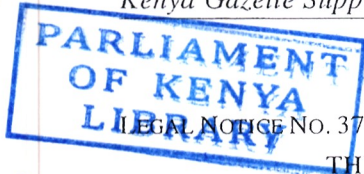




SPECIAL ISSUE

Kenya Gazette Supplement No. 22

4th March, 2016



(Legislative Supplement No. 17)

THE CAPITAL MARKETS ACT
(Cap. 485A)

THE CAPITAL MARKETS (DERIVATIVES MARKETS)
REGULATIONS, 2015

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FOR ENR LORD
By the leader of
majority party
Hon. Alan Duda
on Tuesday
12/4/16
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LEGAL NOTICE NO.

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 (1) of the Capital Markets Act, the Cabinet Secretary to the National Treasury, makes the following Regulations—

THE CAPITAL MARKETS (DERIVATIVES MARKETS)
REGULATIONS, 2015

PART I — PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Derivatives Markets) Regulations, 2015.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Capital Markets Act and any rules and regulations made thereunder; ;

“associate”, has the meaning assigned to it under section 3 of the Act;

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“Authority” has the meaning assigned to it under section 2 of the Act;

“board” means the board of directors of a derivatives exchange;

“clearing bank” means a bank, as defined under section 2 of the Banking Act, which is designated or appointed by a derivatives exchange to provide banking and other facilities to a —

- (a) derivatives exchange;
- (b) the clearing house of an exchange; and
- (c) brokers of an exchange;

to facilitate the maintenance of a segregated account and clearing and settlement functions; “clearing house” means a settlement system by which the claims and liabilities of derivatives brokers and their clients in respect of different derivatives contracts confirmed by the exchange are received, adjusted, settled and paid;

“client” means a person who is registered with a derivatives broker and has executed an agreement with the derivatives broker;

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“client assets” means —

- (a) money received or retained by, or any other property deposited with a derivatives broker in the course of the derivatives broker’s business;

- (b) any money or other property accruing from (a);

for which that derivatives broker has to account to a client;

“client funds” means money of any currency which a derivatives broker —

(3)

- (a) receives or deposits with a clearing house of a derivatives exchange on behalf of a client; or
- (b) owes to a client;

“client group account” means a bank account established and maintained by a derivatives broker for the purposes of regulation 65;

“corner” in relation to derivatives markets means acquisition of enough of a particular commodity or financial instrument or to hold a significant commodity or securities position sufficient to be able to manipulate its price;

“defaulter” means a derivatives broker who is the subject of any default proceedings instituted under these Regulations;

“demutualization” means the separation of ownership of an exchange from the right to trade on such exchange;

“demutualized exchange” means a derivatives exchange in which ownership and rights to trade are separate;

“derivatives broker” means a body corporate admitted to the membership of a derivatives exchange and by the Authority to engage in the business of trading in derivatives contracts as an agent for investors in return for a commission and on its own account;

“derivatives exchange” has the meaning assigned to it under section 2 of the Act;

“derivatives member” means a person admitted to the membership of a derivatives exchange in accordance with these Regulations and the rules of the derivatives exchange but does not refer to a shareholder or an equity holder of the derivatives exchange;

“derivatives contract” means a standardized type of securities or financial instruments which derives its value from the value of underlying assets, indices, or interest rates that are transacted on a derivatives exchange;

“derivatives market” has the meaning assigned to it under section 2 of the Act;

“financial year” means the period of twelve months ending on the thirty first December in each year;

“investor protection fund” means a fund established under regulation 31;

“key personnel” has the meaning assigned to it under the Act;

“liquid networth” means the aggregate value of paid-up equity share capital plus free reserves excluding statutory funds, benefit funds, and reserves created out of revaluation reduced by the investments in businesses, whether related or unrelated, aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;

“margin” means a deposit or payment made to create, vary or maintain a position in the derivatives contract, and includes market to market, regular and additional margins or such other margins, which may be specified by the derivatives exchange from time to time;

“market charge” means a charge, whether fixed or floating, granted in favour of a clearing house of a derivatives exchange —

- (a) over any property which is held by or deposited with the clearing house of a derivatives exchange; and
- (b) for the purpose of securing liabilities arising directly in connection with the clearing house of a derivatives exchange, ensuring the settlement of a market contract;

and where a charge is granted partly for the purpose of a market charge and partly for other purposes, the charge for the purposes of these Regulations is a market charge in so far as it has effect for the specified purpose;

“market collateral” means any property which is held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house, ensuring the settlement of a market contract and where any collateral is granted partly for the purpose of a market collateral and partly for other purposes, the collateral for the purposes of these Regulations is a market collateral in so far as it has been provided for that specified purpose;

“market contract” means —

- (a) a contract entered into by a clearing house with a derivatives broker under a novation —
 - (i) which is subject to the clearing and settlement rules of the clearing house;
 - (ii) for the purpose of clearing and settling of transactions using the clearing facility; and
 - (iii) which is subject to the rules of the clearing house of a derivatives exchange whether before or after default proceedings have commenced; or
- (b) a transaction which is being cleared or settled through the clearing house, whether or not a novation is to take place;

“netting” means the determination of net payment or delivery obligations by setting off, adjusting obligations or claims arising out of buying and selling of derivatives contracts, discontinuation of business, dissolution, winding-up or insolvency or such other circumstances as may be specified in the rules of the derivatives exchange;

“net worth” means paid up capital and free reserves and other securities approved by the derivatives exchange from time to time, but does not include fixed assets, pledged securities, value of member’s card, unlisted securities, bad deliveries, debts or advances overdue for more than three months or debts or advances given to the associate

persons of the trading member or derivatives broker, prepaid expenses, losses, intangible assets and value of marketable securities less a haircut specified by the derivatives exchange and approved by the Authority:

“net capital balance” means the excess of current assets which includes cash at bank, trade receivables at book value less overdue for more than fourteen days, investments in listed securities and Government of Kenya bonds at market value less a haircut specified by the derivatives exchange and approved by the Authority, over current liabilities which include trade payables at book value, other liabilities as classified under International Financial Reporting Standards and contingent liabilities as classified under International Financial Reporting Standards;

“novation” means the act of a clearing house of becoming the legal counterparty to both parties of every trade;

“public interest director” means an independent director, representing the interest of investors in a derivatives market and who does not have any association with that derivatives market, either directly or indirectly;

“regulatory department” means a department of a derivatives exchange which is entrusted with regulatory powers and duties and such other departments as may be specified by the Authority;

“record” means all documentary and electronic materials created, generated, sent, communicated, received, or stored, regardless of physical form or characteristics;

“risk management” means the method of assessing, measuring and controlling risk using appropriate methods including statistical techniques;

“settlement” means the discharge of the rights and liabilities of the parties to the derivatives contract, whether by performance, compromise or otherwise;

“settlement guarantee fund” means a fund established and maintained by a derivatives exchange to strengthen the financial integrity of settlement by the derivatives exchange and used in a manner specified by the rules of the derivatives exchange;

“trading in derivative contracts” means making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view of purchasing or selling a derivatives contract; and

“tick size” means the minimum change in price of a derivative contract up or down.

PART II — LICENSING REQUIREMENTS AND DUTIES OF A DERIVATIVES EXCHANGE

3. A person shall not establish, run, conduct, organize or assist in establishing, running, conducting or organizing a derivatives exchange unless that person has obtained a license from the

Obligation to obtain a license.

Authority:

Provided that a securities exchange, which has been operating under the Act at the commencement of these Regulations and is desirous of running a derivatives market, shall apply to the Authority for an additional license for listing derivatives contracts under these Regulations and all the provisions of these Regulations shall apply to such securities exchange.

4. (1) A person who intends to establish a derivatives exchange shall submit an application for licensing to the Authority in the Form set out in the First Schedule.

Application for
license

(2) An application under subregulation (1) shall be accompanied by—

- (a) the copies of memorandum and articles of association and rules governing the operations of the exchange, which-
 - (i) are in a form satisfactory to the Authority; and
 - (ii) restrict the applicant to the business of operating a derivatives market and services incidental thereto;
- (b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (c) the prescribed licensing fees set out in the Second Schedule;
- (d) satisfactory bank references;
- (e) a business feasibility plan evaluated by an entity with a proven track record and expertise in derivatives or derivatives market development, establishment or management; and
- (f) such additional documents as the Authority may require.

5. In order to be entitled to apply for a licence under Regulation 4, an applicant shall be required to —

Consideration for
grant of license

- (a) be a company limited by shares;
- (b) be demutualized;
- (c) have a minimum authorized, issued and paid up equity share capital of one billion Kenya Shillings;
- (d) satisfy requirements relating to ownership and governance structure specified in these Regulations;
- (e) have its directors and shareholders who hold or intend to hold shares, determined as fit and proper persons as prescribed under section 24A of the Act;
- (f) satisfy the minimum liquid net-worth requirements specified in these Regulations;
- (g) have a minimum of one hundred million Kenya Shillings in the settlement guarantee fund before the commencement of trading;
- (h) satisfy requirements relating to financial capacity,

functional expertise and infrastructure;

- (i) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and
- (j) comply with any other conditions as may be specified by the Authority.

6. (1) An applicant seeking approval to operate a derivatives exchange shall establish and adopt derivatives exchange rules.

Rules of the
Exchange

(2) The rules adopted under subregulation (1) shall contain provisions on—

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the statutory committees of the board;
- (b) the powers of the chief executive officer including in emergency situations;
- (c) the granting of trading rights and non-transferable memberships of the derivatives exchange;
- (d) general obligations of the derivatives brokers who are its derivatives members;
- (e) specifications of the minimum parameters to be disclosed in respect of derivatives contracts to be listed with prior approval of the Authority;
- (f) the clearing and settlement of all trades in derivatives contracts by the clearing house of the derivatives exchange where the clearing house is wholly owned by the exchange or is its subsidiary;
- (g) the performance of novation, netting and guarantee settlement of trades;
- (h) complete segregation of business accounts of brokers from that of their clients and between different clients;
- (i) trading including validation of orders on the derivatives exchange;
- (j) the suspension of trading of any derivatives contract for the protection of investors or for the conduct of orderly and fair trading;
- (k) investigation into the trading practices and financial transactions of derivatives brokers and their clients;
- (l) the clearing house and designated clearing banks of the derivatives exchange;
- (m) the margining regime, daily marking to market of all open positions and variation margin call to derivatives brokers and their clients;
- (n) the methodology for determining the daily and final

settlement prices;

- (o) deliveries through the clearing house and obligations of the brokers;
- (p) the closing out of derivatives contracts in case of non-compliance with the rules of the derivatives exchange;
- (q) the mandatory maintenance of a settlement guarantee fund including provisions for pay in, pay out and topping up;
- (r) the mandatory maintenance of an investor protection fund including provisions for pay in, pay out and topping up;
- (s) the declaration of an event of default and disposal of defaulter's assets under lien or pledge;
- (t) the arbitration of disputes and provision for appeal to the Authority by derivatives brokers and investors; and
- (u) any other provisions specified by the Authority.

7. (1) A proposed derivatives exchange shall deploy a trading system which shall be approved by the Authority before such system is implemented.

