of the financial instrument based on relevant risk factors.

ARTICLE 6 ENGAGING IN REGULATED ACTIVITIES

1. A person shall not carry on a regulated activity unless that person is a company licensed, approved or registered by a Competent Authority.
2. A person shall not perform any function in relation to a regulated activity whether ancillary or incidental to a regulated activity unless that person is authorized to do so by a Competent Authority.
3. A person licensed in respect of regulated activity in any Partner State may engage in that regulated activity in any other Partner State, subject to such terms and conditions where no licensing framework for that activity exists in that Partner State.
4. A person referred to in this Article shall be fit and proper as prescribed in Article 7 of this Directive.

ARTICLE 7 FIT AND PROPER TEST

1. The Competent Authority shall, in determining whether a person is fit and proper to carry out a regulated activity, take into consideration the following:
 - (a) the financial status or solvency of the person;
 - (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is granted, the person will perform;
 - (c) the status of any other license, approval or registration granted to the person by any financial sector regulator; and
 - (d) the ability to carry on the regulated activity competently, honestly and fairly; or
 - (e) the reputation, character, financial integrity and reliability:
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company, its directors, chief executive, management and all other key personnel, and any substantial shareholder of the company.
2. Without limiting the generality of sub-article (1), the Competent Authority may, in considering whether a person is a fit and proper person:
 - (a) have regard to whether the person :

- (i) 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 securities;
 - (ii) was a director of a regulated person that has been liquidated or under liquidation or statutory management;
 - (iii) has taken part in any business practice that, in the opinion of the Competent Authority, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; and
 - (iv) 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;
- (b) take into account any information in the possession of the Competent Authority whether provided by the applicant or not, relating to:
- (i) any person who is to be employed by, associated with, or who will be acting for or on behalf of, the applicant for the purposes of a regulated activity; and
 - (ii) where the applicant is a company in a group of companies:
 - (aa) any other company in the same group of companies; or
 - (bb) any substantial shareholder or officer of the company or any company referred to in sub-subparagraph (aa);
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

3. For the purposes of sub-article (2)(b)(ii), group of companies means any two or more companies, one of which is the holding company of the other or others as the case may be.

ARTICLE 8 DIRECTIONS TO REGULATED PERSONS

1. A Competent Authority may by notice in writing give a person undertaking a regulated activity, directions where it appears to the Competent Authority that:
 - (a) it is desirable for the protection of investors;

- (b) the person is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Directive; or
 - (c) the person has engaged in any activity contrary to the interests of investors.
2. A Competent Authority through a direction may :
- (a) require a person to cease and desist from the contravention or activity;
 - (b) prohibit a person from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
 - (c) prohibit a person from soliciting business from any specified person or a person of a class or description so specified or from persons other than persons of such a class or description;
 - (d) prohibit a person from carrying on business in a specified manner or otherwise than in a specified manner; or
 - (e) require a person to comply with such other matter as the Competent Authority considers necessary for the protection of investors, and the person shall comply with such direction.
3. A direction shall be for such specified period as the Competent Authority may consider necessary.
4. A Competent Authority may, by written notice either of its own motion or on the application of the person on whom a prohibition or requirement has been imposed, rescind or vary the prohibition or requirement if it appears to a Competent Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.
5. Where a Competent Authority issues a direction, a Competent Authority shall give reasons for its decision and shall give the person concerned a right to be heard before a final decision is made.
6. Sub-article (5) shall not apply where a Competent Authority determines that it is necessary or expedient to meet its objectives that the direction should take effect without delay, in which case, the reasons for the guideline shall be supplied and the opportunity to be heard shall be provided as soon as is reasonably practical after the guideline has come into force.

ARTICLE 9 REQUEST FOR INFORMATION BY THE COMPETENT AUTHORITY

A Competent Authority may, by notice in writing, require a person to furnish

information, either specifically or periodically, as it may require for the exercise of its functions.

ARTICLE 10

SUPERVISION OF REGULATED ACTIVITIES

1. A Competent Authority shall supervise all persons providing regulated activities.
2. In the exercise of its powers the Competent Authority may:
 - (a) access the premises and records of the regulated person;
 - (b) require the regulated person, or any other person under the control of the regulated person to produce any record or document;
 - (c) make inquiries on information relating to any record or document, referred in this Article; or
 - (d) inspect and make copies, or take extracts from, and where necessary take possession of, such documents.

ARTICLE 11

INVESTIGATION

A Competent Authority may commence an investigation on any of the matters referred under this Article, where it has reasonable cause to believe, either on its own motion or as a result of a complaint received, that :

- (a) an offence has been committed under this Directive;
- (b) a person may have engaged in embezzlement, fraud, misfeasance or other misconduct in connection with a regulated activity; or
- (c) the manner in which a person has engaged or is engaging in a regulated activity is not in the interest of the client or of investors.

ARTICLE 12

AUDIT

1. A Competent Authority may, where it is satisfied that it is in the public interest to do so, appoint, in writing, an auditor to examine, audit and report, either generally or in relation to any matter, the books, accounts, records or system of a person carrying out a regulated activity.
2. The person under paragraph 1 above shall meet the expenses of an auditor appointed under paragraph (1).

ARTICLE 13

RESTRICTION OF BUSINESS

A Competent Authority may by notice in writing prohibit a person from doing any one or more of the following:

- (a) entering into transactions considered to be regulated activities under this Directive; or
- (b) soliciting business in relation to regulated activities.

ARTICLE 14 VARIATION OF REQUIREMENT

1. A Competent Authority may, on its own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Directive, rescind or vary the prohibition or requirement if it appears to a Competent Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.
2. The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by a Competent Authority on a person undertaking a regulated activity and any such notice shall take effect on such date as is specified in it.

ARTICLE 15 ASSISTANCE TO OTHER COMPETENT AUTHORITIES AND REGULATORS

A Competent Authority may, where it receives a request from another Competent Authority or regulatory body, whether established within the Community or outside, for assistance to investigate a person specified by the Competent Authority who has contravened or is contravening any legal or regulatory requirements that –

- (a) are enforced or administered by the Competent Authority; or
- (b) relates to securities or derivatives transactions regulated by that Competent Authority,

provide the assistance requested for by exercising any of its powers.

ARTICLE 16 AMENDMENTS

1. This Directive may be amended by the Council of Ministers.

2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General for submission to the Council of Ministers.

ARTICLE 17 IMPLEMENTATION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' approval and inform the Council of Ministers.
2. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.