

STATUTORY INSTRUMENTS

2018 NO

THE CAPITAL MARKETS (SECURITIES EXCHANGE) REGULATIONS 2018

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STATUTORY INSTRUMENTS

2018 No

The Capital Markets (Securities exchange) Regulations, 2018

(Under section 101 of the Capital Markets Authority Act, Cap 84)

IN EXERCISE of the powers conferred upon the Capital Markets Authority by section 101 of the Capital Markets Authority Act, these Regulations are made this day of,2018.

PART I – PRELIMINARY

1. Title.

These Regulations may be cited as the Capital Markets (Securities exchange s) Regulations, 2018.

2. Interpretation.

In these Regulations, unless the context otherwise requires-
“Act” means the Capital Markets Authority Act, Cap 84;

“demutualised” means that the ownership and management of the applicant is segregated from the trading rights or clearing rights, as the case may be, in terms of these regulations; or

“rules” means the rules governing the conduct of a securities exchange or its trading participants by whatever name they are called, and includes these Regulations;

PART II—APPROVAL OF SECURITIES EXCHANGE.

3. Application for approval.

An application for approval of a securities exchange shall be made by an applicant to the Authority in triplicate in the Form set out in Schedule I to these Regulations.

4. Conditions for application.

(1) An applicant seeking approval as a securities exchange shall comply with the following conditions, namely—

- (a) the applicant is a company limited by shares;

- (b) the applicant is demutualised;
- (c) the applicant, its directors and its shareholders who hold or intend to hold shares, are fit and proper persons as described in the Act;
- (d) the applicant satisfies requirements relating to ownership and governance structure specified by the Authority; and
- (e) the applicant satisfies requisite capability including its financial capacity, functional expertise and infrastructure.

(2) For purposes of sub regulation (1) (b), where a mutual exchange received approval to operate, demutualisation of that exchange shall be completed within two years from the date of the commencement of these Regulations.

5. Accompanying documents.

- (1) An application for approval of the establishment of a securities exchange shall be submitted together with -
- (a) the rules of the applicant which shall be in compliance with the Act.
 - (b) memorandum and articles of association of the applicant which shall restrict the applicant to the business of operating a securities exchange and services incidental thereto;
 - (c) details of the trading system proposed to be adopted by the applicant;
 - (d) a comprehensive business plan for developing the stock market exchange in Uganda, including increasing number of listed companies, improving liquidity and price discovery in listed securities.
 - (e) Proof of payment of the application fee as prescribed in schedule II; and
 - (f) such additional documents as may be required by the Authority.

- (2) The plan referred to in sub regulation (1) (d), shall prepared by the applicant plan in consultation with the Authority.
- (3) Where the Authority is satisfied with the application of the applicant, the Authority shall grant the approval to establish a securities exchange upon payment of the approval fees prescribed in Schedule III.

6. Consideration of application.

- (1) The authority shall consider an application and inform the applicant of its decision within thirty days after the application has been lodged with it, except that where the application is incomplete, the period of thirty days shall be calculated from the time that the complete application is submitted to the authority.
- (2) Where a decision is not made by the authority within thirty days, the authority shall immediately notify the applicant of the reasons for the delay.
- (3) The Authority may, on an application duly made and after being furnished with all such information as it may require, grant a license or reject the application.
- (4) In determining whether to grant an approval or reject an application the Authority may take into account-
 - (a) any matter relating to any person who is or will be employed by or associated with the applicant for the purposes of the business in question, and in case of a body corporate, to any director or Secretary, to any other body corporate in the same group or to any director or Secretary of any such other body corporate;
 - (b) Any other matter the Authority may deem necessary

7. Publication of approval.

Notice of approval of the establishment of a securities exchange shall be published by the Authority in the Gazette and shall also, as soon as practicable, be published in a newspaper of wide coverage in Uganda.

8. Annual fees.

An approved securities exchange shall pay an annual fee as provided under item iii of schedule iii f these regulations.

