

AREAS FOR AMENDMENT OF THE CAPITAL MARKETS AUTHORITY ACT

Action	Section of the Law	Proposed change	Justification
<p><i>i. Redefinitions</i></p>	<p>CMA Act Cap 84 Section 1</p>	<p>Amend the definition of “Broker” to read “means a person who carries on the business of buying or selling of securities as an agent for investors in return for a commission.”</p>	<p>A Broker is defined as a director of a member company or a partner of a member firm and does not make specific reference to the brokerage business</p>
		<p>Amend the definition “Credit Rating Agency” to clearly indicate that a credit rating agency can evaluate the credit worthiness of the issuer of securities and assign a credit rating to either the issuer or the securities.</p>	<p>The current definition does not recognize that a credit rating may apply to either an issuer or the securities.</p>
		<p>In the “Dealing of securities” definition, remove dealing as an agent in the definition and only allow for dealing as a principal.</p>	<p>Whereas dealer is defined as a person who carries on business of dealing in securities on his or her own account; the definition of dealing in securities allows for dealing both as principal and as an agent which contradicts the definition of dealer.</p>
		<p>In the definition of “Derivative”, remove the word “standardized”.</p>	<p>The use of the word “standardized” wrongly assumes that all derivatives are exchange traded.</p>
		<p>In the definition of “Investment house”, add provision allowing for an investment house to engage in fund management business and delete the reference to “listed or to be listed” as regards privatization.</p>	<p>The reference made to “list or to be listed” limits transaction for companies making public offers with no intention of listing and investment houses once granted approval should be able to carry on the business of fund management.</p>
		<p>Delete the term “registered venture capital fund” and introduce the term “Private Equity (PE) fund” which is a broad term for investment in a company that is not listed, while avoiding constraints on the legal form of the fund.</p>	<p>“Private equity fund” is a broad term for a pooled investment vehicle where an adviser pulls together money by various investors and makes investments in private companies on behalf of that fund.</p>
<p><i>ii. New Definitions</i></p>	<p>Section 30 (1) (P)</p>	<p>Creating a “private Equity Fund” as a license category</p>	<p>“Private equity fund” is a broad term for a pooled investment vehicle where an adviser pulls</p>

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			together money by various investors and makes investments in private companies on behalf of that fund.
	Section 90A	Amend the definition of “ Introduction ” to remove the requirement for the offer to be made by a company that is listed on an approved exchange and allow for “offer of shares that are publicly held, other than as a result of an immediately preceding public offer”, in addition to offer securities that are listed on another exchange.	Both regionally and internationally, introductions apply to instances where the shares are listed or non-listed
		Amend the definition of “Professional investor” to include High Net Worth Individuals (HNWI) as professional investors.	HNWI have the resources to better appreciate risk and return hence the categorization as professional investors.
	Section 2	Define transaction advisor and the roles played, as well as broker/ dealers and Investment Advisors being empowered to act as Transaction Advisors.	Clarity on the role of a Transaction advisor.
<i>iii. Deletions</i>	CMA Act Cap 84 Section 1	Delete the word “Exempt Dealer”	Section 47; The provision that made reference to exempt dealers was repealed.
	Section 24 (3) (A), Section 101 (2) (t)	Delete the provision requiring securities and commodities exchanges to maintain a fidelity fund and instead require professional indemnity or fidelity insurance for staff.	A fidelity fund may tie up organizational resources while professional indemnity insurance or fidelity insurance ensures investors who suffer loss as a result of commission or omission of staff of an exchange are compensated can be a cost-effective option.
	Section 68.7(b)	Delete reference to the fidelity fund.	A fidelity fund may tie up organizational resources while professional indemnity insurance or fidelity insurance ensures investors who suffer loss as a result of commission or omission of staff of an exchange are compensated can be a cost-effective option.