Trading system.

(2) The trading system deployed under subregulation (1) shall—

- (a) be integrated with a clearing and settlement system;
- (b) have an online screen-based trading system for providing direct market access up to the client level via the internet;
- (c) be capable of establishing connectivity with brokers and their clients;
- (d) have the necessary infrastructure to ensure timely clearing and settlement of trades;
- (e) have an adequate risk management mechanism including a pre trade check performed by the trading system;
- (f) be capable of providing real time risk management and market surveillance tools for monitoring of trading activities of all brokers and their clients on a real time basis;
- (g) provide brokers and their clients a facility for accessing both the daily transactions and financial reports including ledgers;
- (h) have a facility to disseminate information about trades, quantities and quotes in real time to at least one information vending network which is accessible to investors in Kenya and internationally;
- (i) have adequate systems capacity supported by a business continuity plan including a disaster recovery site;
- (j) be established and maintained in a way as to ensure that it is secure and maintains the confidentiality of data; and
- (k) have any other features and functionalities specified by the

Authority.

8. (1) The Authority may, if satisfied that the applicant has demonstrated that it is capable of complying with the requirements under regulations 4, 5, 6 and 7, grant the applicant a provisional license to operate a derivatives exchange.

Grant of provisional approval.

(2) The provisional license granted under subregulation (1) shall be valid for a period of six months:

Provided that the Authority may, upon sufficient cause shown by the applicant, extend the validity of the provisional license for a further period not exceeding three months.

9. The Authority may, before and after granting a provisional license to an applicant for a derivatives exchange license, make inquiries and require such further information or document to be furnished, as the Authority may consider necessary.

Power to make inquiries and call for information.

10. (1) The Authority may, after the expiry of the period for which the provisional license had been granted under regulation 8 and if the Authority is satisfied that the applicant has complied with regulations 4, 5, 6, 7 and any other relevant requirements under the Act, grant a license to the applicant to operate a derivatives exchange.

Grant of licence

(2) A derivatives exchange shall comply with such other conditions as the Authority may impose from time to time, including conditions with regard to —

- (a) the nature of derivatives contracts to be dealt with by that derivatives exchange; and
- (b) approval by the Authority of all derivatives contracts to be listed by that derivatives exchange.

11. A license granted under regulation 10 shall remain valid unless suspended or revoked by the Authority.

Period of license

12. A derivatives exchange shall pay a regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

Regulatory fee

13. (1) The Authority may, by notice in writing, revoke a derivatives exchange license granted under these Regulations with effect from the date specified in the notice if the derivatives exchange —

Revocation of license

- (a) ceases to comply with the eligibility conditions specified under regulations 5, 6 and 7;
- (b) ceases to operate a derivatives market that it has been to operate under regulation 10;
- (c) is being wound up;
- (d) fails to comply with any requirement of the Act or these Regulations;
- (e) fails to comply with a direction of the Authority;
- (f) fails to provide the Authority with information required by

the Authority;

- (g) provides false or misleading information;
- (h) is operating in a manner detrimental to the public interest; or
- (i) requests the Authority to do so.

(2) For the purposes of subsection (1), a derivatives exchange shall be deemed to have ceased to operate its derivatives market if the derivatives exchange has ceased to operate its derivatives market for more than thirty days unless the derivatives exchange has obtained prior written approval of the Authority to do so.

(3) The Authority may, by notice served under subregulation (1), allow the derivatives exchange to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Authority may specify in the notice for the purpose of –

- (a) closing down the operations of the derivatives exchange; or
- (b) protecting the interests of the public.

(4) The Authority shall not, except where responding to a request under subregulation (1) (i), revoke a derivatives exchange license without giving the derivatives exchange an opportunity to be heard.

(5) Where the Authority revokes the license of a derivatives exchange, the Authority shall publish a notice of that revocation in at least two newspapers of nationwide circulation in Kenya.

14. A revocation of license under regulation 13 shall not operate so as to –

Effect of
revocation

avoid or affect any agreement, transaction or arrangement entered into on the derivatives market operated by the derivatives exchange where the agreement, transaction or arrangement was entered into before the revocation of the license; or

- (a) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Net worth of a Derivatives Exchange

15. (1) A derivatives exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that derivatives exchange to ensure that there is no significant risk that liabilities may not be met as they fall due.

Net worth
requirements.

(2) The minimum liquid networth capital requirement for a derivatives exchange shall be –

- (a) an amount equal to one half of the estimated gross operating costs of the derivatives exchange for the next twelve-month period; or
- (b) such other liquid networth amount as may be prescribed by

the Authority.

(3) A derivatives exchange shall have systems and controls to enable the derivatives exchange to determine and monitor whether its liquid networth is sufficient for the purposes of subregulation (1) and the minimum liquid networth requirement for the purposes of subregulation (2).

(4) A derivatives exchange shall submit to the Authority an audited liquid networth certificate from the auditor on a quarterly basis within thirty days after the end of every quarter.

Ownership of a Derivatives Exchange

16. (1) Save as otherwise provided for in these Regulations, the shareholding or voting rights of any person in a derivatives exchange shall, at all times, not exceed the limits specified in this Part.

General
conditions

(2) The shareholding as specified in this Part shall include any instrument owned or controlled, directly or indirectly, which provides for entitlement to equity or rights over equity at any future date.

17. (1) At least fifteen percent of the paid up equity share capital of a derivatives exchange shall be held by a Kenyan entity.

Shareholding in a
derivatives
exchange

(2) No individual or corporate person shall —

- (a) control or be beneficially entitled directly or indirectly, to more than twenty five per cent of the issued share capital or voting rights of a derivatives exchange;
- (b) be entitled to appoint more than twenty-five per cent of a board; or
- (c) be entitled to receive more than twenty-five percent of the aggregate dividends to be paid in any given financial year.

(3) Where an applicant under subregulation (2) is an individual and does not meet the requirements of this regulation, that individual shall be required to comply with the requirements of this regulation within five years from the date of issue of a license to operate a derivatives exchange.

(4) Subregulation (2) shall not apply where the ownership structure of a corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five percent of its shares, votes, directorship appointments or dividend.

18. (1) A person shall not, directly or indirectly, acquire or hold five per cent or more of the equity shares of a derivatives exchange unless that person has been certified by the Authority as fit and proper.

Eligibility for
acquiring or
holding shares

(2) A person who, directly or indirectly, either individually or collectively with other persons, plans to acquire equity shares such that the shareholding of that person exceeds five percent of the paid up equity share capital of a derivatives exchange, shall seek approval of the Authority at least fifteen days prior to the proposed date of

acquisition.

(3) A person who holds more than five percent of the paid up equity share capital in a derivatives exchange, shall file a declaration within fifteen days of the end of every financial year to the derivatives exchange, as the case may be, that that person complies with the fit and proper criteria provided in the Act.

(4) Any person who —

- (a) holds five per cent or more of the equity shares of a derivatives exchange; and
- (b) does not in the opinion of the Authority, fulfill the fit and proper criteria as set out under the Act —
 - (i) shall cease to exercise any voting rights immediately upon the derivatives exchange being notified in writing by the Authority, that the shareholder does not fulfill the fit and proper criteria as set under the Act; and
 - (ii) reduce the holding of equity shares to less than five per cent of the share capital of the derivatives exchange within twelve months, or such longer period as the Authority may determine.

19. (1) Without prejudice to any provision of these Regulations, a derivatives exchange shall disclose to the Authority, in the format specified by the Authority, the shareholding pattern of the derivatives exchange on a quarterly basis within fifteen days from the end of each quarter.

Disclosure of
shareholding.

(2) The disclosure under subregulation (1) shall include —

- (a) the names of the ten largest shareholders and the number and percentage of shares held by each of them;
- (b) the names of the shareholders falling under regulations 17 and 18 who acquire shares in that quarter.

(3) A derivatives exchange shall at all times monitor and ensure compliance with this Part.

20. A derivatives exchange shall, in addition to the requirements under any other laws, retain and preserve all the books, registers, minutes of the board meetings and other documents for a period of not less than seven years.

Record keeping.

Governance of a Derivatives Exchange

21. (1) The board of a derivatives exchange shall comprise of—

- (a) shareholder directors;
- (b) at least one third public interest directors; and
- (c) a chief executive officer:

Composition of
the board.

Provided that the chief executive officer of a derivatives

exchange shall not be the chief executive officer of a subsidiary of a derivatives exchange.

(2) A derivatives broker who is a derivatives member or an associate or an agent of that derivatives broker shall not be a member of the board of any derivatives exchange.

(3) At least one public interest director shall be present in the meetings of the board to constitute the quorum.

22. (1) A derivatives exchange shall submit for approval by the Authority, the names of proposed directors for appointment to the board of a derivatives exchange thirty days prior to their appointment or re-appointment.

Conditions of
appointment of
directors.

(2) A public interest director appointed under subregulation (1) shall serve for a fixed term of three years and shall be eligible for re-appointment for one further term.

23. (1) A derivatives exchange may change its chief executive with the prior written consent of the Authority and in accordance with any conditions that may be imposed by the Authority.

Appointment of
chief executive
officer.

(2) A derivatives exchange shall, subject to the guidelines issued by the Authority from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

(3) The tenure under any contract for the chief executive officer of a derivatives exchange shall not be less than three years and not exceeding five years:

Provided that the tenure of office of the chief executive of a derivatives exchange may be renewed for one further term.

(4) No person shall be appointed as the chief executive officer of a derivatives exchange if the person is —

- (a) a shareholder or an associate of a shareholder of any derivatives exchange; or
- (b) a shareholder or an associate of a derivatives broker.

(5) The board of a derivatives exchange may, with the prior approval of the Authority, terminate the appointment of its chief executive officer—

- (a) if the chief executive officer fails to comply with the articles of association of the derivatives exchange; or

to give effect to the directions, guidelines and other orders issued by the Authority, under the Act or these Regulations.

(6) The Authority may on its own motion, terminate the appointment of a chief executive officer of a derivatives exchange if the Authority considers it to be in the public interest:

Provided that the Authority shall not terminate such services

without giving the chief executive officer a reasonable opportunity of being heard.

24. (1) Every director of a derivatives exchange shall abide by the Code of Conduct set out in Part A of the Third Schedule.

Code of conduct for directors and key personnel.

(2) Every director and key personnel of a derivatives exchange shall abide by the Code of Ethics set out in Part B of the Third Schedule.

(3) Every director and key personnel of a derivatives exchange and its clearing house shall be fit and proper persons as prescribed under section 24A of the Act.

(4) The Authority may, if a director of a derivatives exchange fails to abide by these Regulations, the Code of Conduct or the Code of Ethics or in case of any conflict of interest, either upon a reference from the derivatives exchange or on its own motion, take appropriate action including removing or terminating the appointment of any director, after providing that director a reasonable opportunity of being heard.

25. (1) A derivatives exchange shall establish a compensation committee comprising of a majority of public interest directors.

Compensation and tenure of key personnel.

(2) The compensation committee established under subregulation (1) shall —

- (a) be chaired by a public interest director; and
- (b) establish a compensation policy for all employees of the derivatives exchange.