9. Right to refer matters to the Capital Markets Tribunal

An applicant who is aggrieved by the determination of an application made under these regulations may refer the matter to the Capital Markets **Tribunal** established by section 90AF of the Act.

PART III—CONDITIONS FOR APPROVAL

10. Conditions for grant of approval.

A securities exchange approved by the Authority shall—

- (1) engage solely in the business of operating a securities exchange and not directly or indirectly enter to any other business;
- (2) not outsource any of its core functions including listing, trading, clearing and settlement, without the prior approval of the Authority. The approval granted shall not be transferable;
- (3) abide by the Code of corporate governance set by the Authority;
- (4) be a company incorporated to operate a securities Central Depository.
- (5) maintain a board of directors in accordance with regulation 9;
- (6) employ a Chief Executive and an administration with sufficient capacity to administer the securities exchange in accordance with the terms set out in regulation 9 and 10;
- (7) establish a physical location and mode of operation which contributes to a more orderly and efficient securities exchange market for securities in Uganda;
- (8) have an online screen-based trading system;

- (9) have an online surveillance capability which monitors positions, prices and volumes in real time so as to ensure market integrity;
- (10) have adequate infrastructure to list securities for trading on its platform, wherever applicable;
- (11) have the necessary capability to have a network of trading participants and have adequate facility to admit and regulate them;
- (12) make necessary arrangements to establish connectivity with its trading participants and securities central depository;
- (13) have adequate systems capacity supported by a business continuity plan including a disaster recovery site;
- (14) establish a fidelity fund in accordance with section 24 (3a) of the Act for granting compensation to investors who suffer pecuniary loss resulting from the failure of a broker or dealer to meet his or her contractual obligations and require its member dealers or brokers to carry and maintain such professional indemnity insurance as may be required by the Authority; and
- (15) disclose updates about any modifications made to the comprehensive business plan and the progress being made on its implementation.

11. Governance of the securities exchange.

- (1) A securities exchange shall provide in its rules and articles of association -
 - (a) a fixed term of office for its chairman, which shall include a maximum term of office of three consecutive years for the chairman;

- (b) a board of directors comprising of the chief executive of the securities exchange and at least one third shall be independent and non-executive directors;
 - (c) a maximum of 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, finance corporate governance and shall represent the interests of investors and the public on the board;
 - (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;
- (2) Subject to sub regulation 9 (1) (c), (d) and (e), the other persons appointed to the board of directors shall be elected by the shareholders of the securities exchange in accordance with the Companies Act, the rules and articles of association of the securities exchange.
- (3) An independent and non-executive director representing the interests of the public shall not have any association directly or indirectly with the securities exchange, which in the opinion of the board, is in conflict with his role as an independent director.
- (4) Before any person is appointed as a Chief executive or director, the securities exchange shall submit the names of the persons proposed to be appointed to the Authority for approval that the Authority has no objection to the proposed appointments.

12. Chief Executive of the securities exchange.

- (1) No person shall be qualified for appointment as a chief executive of a securities exchange, unless such person is fit and proper and has –

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

13.Role of the Chief Executive.

The Chief Executive of a securities exchange shall have the power to enforce the rules of the securities exchange and to administer the prescribed penalties, including suspension from trading.

14.Removal from Office of the Chief Executive.

The Chief Executive shall not be removed from office without the prior approval of the Authority.

15. Compliance Officer.

- (1) Every securities exchange shall appoint or designate a compliance officer.
- (2) The role of the compliance officer is- **(This insertion was proposed but roles were not provided)**
 - (1)
 - (2)

16.Documents to be furnished to the Authority.

