

REGULATORY NOTICE No. 1/2015

Date: 15th December 2015

To: All stakeholders

REGULATORY GUIDANCE NOTE ON OFFER OF EXCEPTIONAL SECURITIES TO THE PUBLIC

The CMA Board at its meeting held on 01st December 2015 approved the Regulatory Guidance Note on Offer of Exceptional Securities to the Public and its circulation to stakeholders.

a) Introduction

The Capital Markets Authority (CMA) has in the past received requests from various parties to approve public offers of securities where there are no specific regulations.

The Public Offer of Securities approval by CMA Uganda is undertaken under the Capital Markets Authority Act Cap 84 as amended and the regulations issued thereunder.

The approval of Public Offers in Uganda has been principally guided by the CMA Act, Cap 84 and the Capital Markets (Prospectus Requirement) Regulations, SI 84-2 (as amended); the Capital Markets (Cross border Introductions) Regulations, 2004 (as amended).

Securities specific regulation is provided for under the Capital Markets (Asset Backed Securities) Regulations, 2012, the Capital Markets (Corporate Bond) Guidelines, 2003 and the Capital Markets (Commercial Paper) Guidelines, 2003.

It should be noted that the definition of securities under section 2(hh) of the CMA Act is wide and includes a range of securities as provided in the definition below.

“Securities” means-

- (i) debentures, stock, or bonds issued or proposed to be issued by a government;*
- (ii) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;*
- (iii) any right, warrant, option, or futures in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities; or*
- (iv) any instruments commonly known as securities, but does not include-*
 - (A) bills of exchange;*
 - (B) Promissory notes; or*
 - (C) certificates of deposit issued by a bank or financial institution licensed under the Bank of Uganda Act.*

The wide definition of securities has presented a challenge to the CMA in trying to develop specific regulations for every unique security that does not fit the existing public offer of securities legal framework.

Developing specific regulations for every exceptional security to be offered to the public is neither tenable nor efficient as there are a limitless number of securities that can be offered to the public as the level of innovation in the market. Developing regulations is a long and tedious process which may not meet the needs for market development for new and innovative securities products.

b) Regulatory Guidance Note on Offer of Exceptional Securities to the Public

Under Section 5(2) (d) and (h) of the CMA Act, the Authority may formulate principles for guidance of the securities industry and create the necessary environment for the orderly growth and development of the capital market. The Authority hereby exercises the above powers to guide the securities market in Uganda on the following aspects;

“Exceptional securities” refers to securities as defined in section 2(hh) of the CMA Act, Cap 84 which does not have specific regulation.

“Exceptional securities” includes any securities which are not;

- a) Shares
- b) Corporate Bonds
- c) Commercial paper
- d) Asset Backed Securities

The current specific securities regulation under the Capital Markets Authority Act, Cap 84 are contained in the Capital Markets (Asset Backed Securities) Regulations, 2012, the Capital Markets (Corporate Bond) Guidelines, 2003 and the Capital Markets (Commercial Paper) Guidelines, 2003.

1. Offer of Exceptional Securities to the Public shall be made under CMA Act, Cap 84 and the Capital Markets (Prospectus Requirement) Regulations, SI 84-2 (as amended) and other relevant regulations and guidelines.
2. The Authority shall in its discretion grant exemptions under Section 90D of the CMA Act, Cap 84 (as amended) on all matters related to public offer of securities under part XA of the Act and the regulations issued thereunder.
3. Keeping in step with its mandate of investor protection, the CMA shall ensure that exemptions granted are published in the Uganda Gazette and a daily English newspaper of nationwide circulation.
4. The Authority shall continuously monitor the any person who is granted an exemption under Section 90D of the CMA Act, Cap 84 (as amended) and if a person contravenes the conditions of the exemption, the exemption shall be cancelled and a public announcement made in a daily English Newspaper of national wide circulation to that effect.
5. Foreign exceptional securities shall be guided by the Capital Markets (Cross border Introductions) Regulations, 2004 (as amended).
6. The Authority may issue specific directions for exceptional securities and these directions shall be complied with as required under Regulation 5 of the Capital Markets (Prospectus Requirement) Regulations, SI 84-2 (as amended) and the Capital Markets (Cross border Introductions) Regulations, 2004 (as amended).
7. The Exemptions, Directions and the attendant terms and conditions will be made on a case by case basis and may vary among different exceptional securities. However when more similar securities are offered to the public and as the market becomes more familiar with the product, CMA may then take the step of standardizing the industry best practice into a regulation that can be applied uniformly across all applications.
8. The Guidance Note is designed to empower the Authority to fast-track the roll-out of new products and services in Uganda's capital markets to ensure there is a timely regulatory response to changing market

dynamics pending the enactment of a comprehensive regulatory frameworks.

9. The Guidance Note will be reviewed by the Authority after every two years to revalidate the need for specific securities regulation.

Keith Kalyegira

Chief Executive Officer