(3) The compensation policy under subregulation (2) (b) shall be subject to the approval of the Authority.

(4) The compensation given to the key personnel shall be disclosed in the annual report of the derivatives exchange.

(5) The tenure of key personnel, other than a director, shall be for a fixed period, or as may be determined by the derivatives exchange compensation committee.

26. A derivatives exchange shall separate the regulatory department from other departments in the manner set out in Part C of the Third Schedule.

Segregation of regulatory departments.

27. (1) A derivatives exchange shall establish independent oversight committees of the board.

Oversight committees.

(2) The committees established under subregulation (1) shall —

- (a) be chaired by a public interest director; and
- (b) address the conflicts of interest in respect of—
 - (i) the regulation of futures brokers who are derivatives members;

- (ii) derivatives contracts design; and
- (iii) trading and surveillance functions.

(3) A head of department handling the matters referred to in subregulation (2)(b) shall report directly to the respective committee and to the chief executive officer.

(4) Any action of a derivatives exchange against a head of a regulatory department specified under subregulation (2) (b) shall be subject to an appeal to the respective committee, within such period as the board may determine.

28. (1) The board of a derivatives exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product design, technology, charges and levies.

Advisory
Committee.

(2) The advisory committee established under subregulation (1) shall comprise of the derivatives brokers who are members of a derivatives exchange.

(3) The chairperson of the board and the chief executive officer shall be permanent invitees to every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year but a period of three months shall not elapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the derivatives exchange for consideration and appropriate decision of the board, and such recommendations along with the decision of the board on the same, shall be disclosed on the website of the derivatives exchange.

(6) A derivatives member shall not be a member of any other committee of the derivatives exchange.

29. (1) A derivatives exchange shall establish a risk management committee comprising of directors and independent external experts.

Risk management
Committee.

(2) The risk management committee established under subregulation (1), shall —

- (a) report to the board;
- (b) formulate a detailed risk management policy which shall be approved by the board;
- (c) monitor the implementation of the risk management policy; and
- (d) keep the Authority and the board informed on the implementation of policy and any deviation.

(3) The head of the risk management department shall —

- (a) be responsible for implementation of the risk management

policy; and

- (b) report to the risk management committee and to the chief executive officer of the derivatives exchange.

30. (1) A derivatives exchange shall appoint a compliance officer from amongst its employees.

Appointment of compliance officer.

(2) A compliance officer appointed under subregulation (1) shall be responsible for —

- (a) monitoring compliance by the derivatives exchange with its articles of association, rules, these Regulations, the Act, any guidelines or directions issued thereunder; and
- (b) the redress of investors' grievances.

(3) The compliance officer shall, immediately and independently, report to the Authority, the lack of compliance with any provision stated in subregulation (2).

31. (1) A derivatives exchange shall establish an investor protection fund which —

Establishment of an investor protection fund.

- (a) is separate from the board of a derivatives exchange;
- (b) comprises of contributions by derivatives brokers and derivatives exchanges; and
- (c) is intended to satisfy the claims of clients against derivatives brokers.

(2) The fund referred to subregulation (1) shall be managed by trustees appointed and holding office under a trust deed drawn by the board of a derivatives exchange.

32. A derivatives exchange shall comply with the disclosure requirements and corporate governance norms applicable to listed companies where no specific provisions have been made under these Regulations.

Disclosure and corporate governance norms.

33. (1) A derivatives exchange may levy penalties for breach of these Regulations.

Transfer of penalties

(2) All penalties levied under subregulation (1) shall be credited to the investor protection fund established by the derivatives exchange.

Duties of a Derivatives Exchange

34. (1) A derivatives exchange shall ensure —

Duties of Derivatives exchange.

- (a) a fair, efficient and transparent market in derivatives contracts that are traded on its derivatives market; and
- (b) that risks associated with the business and operations of that derivatives exchange are managed in a prudent manner.

(2) A derivatives exchange, in discharging its duty under subregulation (1), shall —

- (a) act in the interest of the public; and

- (b) ensure that the interest of the public prevails where it conflicts with the interest of the derivatives exchange, derivatives brokers who are its members, shareholders or the management.

(3) A derivatives exchange shall operate its facilities in accordance with the rules approved by the Authority.

(4) A derivatives exchange shall regulate the operations, standards of practice and business conduct of derivatives brokers who are its members and representatives or other employees of those derivatives brokers in accordance with the rules, policies, procedures and practices of the derivatives exchange.

(5) A derivatives exchange shall formulate and implement appropriate procedures for ensuring that the derivatives brokers who are its members and representatives or other employees of those derivatives brokers comply with the rules of the derivatives exchange.

(6) A derivatives exchange shall preserve confidentiality with regard to all information in its possession concerning derivatives brokers who are its members and their clients, except that such information may be disclosed by the derivatives exchange when required in writing to do so by the Authority or if the derivatives exchange is ordered to do so by a court of law.

(7) A derivatives exchange shall immediately notify the Authority, if the derivatives exchange becomes aware —

- (a) that any derivatives broker who is a member of the derivatives exchange is unable to comply with any rules of the derivatives exchange or any financial resources requirements; or
- (b) of a financial irregularity or other matter which, in the opinion of the derivatives exchange, may indicate that the financial standing or integrity of a derivatives broker, who is its member, is in question, or that a derivatives broker, who is its member, may not be able to meet its legal obligations.

35. A derivatives exchange shall at all times provide and maintain

Facilities to be maintained by a Derivatives exchange.

- (a) adequate and properly equipped premises;
- (b) competent and trained personnel to effectively discharge the functions of a securities exchange ; and
- (c) an automated trading system which meets the requirements under regulation 7 and pre-approved by the Authority for the conduct of its business.

36. (1) A derivatives exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority.

Derivatives exchange to assist Authority

(2) Any assistance provided under subregulation (1) may include

- (a) the furnishing of returns and the provision of books and other information relating to the business of the derivatives exchange;
- (b) information in respect of trading in derivatives contracts; or
- (c) such other specified information as the Authority may require for the proper administration of its functions under the Act.

Self-Regulatory Organization

37. A derivatives exchange shall have —

Self- Regulation.

- (a) a procedure and appropriate system of exercising self-regulation over its derivatives members;
- (b) a code of conduct for its derivatives members;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

38. A derivatives exchange shall, as a condition for a license to operate a derivatives market, implement a system of self-regulation with respect to derivatives brokers, who are its derivatives members, and shall ensure the day to day management of trading, clearing settlement, delivery and all other activities of derivatives brokers, who are its derivatives members, are in accordance with—

Derivatives Exchange to oversee its members.

- (a) the rules of the derivatives exchange approved by the Authority; and
- (b) laws, regulations and guidelines relating to derivatives contracts issued by the Authority.

Accounts and Audit

39. (1) A derivatives exchange shall keep proper books of account and records of income and expenditure, assets and liabilities and all other transactions of the derivatives exchange.

Accounts and audit.

(2) The derivatives exchange shall, as soon as practicable after the end of each financial year, prepare a statement of accounts of the derivatives exchange for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) The derivatives exchange shall submit the statement of accounts prepared under subregulation (2) to its auditors for audit.

(4) The auditors shall prepare a report on the accounts and submit the report to the derivatives exchange.

(5) A derivatives exchange shall, immediately upon receipt of the auditor's report referred to under subregulation (4), send a copy of the report and a copy of the statement of accounts to the Authority.

(6) The auditors' report shall include —

- (a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of the derivatives exchange; and
- (b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of the derivatives exchange financial affairs at the end of that financial year.

(7) Every derivatives exchange and any employee or agent of a derivatives exchange, shall on demand by an audit firm —

- (a) provide any information; and
- (b) produce for inspection any books, vouchers and other records

that the audit firm may consider necessary for the performance of its duties.

40. The Authority may, where the Authority is satisfied that it is in the public interest to do so, appoint an auditor, in writing, at the expense of the derivatives exchange, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the derivatives exchange.

The Authority
may appoint an
auditor

41. (1) A derivatives exchange shall, within four months after the end of its financial year, submit to the Authority an annual report.

Annual report

(2) The annual report submitted under subregulation (1) shall include —

- (a) a description of the activities undertaken by the derivatives exchange in that financial year;
- (b) the resources, including financial, technological and human resources, that the derivatives exchange had available and used, in order to ensure compliance with its obligations and, in particular, the obligation of the derivatives exchange to ensure that the derivatives market operates in a fair, efficient and transparent manner;
- (c) an analysis of the extent to which the derivatives exchange considers that the activities undertaken, and resources used have resulted in full compliance with all of the obligations of the derivatives exchange under these Regulations and the rules of the derivatives exchange;
- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify.

PART III

CLEARING HOUSE OF A DERIVATIVES EXCHANGE

42. A derivatives exchange shall have a clearing house which may be —

- (a) managed and operated as a department of the derivatives exchange;
- (b) a wholly-owned subsidiary of the derivatives exchange;
- (c) an associate of the derivatives exchange; or
- (d) a third party contracted company.

Clearing house of a derivatives exchange

43. (1) A clearing house shall ensure that —

- (a) in so far as reasonably practicable, there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in derivatives contracts, cleared or settled through its facilities; and
- (b) the risks associated with its business and operations are managed in a prudent manner.

Duties of a clearing house of a derivatives exchange.

(2) In discharging its duty under subregulation (1), a clearing house shall —

- (a) act in the interest of the public; and
- (b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.

(3) A clearing house shall —

- (a) operate its facilities in accordance with the established clearing rules;
- (b) formulate and implement appropriate procedures to ensure that derivatives brokers comply with its rules;
- (c) ensure confidentiality of any information in its possession concerning its derivatives brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, the derivatives exchange or if it is ordered by Court to do so; and
- (d) have efficient procedures and arrangements to address investor complaints.

(4) A clearing house shall immediately notify the Authority if it becomes aware —

- (a) that any of its derivatives brokers is unable to comply with any rule of the clearing house or the derivatives exchange; and
- (b) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that-
 - (i) the financial standing or integrity of a derivatives broker is in question; or
 - (ii) a derivatives broker may not be able to meet its legal

obligations.

(5) A clearing house shall, for the conduct of its business, provide and maintain at all times —

- (a) adequate and properly equipped premises;
- (b) competent personnel;
- (c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,
- (d) security arrangements; and
- (e) technical support for the conduct of its business.

44. (1) A derivatives exchange shall make rules for its clearing house.

Clearing and settlement rules of a derivatives exchange

(2) Where a clearing house is a distinct entity from a derivatives exchange, the clearing house shall make its own rules.

(3) The rules made under subregulations (1) or (2) shall be subject to the approval of the Authority and shall provide for —

- (a) registration of derivatives contracts;
- (b) settlement of transactions involving derivatives contracts;
- (c) guarantee to its derivatives brokers the settlement of derivatives contracts;
- (d) types of margins to be applied on all open positions;
- (e) periodic marking to market of all open positions;
- (f) determining the daily settlement price and the final settlement price;
- (g) setting up a settlement guarantee fund;
- (h) setting up an investor protection fund; and
- (i) the procedure of expulsion, suspension or disciplining of a derivatives broker who contravenes the clearing and settlement rules of the derivatives exchange.