Every securities exchange granted or approved to establish a securities exchange shall be required to furnish with the Authority the following documents **monthly-** **(need to specify time frame – I proposed monthly in line with para “h”)**

- (1) a list of trading participants of the securities exchange and any amendments to the list;
- (2) the names of the members of the board of the securities exchange;
- (3) notice of any disciplinary action taken against a member of the securities exchange;
- (4) changes in the appointment or the terms and conditions of the chief executive officer of the securities exchange;
- (5) a list of securities traded in the securities exchange and any amendments to it;
- (6) proposed amendments to be made to the conditions under which securities may be listed for trading;

- (7) proposed amendments to be made to the conditions governing dealing in securities by trading participants of the securities exchange;
- (8) monthly returns of the volume of securities traded on the securities exchange in a manner prescribed by the Authority;
- (9) amendments proposed to be made to the rules governing the conduct of the securities exchange or its members;
- (10) the days and hours of business of the securities exchange; and
- (11) such other information or document as may be required by the Authority.

17. Rules of securities exchange.

The rules to be adopted by a securities exchange before approval to operate as a securities exchange shall contain provisions in compliance with the Act on the-

- (1) admission to the listing, suspension or de-listing of securities by the securities exchange, through a procedure prescribed by the Authority;
- (2) the conditions governing dealing in securities by its trading participants so as to ensure protection of the rights of investors;
- (3) 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;
- (4) protection of investors against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in the issuing and trading of securities;
- (5) prohibition of market manipulation in any form;
- (6) investigation into trading in securities, financial transactions of trading participants and for conducting surprise checks on such trading participants;
- (7) suspension of trading of any security for the protection of investors or for the conduct of orderly and fair trading;

- (8) the conduct of securities trading by trading participants, the manner in which information relating to transactions is to be maintained and reported to other trading participants and customers of the securities exchange;
- (9) segregation from other business accounts of trading participants, of customers funds and securities;
- (10) arbitration of disputes and provision for appeal to the Authority by trading participants, investors and listed companies;
- (11) proper safe keeping of securities in its custody;
- (12) trading rights on a securities exchange;
- (13) registration with the securities exchange of full members, associate members, their representatives and dealers;
- (14) conduct of trading participants, their representatives, and dealers;
- (15) responsibility of trading participants for the actions of their employees and agents in their dealings with the public; and
- (16) 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.

18. Management of the Exchange.

A securities exchange shall regulate its trading participants and ensure day to day management of trading, settlement, delivery and other activities on dealing in securities in accordance with its articles of Association and the rules which have been approved by the Authority.

19. Net capital worth.

- (1) All approved securities exchange shall maintain a net worth of one billion Uganda shillings at all times.

- (2) For purposes of sub regulation (1), a securities exchange shall achieve a minimum net worth of one billion Uganda shillings within a period of three years from the date of approval or three years from the date of commencement of these Regulations.

20. Accounting records.

A Securities exchange shall preserve for a period of seven years, such books of account and documents, or acceptable alternative accounting records at their offices, as may be determined by the Authority.

21. Ownership of the securities exchange.

- (1) Shareholders of the securities exchange company shall comprise of dealing companies licensed by the Authority and any other institutions or persons approved by the Authority.
- (2) The shareholding of any person in a securities exchange shall not exceed the limits specified by the Authority at any point of time.
- (3) Subject to this regulation any equity held in excess of the limits prescribed by the Authority on the date of commencement of these Regulations shall be reduced to the limits specified by the Authority within a period decided by the Authority.

22. Trading members.

- (1) A securities exchange company shall admit as a trading member, any broker or dealer licensed by the Authority on payment of the admission fee approved by the Authority.
- (2) The securities exchange shall not, directly or indirectly, attempt to restrict or reduce the number of dealing companies or the number of stock brokers.

23. Annual report.

A securities exchange shall, before the 1st day of April in each year or such extended period as the Authority may from time to time allow, furnish the Authority with a report of activities at the securities exchange during the preceding calendar year in such form as may be required by the Authority.

24. Amendment of memorandum, articles of association or rules.

The memorandum, articles of association or rules of a securities exchange in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without the approval of the Authority.

25. Transparency of transactions.

A securities exchange shall make public its transactions in such a manner as may be required by the Authority.