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	Section 24 (7)	Delete the word 'public interest'	The term 'public interest' is ambiguous.
	Section 30 (1) (n)	Delete 'Underwriter' from license category	An underwriter is a service provider within the fundraising value chain, similar to other providers such as lawyers and marketing agencies.
	Section 30 (5)	Delete the word 'register'	The scope of the Act envisages licensing and approving and not registration.
	Section 40	Repeal the Section with respect to deposit lodged for a broker or dealer licence.	The relevance of the deposit is unclear.
	Section 90C (1) (B)	Delete Bank of Uganda as an entity exempted from provisions of offer of securities to the public.	Bank of Uganda does not issue securities (correction of an error) as it is a fiscal agent of the Government of Uganda (the issuer).
	Section 90AH	Delete reference to Sections 26 (1) (d) and (e), 35(5) and 37(3).	These provisions were previously repealed and are therefore non-existent.
	Section 5(1).(c)	Delete the phrase "to maximum extent practicable" with respect to creating a market where participants are self-regulatory, as one of the functions of the authority.	Clarity
	Section 20	Amend the section on inspection of books, records and accounts of an approved person to include licensed persons and delete reference to "stock exchange"	Clarity
<i>iv. Clarity</i>	Section 24	Amend the word stock exchange to <u>securities exchange</u> and add commodities exchange to the title	Stock exchange is limiting whereas securities exchange covers all securities recognized by the Act. As regards the title, the text makes reference to both stock and commodities exchange whereas the title only refers to stock exchange.

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	Section 23	Amend the header from "Establishment, etc. of stock market" to read "Establishment of a securities exchange"	Removal of " stock exchange and etc" from the text.
	Section 24(7)	Remove reference to withdrawal of an approval and retain use of cancellation of approval.	The provision interchanges use of cancellation and withdrawal of the approval granted by the Authority thus the need for uniformity by maintaining cancellation.
	Section 25 (1)	Remove reference to council for securities or commodities exchange and replace with board of directors of securities exchange.	In practice, exchanges have boards as opposed to governing councils
		Add commodities exchange to last part of the provision to read "the board of directors of the securities exchange or <u>commodities exchange</u> shall forward a written...."	Equal application of the provision to commodities exchange as it does to a securities exchange.
	Section 30 (1)	Add "or licensed" to read "...unless that person is approved or licensed to carry out that activity under the Act as..."	The text of the provision only makes reference to approval.
	Section 30 (1) (f)	Amend reference to <u>stock exchange</u> to refer to <u>securities exchange</u>	
	Section 30 (4)	Amend the provision to add "licensed" to read 'a person approved or licensed"	The provision applies to both licensed and approved persons.
	Section 42	Make reference to licensed persons in addition to approved persons.	The requirement for notification of change in particulars only applies to 'approved persons' despite the fact that such notification is necessary for licensed persons as well.
	Section 43	Add licensed persons	Provision only makes reference to a register of approved persons.
	Section 65	Amend the provision on record keeping to apply both to licensed and approved	Provision only makes reference to approved persons thus the need to extend applicability to licensed persons who are required to maintain records.

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	Section 90AH	Amend the provisions to allow intermediaries to directly refer matters for adjudication to the Capital Markets Tribunal as opposed to seeking reference through the Authority.	Improve access to justice and remove elements that may be conceived as bias.
	Section 90.I and 90.P	Merge and amend both sections to allow for a supplementary prospectus for material changes in the prospectus and administrative options for changes not considered material by the Authority.	Provision of flexibility to issuers when it comes to amendment of either material or non-material matters in a prospectus.
	Section 20	Amend the section to provide the purpose for undertaking an inspection.	Clarity
<i>v. Fees, levies, penalties</i>	Sections 8(2) (B)	Insert the word “Levies” for the provision to read “all sums of money paid as fees <u>and levies</u> under this Act. All monies received by the Authority shall be retained by the Authority and used in accordance with the provisions of the PFMA	The Authority has been challenged regarding its collection of levies from the market, thus the need to regularize the collection of levies in the Act. The insertion will also ensure the Authority retains operational autonomy in order to be an effective regulator.
	Section 24 (10)	Amend the provision to allow for payment of levies in addition to the annual fees.	Regularization of collection of the CMA levy that has been contested.
	Section 99A	Provide for the quantum for civil penalties imposed under this provision.	To provide clarity and applicability of the administration of civil penalties.
	Section 101 (2) (b)	Provide for the prescription of levies to be charged on regulated activities in addition to fees that are already provided for.	The Authority has been challenged regarding its collection of levies from the market thus the need to regularize the collection of levies in the Act.
<i>vi. Solvency requirements</i>	Section 5 (2)(L)	Expressly allow for the monitoring of the solvency	It is a recommendation by IOSCO for supervisory