(4) In addition to the requirements of subregulations (1) and (2), the rules of a derivatives exchange and its clearing house shall also include default provisions, which shall provide for the procedure which a derivatives exchange may undertake in instituting default proceedings or taking any other action against a derivatives broker who has failed, appears to be unable, or is likely to become unable to meet its obligations for all unsettled or open market contracts to which the derivatives broker is a party.

(5) The default provisions shall in particular —

- (a) enable the settlement of all derivatives contracts;
- (b) provide, for the purposes of paragraph (a), for payment by or to a derivatives broker, a sum of money in relation to

each contract if that is required after taking into account all the rights and liabilities of the derivatives broker under or in respect of the derivatives contract concerned;

- (c) enable all sums of money payable by or to the derivatives broker as determined in accordance with paragraph (b), to be aggregated or set-off so as to produce a net sum, if any, payable by or to the derivatives broker;
- (d) provide that, if any net sum referred to in paragraph (c) is payable by the derivatives broker the net sum to be set-off against all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral or set-off against the proceeds of the realization of such property so as to produce a further net sum, if any, payable by or to the derivatives broker;
- (e) provide that, if any net sum referred to in paragraph (c) is payable to the derivatives broker, all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral shall cease to be subject to the market charge but without prejudice to any other form of charge to which it may be subject or to be market collateral but without prejudice to its provision as any other form of collateral, as the case may be; and
- (f) provide for the certification by the clearing house of any net sum referred to in r paragraph (c) payable to the derivatives broker, or of any further net sum referred to in paragraph (d) payable by or to the derivatives broker, as the case may be, or if there is no such sum, the certification by the clearing house of that fact.

(6) Where a clearing house takes default proceedings against a defaulter, all subsequent action taken under the rules of the clearing house for settlement of market contracts to which the defaulter is a party, shall be treated as taken under the default proceedings.

(7) The rules of a clearing house of a derivatives exchange shall apply to the employees of its derivatives brokers.

(8) The derivatives brokers of a clearing house shall ensure that its employees comply with the rules of the clearing house.

45. (1) Where property is subject to a market charge or has been provided as a market collateral, no execution or other legal process for the enforcement of a judgment or an order may be commenced or continued, and no distress may be levied, against the property by a person seeking to enforce any interest in or security over the property, except with the consent of the clearing house concerned.

(2) Where a person is not entitled, by virtue of this regulation, to enforce judgment or an order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

Ranking of
default
proceedings of
clearing house in
insolvency

46. (1) For the purposes of these Regulations, where a derivatives broker —

- (a) enters into any transaction, including a market contract with a clearing house of a derivatives exchange; and
- (b) is likely to be a party to that transaction as an agent,

Derivatives broker to be party to certain transactions as principal

notwithstanding any other law, as between the clearing house and any other person, including the derivatives broker and the person who is his principal in respect of that transaction, the derivatives broker shall for all purposes, including any action, claim or demand, either civil or criminal, be deemed not to be a party to that transaction as agent but as principal.

(2) For the purposes of these Regulations, where —

- (a) two or more derivatives brokers enter into any transaction; and
- (b) any such derivatives broker is likely to be a party to that transaction as agent,

notwithstanding any other law, any such derivatives broker to whom this regulation applies shall for all purposes, including an action, claim or demand, either civil or criminal, except as between that derivatives broker and the person who is its principal in respect of that transaction shall be deemed not to be a party to the transaction as an agent but as a principal.

47. (1) Subject to regulation 44, where a derivatives broker deposits any property with a clearing house as market collateral in accordance with the clearing and settlement rules of a derivatives exchange, then, notwithstanding any other law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person shall lie, or shall be commenced or allowed against the derivatives exchange or its nominees.

Property deposited with a clearing house

(2) The operation of subregulation (1) shall be subject to any modifications and exclusions provided in the clearing and settlement rules of the derivatives exchange.

48. These Regulations, except to the extent where they expressly provide for, shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person;
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Preservation of rights etc.

PART III

APPROVAL OF DERIVATIVES CONTRACT

49. (1) The Authority shall, by notice, prescribe transactions which may be conducted on a derivatives market.

Transactions that may be conducted on a derivatives exchange

(2) The transactions prescribed under subregulation (1) shall only be dealings in derivatives contracts or other financial products.

50. (1) Every derivatives contract shall be approved by the Authority prior to becoming eligible for listing on a derivatives exchange.

Approval of derivatives contracts.

(2) A derivatives exchange shall submit an application for approval of a derivatives contract to the Authority.

(3) Each application for approval of a derivatives contract shall include the following information —

- (a) size of the contract;
- (b) tick size;
- (c) duration of the contract;
- (d) mode of final settlement;
- (e) grade and quality of the underlying asset, if applicable;
- (f) position limits at the derivatives broker and client levels; and
- (g) any other information which the Authority may consider necessary.

(4) Upon receipt of an application under subregulation (2), the Authority may, if it is satisfied that the application fulfills the requirements under subregulation (3), approve the derivatives contract for listing on the derivatives exchange.

(5) If after the approval of the derivatives contract, the Authority finds the application or operationalization of the approved derivatives contract deficient in any material respect or that the derivatives exchange has failed to comply with any of the prescribed conditions or requirements or that the continued listing of the derivatives contract would not be in the public interest, the Authority may —

- (a) direct the derivatives exchange to correct the deficiency;
- (b) direct the derivatives exchange to comply with the prescribed condition or requirement within the specified time;
- (c) amend the specification of any derivatives contract; or
- (d) revoke the derivatives contract.

(6) An application submitted under subregulation (2) shall not be refused and an approval of a derivatives contract shall not be revoked unless the derivatives exchange has been given the opportunity of being heard.

PART V

LICENSING OF DERIVATIVES BROKERS

51. A person shall not carry on or purport to carry on business as a derivatives broker unless that person is licensed as a derivatives

Obligation to seek a license

broker by the Authority.

52. (1) A person who intends to operate as a derivatives broker shall submit an application for a license to operate as such to the Authority in Form 2 as set out in the Fourth Schedule.

Licensing of a derivatives broker.

(2) An application under subregulation (1) shall be accompanied by –

- (a) the prescribed fees as set out in the Fifth Schedule;
- (b) the documents, information and declarations specified under regulation 52; and
- (c) a letter from the derivatives exchange stating that the applicant meets all the relevant requirements of that derivatives exchange and that the derivatives exchange will admit the applicant if licensed by the Authority.

53. (1) An applicant seeking a license under regulation 51 shall be required to –

Consideration for grant of license.

- (a) be a company limited by shares;
- (b) have a chief executive who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, commodity derivatives contracts or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by the derivatives exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another securities exchange in addition to the derivatives exchange, the applicant shall provide an undertaking that it shall allocate a prescribed percentage of the net capital balance to support its activities at the derivatives exchange.

(3) The net capital required under regulation (3) shall –

- (a) not be less than the minimum required net capital balance at the derivatives exchange;
- (b) be kept segregated; and
- (c) be maintained at all times.

(4) A shareholder, a director and key personnel of the applicant shall be persons who have not defaulted in payment of dues at a clearing house.

54. (1) The Authority may, in considering an application made under regulation 51, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

Furnishing of information, clarifications, etc.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

55. (1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a derivatives broker.

Grant of licence.

(2) The Authority shall duly inform the derivatives exchange and the applicant of the grant of a licence under subregulation (1).

(3) A licence granted under subregulation (1) shall remain valid unless suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the derivatives exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority under subregulation (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

56. A derivatives broker shall pay an annual licence fee as set out in the Fifth Schedule.

Annual licence fees

57. (1) Where the Authority is satisfied that —

Suspension of a license.

- (a) a derivatives broker has failed to comply with any conditions subject to which the licence was granted under these Regulations;
- (b) a derivatives broker has failed to comply with the Act, these Regulations or any directions made or given thereunder;
- (c) a derivatives broker has contravened the rules of the derivatives exchange;
- (d) a derivatives broker has failed to adhere to any requirement of the code of conduct as laid down under these Regulations;
- (e) a derivatives broker has failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;
- (f) a derivatives broker has failed to furnish any information relating to the transactions of the derivatives broker in derivatives contracts as may be required by the Authority;

- (g) a derivatives broker has failed to submit periodical returns as required by the Authority;
- (h) a derivatives broker has furnished the Authority or the derivatives exchange with wrong or false information;
- (i) a derivatives broker has failed to settle an investor complaint where such complaint has been adjudicated by a securities exchange, a derivatives exchange, a committee of an exchange or the Authority;
- (j) a derivatives broker has not co-operated in any enquiry or inspection conducted by the Authority;
- (k) a derivatives broker has indulged in market manipulation, price rigging or cornering activities at a derivatives exchange;
- (l) a derivatives broker has experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the derivatives broker in the business of dealing in derivatives contracts is no longer in the interest of investors;
- (m) a derivatives broker has been suspended by a securities exchange or a derivatives exchange; or
- (n) a derivatives broker has failed to pay the annual fees; or
- (o) it is necessary in the public interest to do so,

the Authority may, by order in writing, suspend the licence of a derivatives broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under subregulation (1), give a derivatives broker an opportunity to be heard.

58. (1) The Authority may, by order in writing, revoke the licence of a derivatives broker where it is satisfied that —

Revocation of a license

- (a) the reasons for suspension of a licence under regulation 56 continue during the period of such suspension;
- (b) a derivatives broker whose licence has been suspended —
 - (i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;
 - (ii) has been found guilty of fraud or convicted of a criminal offence;
 - (iii) has not complied with a directive of the Authority; or
- (c) the membership of that derivatives broker has been cancelled by a derivatives exchange or another securities exchange; or

(d) it is necessary for the protection of investors,

(2) The Authority shall, before issuing an order of revocation under subregulation (1), give a derivatives broker an opportunity to be heard.

59. (1) A licence granted under regulation 54 shall automatically be revoked if the derivatives broker —

Automatic revocation of a license.

- (a) ceases to be a trading member of a derivatives exchange;
- (b) is declared a defaulter by a securities exchange or a derivatives exchange and is not re-admitted to membership within a period of six months from such declaration;
- (c) surrenders its membership in all derivatives exchanges where it is a member;
- (d) is declared insolvent by a court of law;
- (e) voluntarily surrenders the license to the Authority; or
- (f) is wound up by a court order.

60. A derivatives broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

Appeal against suspension or revocation of licence.

61. Despite a suspension or revocation of a licence under regulations 56, 57 or 58, a derivatives broker shall be responsible for clearing all its outstanding obligations up to the date on which that derivatives broker has been operating as such.

Derivatives broker to clear liabilities.

62. (1) A derivatives broker shall, as a condition of continued admission as a derivatives broker, provide to the Authority through the derivatives exchange a certified copy of —

Continuing obligations

- (a) the net capital balance;
- (b) net worth statements; and
- (c) a report of the auditor;

in a form that may be prescribed by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART VI

CONDUCT OF BUSINESS OF DERIVATIVES

63. The provisions of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 and the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 shall apply to derivatives brokers.

