

RESEARCH NOTE ON REGULATORY PHILOSOPHY

April, 2021

Research and Market Development, Capital Markets Authority Uganda

1.0 Regulatory Philosophy

Effective regulation seeks to address the issues that may erode public confidence and participation in securities markets. Regulations are rules that set standards for conduct and that carry the force of law.¹ Regulators often act in response to a perceived need for regulations. Furthermore, regulation is needed when market solutions are insufficient for a variety of reasons.² As part of regulation, it is important for a regulator to have a regulatory philosophy. *A regulatory philosophy sets out the principles underpinning the way a regulator performs its functions, exercise its power and engages with the other stakeholders.*³ *A regulatory philosophy guides a regulator in the execution of duties under its regulatory mandate.*⁴

This note aims at developing a regulatory philosophy statement, which will guide the Capital Markets Authority (CMA) in carrying out its duties.

2.0 Building Blocks of a Regulatory Philosophy

A regulatory philosophy is based on key principles a regulator adopts in performing its role, according to its mission, values, and strategic objectives.⁵ In developing a regulatory philosophy statement, context is usually derived from:

- a. **The mission** of an organization which delineates an organisation's objectives and its approach to reach those objectives.
- b. **The vision** of the organization which reflects the desired long terms results of an organization's effort;
- c. **An organization's values** which are basic and fundamental beliefs that guide or motivate attitudes or actions.
- d. **Strategic objectives**, which are broad and clearly defined statements of 'end goals' that an organization aspires to achieve within a defined long-term timeframe.

¹ Chartered Financial Analyst Institute Investment Foundations. (2014). *Regulation*

² Chartered Financial Analyst Institute Investment Foundations. (2014). *Regulation*

³ <https://www.casa.gov.au/about-us/who-we-are/our-regulatory-philosophy>

⁴ <https://www.sfc.hk/en/Career/What-the-SFC-does/How-we-function/Regulatory-philosophy>

⁵ Securities and Commodities Authority United Arab Emirates. (2019). *The Regulatory Philosophy of the Securities and Commodities Authority*

Figure 1: Building Blocks of a Regulatory Philosophy



Source: Author

3.0 Regulatory Philosophy Principles of Securities Regulators in Other Jurisdictions

3.1 Securities and Futures Commission (SFC) of Hong Kong

The SFC is an independent statutory body set up in 1989 to regulate Hong Kong's securities and futures markets. The commission derives its investigative, remedial and disciplinary powers from the Securities and Futures Ordinance and subsidiary legislation. The commission is operationally independent of the Government of the Hong Kong Special Administrative Region. The following regulatory philosophy principles guide the SFC of Hong Kong in carrying out its duties:⁶

i) Staying firm but fair

SFC strives to regulate in a firm, fair, transparent and accountable manner. Not only does the Commission take firm and decisive enforcement action against misconduct, it also engages in more proactive oversight of listed companies' conduct and activities, to facilitate investor protection, market development and the continuing vibrancy of Hong Kong's markets.

ii) Focus on risk

SFC identifies and focuses its attention and resources on areas considered to be of higher risk. In addition, the Commission encourages industry participants to develop a robust compliance culture. In view of fast-changing market conditions

⁶ <https://www.sfc.hk/en/Career/What-the-SFC-does/How-we-function/Regulatory-philosophy>

and practices, it adopts a principles-based approach to set out requirements at a higher level, which can then be articulated by detailed codes, guidelines and rules.

iii) Forming partnerships

The Commission strives to achieve its objectives of protecting investors and encouraging market development by building strong relationships with those it regulates. SFC seeks to ensure a robust and vibrant market through forming partnerships and cooperating with different stakeholders such as other regulators, industry bodies, market intermediaries and investors.

Additionally, the actions the Commission takes reflect the principles behind its regulatory philosophy:

i) Firmness

The Commission takes firm and appropriate action against those who harm investors or damage market integrity, regardless of their position or status.

ii) Fairness

The Commission treats everyone fairly, taking into account the requirements of procedural fairness and natural justice in its decision-making processes.

iii) Consistency

The Commission strives to be consistent in its decisions and actions while keeping in mind the specific circumstances of each case.

iv) Negotiation and not dictating

The Commission believes open dialogue and negotiation produce more efficient and satisfactory results.