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<i>for market intermediaries</i>		of ALL market intermediaries by the authority.	authorities to ensure, on an ongoing basis, that market intermediaries have adequate capital to support the volume and nature of business undertaken and to provide a buffer so that unexpected or large losses within an institution do not immediately impinge on the interests of customers. Therefore, providing for monitoring of solvency for intermediaries ensures investor protection, which is a core mandate of the Authority.
<i>vii. Investor protection</i>	Section 28	Amend the provision to remove reference to public interest with respect to the removal of a CEO of a securities exchange and change governing council to board of directors.	Reference to public interest limits the Authority's intervention even in cases of breach of the law to instances affecting the general/a large section of the public. The Authority should be able to intervene in all cases of breach and for more efficient running of the securities or commodities exchange.
	Section 39	Amend Section 39 to allow for imposition of conditions and restrictions to approved persons as well.	The provision currently allows for imposition of conditions and restrictions to licensed persons. Extending it to approved persons will enable the Authority carry out its supervisory functions more effectively and further ensure uniformity.
	Section 44 (1)	Amend the text of the provision for revocation and suspension to apply to an approval and not just a license	Whereas the title indicates that revocation and suspensions applies to both approvals and licenses, the text of the provision only refers to licenses and not approvals thus limiting the power of the Authority.
	Section 44. (1) & (2)	Amend the text to provide clarity on the grounds for suspension and revocation of a licence.	Clarity on grounds for suspension and revocation of a licence or approval.
	Section 81(1)	Amend the text to widen coverage of the Investor Compensation Fund (ICF), to include all investors that suffer from failure of	Enhancement of investor confidence due to ICF coverage owing to the failure of approved or licensed persons, other than brokers as the case is currently.

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		licensed or approved persons.	
viii. Reduction of operational costs.	Section 34	Amend the provision to remove renewal and provide for perpetual licenses issued once unless revoked or suspended.	This reduces the administrative work involved in evaluating applications for renewal by the Authority therefore allowing the Authority to concentrate on supervision and ensuring efficiency in the market.
ix. Enhancement of market operations	Section 24 (3)	Amend the provision to insert the requirement for at least three brokers before the approval of a securities exchange.	Brokers as members of an exchange provide an interface between the exchange and investors, hence the requirement for Brokers who will interact with the public.
	Section 101.2	Insert a section requiring the Authority to prescribe procedures for short selling.	Short selling contributes to efficiency in price discovery, liquidity and vibrancy of public markets.
	Section 30.(1).(a) & (b)	Recombine broker and dealer licence categories.	Recombination will enhance market efficiency by allowing all brokers to be able to deal on their account.
	Section 30.(2)	Amend to allow brokers to act as Transaction Advisors and Investment Advisors to be able to act as market advisors and transaction advisors.	Reduction of the regulatory burden of having the Authority separately approve licencees as Transaction and Market Advisors.
x. Increased access to issuers	Section 90.P.4	Amend the text to allow the Authority leeway to determine the contents in a supplementary prospectus, notwithstanding Sec 90.G and 90.M.	Reduction in the regulatory burden on issuers of securities to increase access to market based finance.
	Section 90	Insert a provision allowing the Authority to delegate powers to approve public offers in writing.	Growth Market offerings target professional investors with an appreciation of the high risk and returns of investing in growth companies. Delegating of such offerings to a securities exchange will aid in reducing the time to market for issuers.