Standards of conduct
L.N 144/2011
L.N 145/2011

64. A derivatives broker shall undergo a periodic system audit in accordance with the directions issued by the Authority from time from time.

Systems audit.

65. A derivatives broker shall not open a derivatives trading account for a client unless the derivatives broker has —
- Risk disclosure statements
- (a) furnished the client with a separate written risk disclosure statement which shall be in such form and contain such information as may be prescribed by the derivatives exchange and approved by the Authority; and
 - (b) received an acknowledgement from the client signed and dated by the client confirming that the client has received and understood the nature and contents of the risk disclosure statement.
66. (1) A derivatives broker shall maintain strict segregation between its own funds and each individual clients' funds without any co-mingling between —
- Segregation of clients' funds.
- (a) its own funds and clients' funds; and
 - (b) individual clients' funds.
- (2) A derivatives broker shall establish a Client Group Account with the designated clearing bank of the derivatives exchange of which that derivatives broker is a derivatives member.
- (3) A derivatives broker shall ensure that all deposits and withdrawals on behalf of clients are only made through the Client Group Account established under subregulation (2).
- (4) A derivatives broker shall only accept a deposit towards initial margins, special margins, delivery margins, variation margins or fees by way of —
- (a) a cheque;
 - (b) a bank draft; or
 - (c) online bank transfer or via mobile banking transfer from a client designated account.
- (5) A derivatives broker shall immediately deposit any deposits under subregulation (4) in the Client Group Account maintained by the derivatives broker with the derivatives exchange designated clearing bank for onward transfer and credit to each individual clients' account at the clearing house of the derivatives exchange.
- (6) Any withdrawals requested by a client shall be processed by transferring funds from the individual clients' account maintained at the clearinghouse of the derivatives exchange to the Client Group Account maintained by the derivatives broker at the designated clearing bank of a derivatives exchange.
- (7) A withdrawal under subregulation (6) shall be settled either by a cheque drawn on the Client Group Account of the derivatives broker, by online bank transfer or by mobile banking transfer, to a designated client account, from the same account maintained at the designated clearing bank of a derivatives exchange.
- (8) A derivatives broker shall undertake and complete

reconciliation on a daily basis between-

- (a) the Client Group Account maintained at the designated clearing bank of a derivatives exchange;
- (b) the Client Group Account at the clearing house of a derivatives exchange; and
- (c) individual clients' account maintained at the clearing house of a derivatives exchange.

(9) A derivatives broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(10) A derivatives broker shall maintain a record of transactions with the banks including clients deposits and withdrawals from the client group account maintained with the derivatives exchange designated clearing bank.

PART VII

INSPECTION

67. (1) The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a derivatives broker, where there is need to —

The right of the Authority to inspect.

- (a) establish that the books of accounts and other records are being maintained in the manner required;
- (b) ensure that the provisions of the Act are being complied with;
- (c) investigate into the complaints received from investors, other derivatives brokers or any other person on any matter having a bearing on the activities of the derivatives broker; and
- (d) investigate on its own motion, in the interest of derivatives business or the interest of investors, into the affairs of a derivatives broker.

68. (1) The Authority shall, before undertaking an inspection under regulation 66, give the derivatives broker a reasonable notice of the intention to undertake an inspection.

Procedure for inspection.

(2) Notwithstanding subregulation (1), the Authority may direct, in writing, that an inspection of a derivatives broker be carried out without notice to the derivatives broker, if the Authority is satisfied that it is in the interest of the investors or in the public interest that no such notice should be given.

(3) The inspecting officers appointed under regulation 66, shall have the power to undertake the inspection of the derivatives broker as directed by the Authority and that derivatives broker is bound to discharge its obligation as provided under regulation 68.

69. (1) An inspecting officer may require a shareholder, director, officer or an employee of the derivatives broker under inspection to

Obligations of derivatives broker who is

produce, such books, accounts and other documents in his or her custody or control and furnish the inspecting officer with the statements and information relating to the transactions in derivatives market within such time as the inspecting officer may require.

under inspection

(2) A derivatives broker shall —

- (a) allow the inspecting officer reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;
- (b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and
- (c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, in the course of inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a derivatives broker under inspection.

(4) A director, an officer or an employee of the derivatives broker under investigation shall give to the inspecting officer any assistance in connection with the inspection which the derivatives broker may reasonably be expected to give.

70. The Authority may, after considering an inspection report, take such action as provided for under the Act.

Action on
inspection report

71. (1) The Authority may, in the interest of investors, appoint a qualified auditor to audit the books of accounts or to investigate any affairs of a derivatives broker at the cost of that derivatives broker.

Appointment of
an auditor

(2) Any shareholder, director, officer or employee of the derivatives broker which is being audited or investigated shall produce, to the auditor, such books, accounts and other documents in his or her custody or control and furnish the auditor with the statements and information relating to the transactions in derivatives market within such time as the auditor may require.

(3) A derivatives broker shall —

- (a) allow the auditor reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;
- (b) extend reasonable facilities to the auditor to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and
- (c) provide copies of documents or other materials which, in the opinion of the auditor, are relevant.

(4) An auditor shall, in the course of an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor or employee of a derivatives broker under audit or

investigation.

(5) A director, an officer or an employee of the derivatives broker under audit or investigation shall give the auditor all assistance in connection with the audit or investigation which the derivatives broker may reasonably be expected to give.

PART VIII

MARKET OFFENCES

72. (1) A person who creates, causes to be created, or does anything that is calculated to create a false or a misleading appearance of trading activity in a derivatives market, commits an offence. False trading.

(2) Without limiting the generality of subregulation (1), a false or a misleading appearance of trading activity is created if a person executes or holds himself or herself out as having executed an order for the purchase or sale in a derivatives market, without having effected a bona fide purchase or sale in accordance with the regulations, rules and practices of the derivatives market.

73. A person who directly or indirectly takes the opposite side of a client's order into a derivatives broker's own account or into an account in which a derivatives broker has an interest, without open and competitive execution of the order on the derivatives exchange, commits an offence. Bucketing.

74. (1) A person who directly or indirectly —

- (a) manipulates or attempts to manipulate the price of-
 - (i) a derivatives contract that may be traded on a derivatives market;
 - (ii) any commodity which is the underlying of a derivatives contract; or
- (b) corners, or attempts to corner, any commodity which is the underlying of a derivatives contract, commits an offence.

Manipulation of price of a Derivatives contract and cornering

75. (1) A person who, directly or indirectly, in connection with any transaction with any other person involving trading in a derivatives contract —

- (a) employs any device, scheme or artifice to defraud that person;
- (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that person; or
- (c) makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, misleading,

Employment of fraudulent or deceptive devices, etc.

commits an offence.

76. (1) A person who directly or indirectly, induces or attempts to Fraudulently

- induce another person to trade in a derivatives contract by —
- (a) making or publishing any statement, promise or forecast that is false, misleading or deceptive;
 - (b) concealing material facts; or
 - (c) recording or storing in, or by means of, any mechanical, electronic or other device, information that is false or misleading in a material fact particularly to induce or attempt to induce that person to trade in a derivatives contract,
- commits an offence.
77. A derivatives broker shall ensure that any derivatives business that the derivatives broker conducts in relation to derivatives contracts shall be concluded on or through the facilities of a derivatives exchange as may be provided by the rules of the derivatives exchange.
78. A person who is found guilty of an offence under this Part shall be liable to the penalty as specified under section 34A of the Act in addition to any action for damages in respect of the loss occasioned.

inducing trading
in derivatives
contracts

Trading of
derivatives
contracts off-
exchange is
illegal

Penalty

PART IX

GENERAL PROVISIONS

79. The Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 are repealed.
80. An exchange which was licensed under the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 and repealed by these Regulations shall continue to operate as if it is licensed under these Regulations and shall be required to comply with these Regulations.

Repeal of L N
108/2013

Savings
L N 108/2013

FIRST SCHEDULE

Form I

(r. 4(1))

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015
 APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A
 DERIVATIVES EXCHANGE

Application is made for a derivatives exchange license under the Act and the following are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application or renewal.

1. Name of the Company.....Limited
2. Registered office.....
3. Date of incorporation.....
4. Address.....
5. E-mail.....
6. Location, address and telephone number of principal office.....
-
7. Location, address and telephone number of branch offices.....
-
8. Details of capital structure:
 - (a) Nominal/authorized capital (Kshs.).....
 - (b) Number of shares.....
 - (c) Paid-up capital (Kshs.).....
9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held

10. (a) Directors (please attach a list)

Name	Identity card/Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company

(b) Secretary

Name.....

Address.....

Institute of Certified Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

Name	Identity card or Passport number.	Date of appointment	Date of birth.	Permanent address and telephone number	Academic and professional qualifications	Number of shares held in the company.
------	-----------------------------------	---------------------	----------------	--	--	---------------------------------------

11. Particulars of other directorship (s) of the directors and secretary.....

.....

12. Particulars of shares held by the directors and secretary in other companies.....

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details.....

.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No

If Yes, give details.....

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details.....

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodities exchange? Yes/No. If "yes" give details..

(2) have any of the above persons been-

(a) refused admission as a member of any securities organization? Yes/No. if Yes, give details.....

(b) expelled from or suspended from trading on any securities organization? Yes/No if Yes. give details.....

(c) subjected to any other form of disciplinary action by any stock exchange? Yes/No if Yes, give details.....

18. Business references:

Name	Address	Telephone number(s)	Occupation

19. Profile of the chief executive officer and key personnel in the applicant company

.....
.....

20. List of office facilities of the applicant.....
.....
.....
.....
.....

21. Any other additional information considered relevant to this applicant.....
.....
.....
.....
.....

We.....(Director)..... (Director)
and.....(Secretary) declare that all the information given
in this application and in the attached documents is true and correct.

Dated this.....day of.....20....

Signed:

.....) Director
.....) Director
.....) Secretary

Note:

- 1. The following shall be submitted with the application for a license:
 - (a) memorandum and articles of association;
 - (b) certificate of incorporation;
 - (c) feasibility plan complying with regulation 4 (2)(e);
 - (d) rules of the proposed derivatives exchange containing provisions in compliance with the matters detailed under regulation 3;
 - (e) details of the proposed trading system complying with the requirements of regulation 7;
 - (f) statements of the unaudited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in case of application of license);
 - (g) a declaration by directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of application-

- (i) the business of the company has, in their opinion, been satisfactorily maintained;
 - (ii) they have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;
- (h) a declaration by persons authorized as prescribed to accompany the application form; and
- (i) application fee.

SECOND SCHEDULE

(r. 4(2)) (c), 12)

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015
 LICENSING AND ANNUAL FEES FOR DERIVATIVES EXCHANGES

Application fees.....	Kshs. 2,500.00
Licensing fees.....	Kshs. 2,500,000.00
Annual regulatory fees.....	Kshs. 2,500,000.00

THIRD SCHEDULE

PART A

(r. 24(1))

Code of conduct for the directors on the board

i. Meetings and minutes.