26. Fees and Charges to be levied by the securities exchange.

All fees and service charges levied by the securities exchange on the listed companies and dealing companies or any other person benefiting from the services of the securities exchange, and any amendment in the said fees and service charges, shall be subject to the prior approval of the Authority.

27. Records to be maintained.

The securities exchange company shall maintain and preserve the following records and documents, for a period of seven years -

- (1) minutes of the meetings of its board of directors, shareholders and any committee of the board of directors;
- (2) register of shareholders and directors including the full names and physical addresses of all directors and shareholders and their number of shares in case of shareholders;
- (3) register of representatives and agents;
- (4) record of securities transactions;
- (5) statistical information on market turnover and capitalisation;
- (6) register of all listed securities including the names of issuers and number of securities listed by each issuer;
- (7) records of receipts and disbursement of the investors compensation fund if any;
- (8) annual audited accounts;
- (9) annual reports of all listed companies; and
- (10) financial records of all transactions of the securities exchange Company.

28. Revocation of S.I. 84-3.

The Capital Markets Authority (Establishment of Stock Exchanges) Regulations, SI 84-3 are revoked.

CAPITALMARKETSAUTHORITY ACT, CAP 84
APPLICATION FOR APPROVAL TO ESTABLISH A SECURITIES
EXCHANGE

Name of Company:.....
Physical postal Address:.....
Date of incorporation:.....
Company No:.....

We apply for approval to establish a securities exchange / and submit the following information for your consideration—

(a)Location of principal office.....

(b) Details of capital structure—

(i) Nominal capital Shs.....

(ii) Paid up capital Shs.....

(c)Names and addresses of directors:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

(d) Name and address of the Chief Executive:

.....
.....

2. We enclose two copies each of the following documentation required to accompany the application—

- (a) Certified copies of the Memorandum and Articles of Association
- (b) Proposed rules of the securities exchange;
- (c) the list of names and addresses of the owners of the securities exchange;

- (d) the audited annual accounts for the last three years of operation, or the period since inception, (*if shorter*) of the securities exchange;
- (e) details of the trading system proposed to be adopted
- (f) business plan
- (g) Business continuity plan
- (h) Governance of the Exchange – list of directors indicating whether the director is Executive, non-executive or /and independent
- (i) Completed Fit and proper assessment form for each director including senior management and Chief Executive Officer
- (j) Audited financial statements of the exchange

Dated atthis day of20.....

Signed by

Name:

Designation:.....

Signature:

**Delete as necessary.*

CAPITAL MARKETS AUTHORITY ACT, CAP 84

CRITERIA FOR APPOINTMENT OF INDEPENDENT DIRECTORS

A director appointed under regulation 9 as an independent director shall fulfill the following criteria.

He or she

- (a) has not been employed by the applicant in a senior position within the last five years;
- (b) is not affiliated to an adviser or consultant of the applicant or a member of the applicant's senior management or a significant customer or supplier of the applicant or with a not-for-profit entity that receives significant contributions from the applicant ; or within the last five years, has not had any business relationship with the applicant
- (c) has no personal service contract (s) with the applicant
- (d) is not a member of the immediate family of any director of the applicant
- (e) has not had any of the relationships described in (b) above with any affiliate of the applicant.

SCHEDULE - III

Reg. 24

FEES

ITEM	MATTER	FEES (Ug. Shs.)
DIVISION I- APPROVAL FEES FOR A SECURITIES EXCHANGE		
1.	Non-refundable application fee for a securities exchange	1,000,000/=
2.	Grant of the approval or admission fee for a securities exchange	10,000,000/=
3.	Annual fee	1 % of the gross earnings, excluding the transaction fees
DIVISION II- REPLACEMENT OR CERTIFICATION OF APPROVAL		
4.	Application for replacement of the approval	50,000/=
5.	Application for certification of approval	50,000/=

JACQUELINE KOBUSINGYE OPONDO,
Chairperson, Capital Markets Authority