3.2 Securities and Commodities Authority (SCA) of United Arab Emirates

SCA is the securities regulator in the UAE, whose main objective is to supervise and monitor the capital markets. SCA's regulatory philosophy reflects the key principles that it adopts in all its businesses and in performing its role, according to its mission, values, and strategic objectives. They are as follows:⁷

i) Competitiveness

SCA's approach towards competitiveness aims at building a financial sector that benefits from the flexible economic environment. Such environment allows capital to grow from attractive investment returns and strengthens the high-added value financial economy, thus promoting prosperity. SCA also aims to improve the country's ranking in global competitiveness reports by working

⁷ Securities and Commodities Authority United Arab Emirates. (2019). *The Regulatory Philosophy of the Securities and Commodities Authority*

closely with its strategic partners to adopt the best policies and legislation that serve the aspirations of investors in the financial sector.

ii) Transparency and Disclosure

Transparency is a key principle that creates confidence in financial markets and the SCA works to entrench it. Transparency focuses on the provision of sufficient, timely information and data to all concerned parties in capital markets. It covers a number of areas, including: the transparency of financial markets, the transparency of securities issuers, the transparency of service providers, and the transparency of regulatory authorities.

Disclosure, on the other hand, focuses on the provision of information to all investors and interested parties in securities markets simultaneously and equally. SCA works to ensure that all information relating to securities and commodities markets is accessible to investors in a timely, highly efficient, effective, and transparent manner. This helps them make informed investment decisions. Such information may be financial statements or other material information that impacts securities prices. This is aimed at ensuring fair trade and preventing insider trading, where few investors gain access to material information and accordingly make sell-and-buy decisions in light of this advantage, while the majority of investors may not have access to this information and may therefore make uninformed investment decisions.

iii) Proportionality

The proportionality policy comes from the need to maintain a level of regulatory intervention (in the form of rules, constraints, penalties, or requirements) that is proportionate with what is needed to achieve the economic and regulatory objectives, in addition to the other targeted aims. This requires that any regulatory intervention is proportionate with the level of risk associated with a particular sector, product, or activity. SCA measures the legislative impact of all its regulatory and legislative procedures pre- and post-implementation to ensure that it is achieving its regulatory objectives without burdening licensed entities, listed companies, the economy, or the community with high costs that are disproportionate with its true objective.

iv) Commitment to Internationally-Recognized Standards and Principles

SCA is an active IOSCO member and is keen to bring its legislation and regulations in harmony with international standards and principles. This is evident from the rules and regulations it introduces to regulate the capital markets, in accordance with IOSCO's principles. For this reason, SCA introduces, reviews, and amends

draft rules and regulations relevant to its work and monitors their improvement in line with the best international standards and practices. It also reviews the relevant legal publications in line with the international legal developments and their impact on UAE financial markets.

v) Awareness

SCA is keen to execute its annual awareness plan to raise awareness about the legislation introduced using methods that guarantee enhanced awareness among the affected parties. Increasing awareness among all concerned parties and those affected by the implementation of the legislation is important to ensure compliance with the provisions of the law and the regulations, to limit violations, and to mitigate the negative impacts that may cause harm to one party if the provisions of the legislation were not implemented or bring benefit to a party at the expense of the other.

vi) Corporate Governance

SCA considers corporate governance to be an important matter to all local and international companies. To this end, SCA seeks to implement the highest standards of governance across listed companies, licensed entities, and self-regulatory organizations.

4.0 Conclusion

A regulatory philosophy statement for CMA should be based on key principles to be adopted in executing the Authority's role, organizational mission, values, and strategic objectives. The regulatory philosophy statement should aim at achieving the Authority's regulatory goals and ensuring a consistent and cohesive approach to actions and decisions.

In developing the regulatory philosophy statement, the Authority should focus on principles aimed at:

- i) Protecting investor interests and enhancing confidence in Uganda's capital markets;
- ii) Enhancing cooperation with strategic partners and other stakeholders and engaging them in initiatives;
- iii) Keeping doors open to suggestions, feedback, and comments from all related parties in the Ugandan capital market; and
- iv) Creating a facilitative regulatory environment that will drive issuance, innovation, adoption of international practices and enactment of a regulatory framework that is certain, friendly to innovation and cost effective for investors, issuers and market intermediaries.