Every director of the derivatives exchange shall—

- (a) not participate in discussions on any subject matter in which any conflict of interest exists or arises, whether pecuniary or otherwise, and in such cases the same shall be disclosed and recorded in the minutes of the meeting;
- (b) not encourage the circulation of agenda papers during the meeting, unless circumstances so require;
- (c) offer their comments on the draft minutes and ensure that the same are incorporated in the final minutes;
- (d) insist on the minutes of the previous meeting being placed for approval in subsequent meeting;
- (e) endeavor to have the date of next meeting fixed at each board meeting in consultation with other members of the board;
- (f) endeavor to ensure that in case all the items of the agenda of a meeting were not covered for want of time, the next meeting is held within fifteen days for considering the remaining items.

ii. Code of Conduct for the public interest directors.

- (a) In addition to the conditions stated in paragraph (i), public interest directors of the derivatives exchange shall, endeavor to attend all the board meetings and they shall be liable to vacate office if they remain absent for three consecutive meetings of the board or do not attend seventy five percent of the total meetings of the board in a calendar year.
- (b) Public interest directors shall meet separately, at least once in six months to exchange views on critical issues.

iii. Strategic planning.

Every director of the derivatives exchange shall—

- (a) participate in the formulation and execution of strategies in the best interest of the Derivatives exchange and contribute towards pro-active decision making at the board level;
- (b) give benefit of their experience and expertise to the Derivatives exchange and provide assistance in strategic planning and execution of decisions.

iv. Regulatory compliances.

Every director of the derivatives exchange shall—

- (a) endeavor to ensure that the derivatives exchange abides by all the provisions of the Act and regulations framed thereunder and the circulars, directions issued by the Authority from time to time;
- (b) endeavor compliance at all levels so that the regulatory system does not suffer any breaches;
- (c) endeavor to ensure that the derivatives exchange takes steps commensurate to honour the time limit stipulated by Authority for corrective action;
- (d) not support any decision in the meeting of the board which may adversely affect the interest of investors and shall report forthwith any such decision to the Authority.

v. General responsibility.

Every director of the derivatives exchange shall—

- (a) place priority for redressing investor grievances and encouraging fair trade practice so that the derivatives exchange becomes an engine for the growth of the derivatives market;
- (b) endeavour to analyze and administer the derivatives exchange issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- (c) submit the necessary disclosures/statement of dealings in derivatives contracts as required by the derivatives exchange from time to time as per their rules or articles of association;
- (d) unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in the discharge of their duty and no such information shall be used for personal gains;

- (e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties in order to inspire public confidence and shall not engage in acts discreditable to their responsibilities;
- (f) perform their duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official duties;
- (g) perform their duties with a positive attitude and constructively support open communication, creativity, dedication, and compassion;
- (h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the derivatives exchange.

PART – B

(r. 24(2))

Code of Ethics for directors and key personnel of Derivatives Exchange

The 'Code of Ethics' for directors and key personnel of the derivatives exchange, is aimed at improving the professional and ethical standards in the functioning of derivatives exchange thereby creating better investor confidence in the integrity of the derivatives market.

i. Objectives and underlying principles.

The Code of Ethics for directors and key personnel of the derivatives exchange seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key personnel, towards establishing a fair and transparent marketplace. The Code of Ethics is based on the following fundamental principles:

- (a) airness and transparency in dealing with matters relating to the derivatives exchange and the investors;
- (b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ derivatives exchange;
- (c) Exercising due diligence in the performance of duties; and
- (d) Avoidance of conflict of interest between self-interest of directors/ key management personnel and interests of derivatives exchange and investors.

ii. Ethics committee.

For overseeing implementation of this Code, an ethics committee shall be constituted by every Derivatives exchange under the respective board.

iii. General standards.

- (a) Directors and key personnel shall endeavor to promote greater awareness and understanding of ethical responsibilities;
- (b) Directors and key personnel, in the conduct of their business shall observe high standards of commercial honor and just and equitable principles of trade;
- (c) The conduct of directors and key personnel in business life should be exemplary which will set a standard for other members of the derivatives exchange;

- (d) Directors and key personnel shall not use their position to give/get favors to/from the executive or administrative staff of the derivatives exchange, technology or service providers and vendors of the Derivatives exchange;
- (e) Directors and key personnel shall not commit any act which will put the reputation of the derivatives exchange, in jeopardy; and
- (f) Directors, committee members and key personnel of the derivatives exchange, should comply with all rules and regulations applicable to the derivatives market.

iv. Disclosure of dealings in Derivatives Contracts by key personnel of the Derivatives Exchange.

Key personnel of the Derivatives exchange shall disclose on a periodic basis as determined by the laws, regulations, guidelines, rules relating to the Derivatives markets (which could be monthly), all their dealings in Derivatives contracts, directly or indirectly, to the board/ ethics committee/ Compliance Officer.

vi. Avoidance of conflict of interest.

- (a) No director of the board or member of any committee of the Derivatives exchange participate in any decision making/adjudication in respect of any person /matter in which he is in any way, directly or indirectly, concerned or interested.
- (b) Whether there is any conflict of interest or not in a matter, should be decided by the board.

vii. Role of the Chairperson and directors in the day to day functioning of the Derivatives exchange or clearing corporation.

- (a) The chairperson and directors shall not interfere in the day to day functioning of the Derivatives exchange and shall limit their role to decision making on policy issues and to issues as the board may decide;
- (b) The chairperson and directors shall abstain from influencing the employees of the Derivatives exchange in conducting their day to day activities; and
- (c) The chairperson and directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the board.

viii. Access to information.

- (a) Directors shall call for information only as part of specific committees or as may be authorized by the board.
- (b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.
- (c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/ gain.
- (d) Any information relating to the business/operations of the Derivatives exchange, which may come to the knowledge of directors/ key personnel during performance of their duties shall be held in strict confidence, shall

not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

ix. Misuse of position.

Directors/ committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

x. Ethics committee to lay down procedures.

- (a) The ethics committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code.
- (b) The compliance officer shall execute the requirements laid down by the ethics committee.

While the objective of this Code is to enhance the level of market integrity and investor confidence, it is emphasized that a written code of ethics may not completely guarantee adherence to high ethical standards. This can be accomplished only if directors and key personnel of the Derivatives exchange commit themselves to the task of enhancing the fairness and integrity of the system in letter and spirit.

PART – C

(r. 26)

Measures to ensure segregation of regulatory departments

In order to ensure the segregation of regulatory departments, every Derivatives exchange shall adopt a "Chinese Wall" policy which separates the regulatory departments of the Derivatives exchange from the other departments. The employees in the regulatory departments shall not communicate any information concerning regulatory activity to any one in other departments. The employees in regulatory areas may be physically segregated from employees in other departments including with respect to access controls. In exceptional circumstances employees from other departments may be given confidential information on "need to know" basis, under intimation to the compliance officer

FOURTH SCHEDULE

FORM 2

(r.52(1))

APPLICATION FORM FOR LICENCE AS DERIVATIVES BROKER

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

APPLICATION FORM

APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A
DERIVATIVES BROKER

Application is made for a derivatives broker licence under The Capital Markets (Derivatives Business) Regulations, 2015 and the following statements are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office.....
7. Location, address and telephone number of branch offices
8. Details of capital structure:
 - (a) Nominal capital (Kshs.)
 - (b) Number of shares
 - (c) Paid-up capital (Kshs)

9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held
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10 (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company
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(b) Secretary

Name.....

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic or Professional qualification	Number of shares held in the company
------	--------------------------------	---------------------	---------------	--------------------------------------	--	--------------------------------------

11. Particulars of other directorship(s) of the directors and secretary.

12. Particulars of shares held by directors or secretary in other companies

.....
13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details
.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....
(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.
.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.
.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.
.....

16. Is the applicant and/or a person associated with the applicant now the subject of anyproceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,' give details.
.....

17 (1) Is the applicant, or any shareholder, director or the secretary of the applicant, amember or director of a member company of any securities exchange? Yes/ No.

If 'yes', give details.
.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details
.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....
 (c) subjected to any other form of disciplinary action by any stock/securities exchange? Yes/No. If 'yes', give details.

18. Business references:

Name	Address	Telephone number (s)	Occupation
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19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
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21. List the office facilities of the applicant

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

23. Any other additional information considered relevant to this application:

We(Director), (Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence:

- (a) memorandum and articles of association
- (b) certificate of incorporation;
- (c) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years or an auditor's certificate in case of a newly established entities (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

EXPLANATORY MEMORANDUM TO THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2016

PART I

Name of Statutory Instrument: The Capital Markets (Derivatives Markets) Regulations, 2016

Name of the Parent Act : The Capital Markets Act, (Cap. 485A)

Enacted Pursuant to : Section 12 (1) of the Capital Markets Act

Name of the Ministry/Department: The National Treasury

Gazetted on : 26th February, 2016 (Legal Notice No. 37 of 2016)

Tabled on :

PART II

1. Purpose of Statutory Instruments

The Kenyan Vision 2030 has identified several sectors as the key drivers of the economy, in order to sustainably achieve average economic growth of 10 per cent, reduce poverty levels and boost food security. In addition, recent discoveries of oil, gas and other mineral resources are likely to sustain the creation of new industries over the next few years. Finally the country's potential for clean energy use in geothermal, hydroelectric, wind and solar power also supports the creation of a large energy sector that can support the growth of the broader region. As these sectors flourish, the capital markets will be well placed to offer spot markets and derivatives markets based on agriculture, energy and mineral/metal commodities.

Kenya's financial markets have reached the level of sophistication from which it can move to the next stage with the introduction of derivative markets (both financial and commodity derivatives). A well regulated derivatives market is therefore critical in realizing the full potential of the commodities and financial sectors in Kenya.

The requirements in a derivatives market are different from those of the cash securities markets. Whereas in securities markets the time between trading and settlement, when the two parties, are exposed to each other is typically measured in days, in derivative markets it may be measured in weeks or month

2. Legislative Context

The Capital Markets Act was amended by the Capital Markets (Amendment) Act, No.48 of 2013, to introduce anchoring provisions for the regulation of derivatives market in Kenya.

Prior to the enactment of The Capital Markets (Amendment) Act, 2013 (assented to on 24th December 2013 and with the commencement date of 10th January 2014), The Capital Markets (Futures Exchanges)(Licensing Requirements) Regulations, Legal Notice No. 108 of 2013 had been issued on June 18th 2013. These Regulations provide for the licensing and supervision of futures exchanges by the Capital Markets Authority.

The Capital Markets (Business of Derivatives), Regulations 2016 are proposed to repeal and replace the Capital Markets (Futures Exchanges)(Licensing Requirements) Regulations, issued under Legal Notice No. 108 of 2013.

The objective of the extensive revision of the existing Regulations is to implement the provisions of the Capital Markets Act through an expanded scope of the subsidiary legislation covering the entire spectrum of derivatives markets. This includes regulation of derivatives exchanges, clearing house, derivatives contracts and derivatives brokers.

3. Policy Background

The Government of Kenya through a policy pronouncement by the then Deputy Prime Minister and Minister for Finance, in his June 10, 2010 Budget Speech, announced that steps would be made towards developing institutional and legal frameworks to introduce a commodities and derivatives exchange in Kenya.

Subsequently, the Futures Exchange Programme was initiated by the Minister of Finance, resulting in the establishment of the Futures Market Committee comprising Ministry of Finance, Capital Markets Authority (the Authority), State Law Office, Ministry of Environment and Natural Resources and the Ministry of Trade.

The Policy Framework for the Establishment and Operations of a Derivatives Market was adopted in April 2013. The Policy recommended the need to have a legal and regulatory framework that provides for an oversight role by the Capital Markets Authority, disciplining those who try to manipulate the markets for their own benefit and ensuring the sanctity of contracts. This includes providing a licensing criteria for the market participants that meets the high standard required for futures and derivatives business. The policy is benchmarked to the Principles issued by the International Organization of Securities Commissions (IOSCO) which is the global standard setting body in securities markets.

The derivatives market will aid wider risk management for the whole economy through introduction of foreign exchange, interest rate and equity based derivatives. Additionally, the derivatives markets will introduce a more open, efficient and adequately regulated commodities markets covering a wider range of products.

4. Consultation Outcome

The Regulations were exposed for stakeholders and public comments for a thirty (30) days period commencing September 16, 2013 to October 16, 2013.

The Authority received several responses from the stakeholders and the public. The Nairobi Securities Exchange was a key stakeholder in this process.

The following is a summary of feedback obtained from stakeholders –

- (a) *Commercial banks should be allowed to be clearing banks.* It was clarified to stakeholders that the draft Regulations do not restrict banks from engaging as clearing banks. Additionally, any entity which meets the prescribed criteria can become a Derivatives broker.
- (b) *Approval of futures contracts.* There was a concern that futures contracts do not require prior approval from the Authority. A benchmark on the best practices in other jurisdiction (Malaysia, China, USA, India, UAE-Dubai) showed that futures contracts require prior approval by the regulator and therefore the need for prior approval was retained.
- (c) *The provision that distinguished futures contracts from gaming and wagering contracts was noted to be limiting the application of another Act of Parliament.* This provision was moved to the Capital Markets Act through the Capital Markets (Amendment) Act, No. 48 of 2013.
- (d) *Grant of exemptions.* Granting of exemptions from any of the provisions is not contemplated in the Regulations with sufficient safeguards to ensure proper exercise of discretion by the Regulator.
- (e) *Fit and proper test for substantial shareholders of an applicant.* A substantial shareholder is defined as any person who is the beneficial owner of, or in a position to exert control over, not less than 15% of the shares of the body corporate. The threshold is even lower than that in the banking sector where a shareholder with 5% or more must be vetted.
- (f) *Annual license fees.* The draft was revised to ensure consistency in all reference in relation to licensing fees and annual fees. However, the licensing fees for

derivatives brokers was set a nominal figure of Kshs. 50,000 in order to ensure ease of access and spread of the services across all counties.

- (g) *Stakeholders' sought to know whether Electronic Funds Transfer was provided for.* It is confirmed that the derivatives exchanges will adopt modern technology including leveraging on the existing money transfer platforms including Mpesa.
- (h) *The stakeholders sought to know whether the stipulated market offences list was comprehensive enough.* The stipulated derivatives related market offences seeks to expound and complement the general provisions on market offences under the Capital Markets Act. The applicable penalties are also stipulated under the Capital markets Act.

In order to ensure that the proposed regulations meet global best standards, the Authority sought input from its peers both locally and internationally. The Authority received insightful comments from Securities Commission of Malaysia, China Securities Regulatory Commission Dubai Financial Services Authority.

The Authority welcomed the comments and incorporated all appropriate proposals into the draft Regulations.

5. Guidance

The development of the Policy Framework on Futures and Derivatives involved wide stakeholder engagement especially in relation to simplifying the complex or technical terms and ensuring that the framework was well understood by the stakeholders. This included incorporation of experts in the process. The Authority has a very good rapport with stakeholders and this is expected to continue at implementation stage of these Regulations.

6. Impact

6.1 The Impact on Fundamental Rights and Freedoms

These Regulations do not limit the Fundamental Rights and Individuals as enshrined under chapter V of the Constitution. The establishment of a derivatives market in Kenya will expand the scope of business opportunities of the citizenry and thereby contribute to the economic development of the country. The Regulations therefore impact positively on economic rights of Kenyans.

6.2 The impact on the Private Sector

The Regulations establish a licensing criteria for derivatives exchanges and brokers and the conduct of derivatives business. This will facilitate the establishment of derivatives business resulting in a widened scope of business for the private sector.

6.3 The impact on the Public Sector

The Regulations enhance economic development especially in commodities business and currency futures. This will result in stability of prices of commodities, reduce interest rate and currency risks thereby leading to a more stable economy.

6.4 Impact Assessment

The Policy Framework for the Establishment of a Futures and Derivatives Market in Kenya highlights the following-

- (a) The success of a futures exchange is dependent on sound legal and regulatory principles as well as high standards for licensing of futures members. This will ensure that there is a high probability of success;
- (b) for futures and derivatives business to be firmly established in Kenya, the regulations on risk management, investor protection, trading systems and capital and solvency requirements for market players are key prerequisites; and
- (c) a futures exchange requires a developed financial system with capacity building and training for market participants.

7. Monitoring and review

For futures and derivatives business to be efficient and successful, regulatory oversight and supervision are key. The Authority will be undertaking capacity building for the stakeholders and its staff as well as provide guidance to potential and licensed players.

Since the market is new in Kenya, the Regulations will be reviewed periodically to ensure that they facilitate the growth and efficiency of futures and derivatives business.

8. Contact

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Cabinet Secretary for the National Treasury

18th March 2016

SPECIAL ISSUE

1529

Kenya Gazette Supplement No. 22

4th March, 2016

(Legislative Supplement No. 17)

LEGAL NOTICE NO. 37

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (DERIVATIVES MARKETS)
REGULATIONS, 2015

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LEGAL NOTICE NO.

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 (1) of the Capital Markets Act, the Cabinet Secretary to the National Treasury, makes the following Regulations—

THE CAPITAL MARKETS (DERIVATIVES MARKETS)
REGULATIONS, 2015

PART I — PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Derivatives Markets) Regulations, 2015.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Capital Markets Act and any rules and regulations made thereunder; ;

“associate”, has the meaning assigned to it under section 3 of the Act;

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“Authority” has the meaning assigned to it under section 2 of the Act;

“board” means the board of directors of a derivatives exchange;

“clearing bank” means a bank, as defined under section 2 of the Banking Act, which is designated or appointed by a derivatives exchange to provide banking and other facilities to a —

- (a) derivatives exchange;
- (b) the clearing house of an exchange; and
- (c) brokers of an exchange;

to facilitate the maintenance of a segregated account and clearing and settlement functions; “clearing house” means a settlement system by which the claims and liabilities of derivatives brokers and their clients in respect of different derivatives contracts confirmed by the exchange are received, adjusted, settled and paid;

“client” means a person who is registered with a derivatives broker and has executed an agreement with the derivatives broker;

Cap. 488.

“client assets” means —

- (a) money received or retained by, or any other property deposited with a derivatives broker in the course of the derivatives broker’s business;

- (b) any money or other property accruing from (a);

for which that derivatives broker has to account to a client;

“client funds” means money of any currency which a derivatives broker —

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- (a) receives or deposits with a clearing house of a derivatives exchange on behalf of a client; or
- (b) owes to a client;

“client group account” means a bank account established and maintained by a derivatives broker for the purposes of regulation 65;

“corner” in relation to derivatives markets means acquisition of enough of a particular commodity or financial instrument or to hold a significant commodity or securities position sufficient to be able to manipulate its price;

“defaulter” means a derivatives broker who is the subject of any default proceedings instituted under these Regulations;

“demutualization” means the separation of ownership of an exchange from the right to trade on such exchange;

“demutualized exchange” means a derivatives exchange in which ownership and rights to trade are separate;

“derivatives broker” means a body corporate admitted to the membership of a derivatives exchange and by the Authority to engage in the business of trading in derivatives contracts as an agent for investors in return for a commission and on its own account;

“derivatives exchange” has the meaning assigned to it under section 2 of the Act;

“derivatives member” means a person admitted to the membership of a derivatives exchange in accordance with these Regulations and the rules of the derivatives exchange but does not refer to a shareholder or an equity holder of the derivatives exchange;

“derivatives contract” means a standardized type of securities or financial instruments which derives its value from the value of underlying assets, indices, or interest rates that are transacted on a derivatives exchange;

“derivatives market” has the meaning assigned to it under section 2 of the Act;

“financial year” means the period of twelve months ending on the thirty first December in each year;

“investor protection fund” means a fund established under regulation 31;

“key personnel” has the meaning assigned to it under the Act;

“liquid networth” means the aggregate value of paid-up equity share capital plus free reserves excluding statutory funds, benefit funds, and reserves created out of revaluation reduced by the investments in businesses, whether related or unrelated, aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;

“margin” means a deposit or payment made to create, vary or maintain a position in the derivatives contract, and includes market to market, regular and additional margins or such other margins, which may be specified by the derivatives exchange from time to time;

“market charge” means a charge, whether fixed or floating, granted in favour of a clearing house of a derivatives exchange —

- (a) over any property which is held by or deposited with the clearing house of a derivatives exchange; and
- (b) for the purpose of securing liabilities arising directly in connection with the clearing house of a derivatives exchange, ensuring the settlement of a market contract;

and where a charge is granted partly for the purpose of a market charge and partly for other purposes, the charge for the purposes of these Regulations is a market charge in so far as it has effect for the specified purpose;

“market collateral” means any property which is held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house, ensuring the settlement of a market contract and where any collateral is granted partly for the purpose of a market collateral and partly for other purposes, the collateral for the purposes of these Regulations is a market collateral in so far it has been provided for that specified purpose;

“market contract” means —

- (a) a contract entered into by a clearing house with a derivatives broker under a novation —
 - (i) which is subject to the clearing and settlement rules of the clearing house;
 - (ii) for the purpose of clearing and settling of transactions using the clearing facility; and
 - (iii) which is subject to the rules of the clearing house of a derivatives exchange whether before or after default proceedings have commenced; or
- (b) a transaction which is being cleared or settled through the clearing house, whether or not a novation is to take place;

“netting” means the determination of net payment or delivery obligations by setting off, adjusting obligations or claims arising out of buying and selling of derivatives contracts, discontinuation of business, dissolution, winding-up or insolvency or such other circumstances as may be specified in the rules of the derivatives exchange;

“net worth” means paid up capital and free reserves and other securities approved by the derivatives exchange from time to time, but does not include fixed assets, pledged securities, value of member’s card, unlisted securities, bad deliveries, debts or advances overdue for more than three months or debts or advances given to the associate

persons of the trading member or derivatives broker, prepaid expenses, losses, intangible assets and value of marketable securities less a haircut specified by the derivatives exchange and approved by the Authority:

“net capital balance” means the excess of current assets which includes cash at bank, trade receivables at book value less overdue for more than fourteen days, investments in listed securities and Government of Kenya bonds at market value less a haircut specified by the derivatives exchange and approved by the Authority, over current liabilities which include trade payables at book value, other liabilities as classified under International Financial Reporting Standards and contingent liabilities as classified under International Financial Reporting Standards;

“novation” means the act of a clearing house of becoming the legal counterparty to both parties of every trade;

“public interest director” means an independent director, representing the interest of investors in a derivatives market and who does not have any association with that derivatives market, either directly or indirectly;

“regulatory department” means a department of a derivatives exchange which is entrusted with regulatory powers and duties and such other departments as may be specified by the Authority;

“record” means all documentary and electronic materials created, generated, sent, communicated, received, or stored, regardless of physical form or characteristics;

“risk management” means the method of assessing, measuring and controlling risk using appropriate methods including statistical techniques;

“settlement” means the discharge of the rights and liabilities of the parties to the derivatives contract, whether by performance, compromise or otherwise;

“settlement guarantee fund” means a fund established and maintained by a derivatives exchange to strengthen the financial integrity of settlement by the derivatives exchange and used in a manner specified by the rules of the derivatives exchange;

“trading in derivative contracts” means making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view of purchasing or selling a derivatives contract; and

“tick size” means the minimum change in price of a derivative contract up or down.

PART II — LICENSING REQUIREMENTS AND DUTIES OF A DERIVATIVES EXCHANGE

3. A person shall not establish, run, conduct, organize or assist in establishing, running, conducting or organizing a derivatives exchange unless that person has obtained a license from the

Obligation to
obtain a license

Authority:

Provided that a securities exchange, which has been operating under the Act at the commencement of these Regulations and is desirous of running a derivatives market, shall apply to the Authority for an additional license for listing derivatives contracts under these Regulations and all the provisions of these Regulations shall apply to such securities exchange.

4. (1) A person who intends to establish a derivatives exchange shall submit an application for licensing to the Authority in the Form set out in the First Schedule.

Application for
license

(2) An application under subregulation (1) shall be accompanied by—

- (a) the copies of memorandum and articles of association and rules governing the operations of the exchange, which-
 - (i) are in a form satisfactory to the Authority; and
 - (ii) restrict the applicant to the business of operating a derivatives market and services incidental thereto;
- (b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (c) the prescribed licensing fees set out in the Second Schedule;
- (d) satisfactory bank references;
- (e) a business feasibility plan evaluated by an entity with a proven track record and expertise in derivatives or derivatives market development, establishment or management; and
- (f) such additional documents as the Authority may require.

5. In order to be entitled to apply for a licence under Regulation 4, an applicant shall be required to —

Consideration for
grant of license

- (a) be a company limited by shares;
- (b) be demutualized;
- (c) have a minimum authorized, issued and paid up equity share capital of one billion Kenya Shillings;
- (d) satisfy requirements relating to ownership and governance structure specified in these Regulations;
- (e) have its directors and shareholders who hold or intend to hold shares, determined as fit and proper persons as prescribed under section 24A of the Act;
- (f) satisfy the minimum liquid net-worth requirements specified in these Regulations;
- (g) have a minimum of one hundred million Kenya Shillings in the settlement guarantee fund before the commencement of trading;
- (h) satisfy requirements relating to financial capacity,

functional expertise and infrastructure;

- (i) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and
- (j) comply with any other conditions as may be specified by the Authority.

6. (1) An applicant seeking approval to operate a derivatives exchange shall establish and adopt derivatives exchange rules.

Rules of the
Exchange

(2) The rules adopted under subregulation (1) shall contain provisions on—

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the statutory committees of the board;
- (b) the powers of the chief executive officer including in emergency situations;
- (c) the granting of trading rights and non-transferable memberships of the derivatives exchange;
- (d) general obligations of the derivatives brokers who are its derivatives members;
- (e) specifications of the minimum parameters to be disclosed in respect of derivatives contracts to be listed with prior approval of the Authority;
- (f) the clearing and settlement of all trades in derivatives contracts by the clearing house of the derivatives exchange where the clearing house is wholly owned by the exchange or is its subsidiary;
- (g) the performance of novation, netting and guarantee settlement of trades;
- (h) complete segregation of business accounts of brokers from that of their clients and between different clients;
- (i) trading including validation of orders on the derivatives exchange;
- (j) the suspension of trading of any derivatives contract for the protection of investors or for the conduct of orderly and fair trading;
- (k) investigation into the trading practices and financial transactions of derivatives brokers and their clients;
- (l) the clearing house and designated clearing banks of the derivatives exchange;
- (m) the margining regime, daily marking to market of all open positions and variation margin call to derivatives brokers and their clients;
- (n) the methodology for determining the daily and final

- settlement prices;
- (o) deliveries through the clearing house and obligations of the brokers;
 - (p) the closing out of derivatives contracts in case of non-compliance with the rules of the derivatives exchange;
 - (q) the mandatory maintenance of a settlement guarantee fund including provisions for pay in, pay out and topping up;
 - (r) the mandatory maintenance of an investor protection fund including provisions for pay in, pay out and topping up;
 - (s) the declaration of an event of default and disposal of defaulter's assets under lien or pledge;
 - (t) the arbitration of disputes and provision for appeal to the Authority by derivatives brokers and investors; and
 - (u) any other provisions specified by the Authority.

7. (1) A proposed derivatives exchange shall deploy a trading system which shall be approved by the Authority before such system is implemented.

Trading system.

- (2) The trading system deployed under subregulation (1) shall—
 - (a) be integrated with a clearing and settlement system;
 - (b) have an online screen-based trading system for providing direct market access up to the client level via the internet;
 - (c) be capable of establishing connectivity with brokers and their clients;
 - (d) have the necessary infrastructure to ensure timely clearing and settlement of trades;
 - (e) have an adequate risk management mechanism including a pre trade check performed by the trading system;
 - (f) be capable of providing real time risk management and market surveillance tools for monitoring of trading activities of all brokers and their clients on a real time basis;
 - (g) provide brokers and their clients a facility for accessing both the daily transactions and financial reports including ledgers;
 - (h) have a facility to disseminate information about trades, quantities and quotes in real time to at least one information vending network which is accessible to investors in Kenya and internationally;
 - (i) have adequate systems capacity supported by a business continuity plan including a disaster recovery site;
 - (j) be established and maintained in a way as to ensure that it is secure and maintains the confidentiality of data; and
 - (k) have any other features and functionalities specified by the

Authority.

8. (1) The Authority may, if satisfied that the applicant has demonstrated that it is capable of complying with the requirements under regulations 4, 5, 6 and 7, grant the applicant a provisional license to operate a derivatives exchange.

Grant of
provisional
approval

(2) The provisional license granted under subregulation (1) shall be valid for a period of six months:

Provided that the Authority may, upon sufficient cause shown by the applicant, extend the validity of the provisional license for a further period not exceeding three months.

9. The Authority may, before and after granting a provisional license to an applicant for a derivatives exchange license, make inquiries and require such further information or document to be furnished, as the Authority may consider necessary.

Power to make
inquiries and call
for information.

10. (1) The Authority may, after the expiry of the period for which the provisional license had been granted under regulation 8 and if the Authority is satisfied that the applicant has complied with regulations 4, 5, 6, 7 and any other relevant requirements under the Act, grant a license to the applicant to operate a derivatives exchange.

Grant of licence

(2) A derivatives exchange shall comply with such other conditions as the Authority may impose from time to time, including conditions with regard to —

- (a) the nature of derivatives contracts to be dealt with by that derivatives exchange; and
- (b) approval by the Authority of all derivatives contracts to be listed by that derivatives exchange.

11. A license granted under regulation 10 shall remain valid unless suspended or revoked by the Authority.

Period of license.

12. A derivatives exchange shall pay a regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

Regulatory fee

13. (1) The Authority may, by notice in writing, revoke a derivatives exchange license granted under these Regulations with effect from the date specified in the notice if the derivatives exchange —

Revocation of
license

- (a) ceases to comply with the eligibility conditions specified under regulations 5, 6 and 7;
- (b) ceases to operate a derivatives market that it has been to operate under regulation 10;
- (c) is being wound up;
- (d) fails to comply with any requirement of the Act or these Regulations;
- (e) fails to comply with a direction of the Authority;
- (f) fails to provide the Authority with information required by

the Authority;

- (g) provides false or misleading information;
- (h) is operating in a manner detrimental to the public interest; or
- (i) requests the Authority to do so.

(2) For the purposes of subsection (1), a derivatives exchange shall be deemed to have ceased to operate its derivatives market if the derivatives exchange has ceased to operate its derivatives market for more than thirty days unless the derivatives exchange has obtained prior written approval of the Authority to do so.

(3) The Authority may, by notice served under subregulation (1), allow the derivatives exchange to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Authority may specify in the notice for the purpose of –

- (a) closing down the operations of the derivatives exchange; or
- (b) protecting the interests of the public.

(4) The Authority shall not, except where responding to a request under subregulation (1) (i), revoke a derivatives exchange license without giving the derivatives exchange an opportunity to be heard.

(5) Where the Authority revokes the license of a derivatives exchange, the Authority shall publish a notice of that revocation in at least two newspapers of nationwide circulation in Kenya.

14. A revocation of license under regulation 13 shall not operate so as to –

Effect of
revocation.

avoid or affect any agreement, transaction or arrangement entered into on the derivatives market operated by the derivatives exchange where the agreement, transaction or arrangement was entered into before the revocation of the license; or

- (a) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Net worth of a Derivatives Exchange

15. (1) A derivatives exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that derivatives exchange to ensure that there is no significant risk that liabilities may not be met as they fall due.

Net worth
requirements.

(2) The minimum liquid networth capital requirement for a derivatives exchange shall be –

- (a) an amount equal to one half of the estimated gross operating costs of the derivatives exchange for the next twelve-month period; or
- (b) such other liquid networth amount as may be prescribed by

the Authority.

(3) A derivatives exchange shall have systems and controls to enable the derivatives exchange to determine and monitor whether its liquid networth is sufficient for the purposes of subregulation (1) and the minimum liquid networth requirement for the purposes of subregulation (2).

(4) A derivatives exchange shall submit to the Authority an audited liquid networth certificate from the auditor on a quarterly basis within thirty days after the end of every quarter.

Ownership of a Derivatives Exchange

16. (1) Save as otherwise provided for in these Regulations, the shareholding or voting rights of any person in a derivatives exchange shall, at all times, not exceed the limits specified in this Part.

General
conditions

(2) The shareholding as specified in this Part shall include any instrument owned or controlled, directly or indirectly, which provides for entitlement to equity or rights over equity at any future date.

17. (1) At least fifteen percent of the paid up equity share capital of a derivatives exchange shall be held by a Kenyan entity.

Shareholding in a
derivatives
exchange

(2) No individual or corporate person shall —

- (a) control or be beneficially entitled directly or indirectly, to more than twenty five per cent of the issued share capital or voting rights of a derivatives exchange;
- (b) be entitled to appoint more than twenty-five per cent of a board; or
- (c) be entitled to receive more than twenty-five percent of the aggregate dividends to be paid in any given financial year.

(3) Where an applicant under subregulation (2) is an individual and does not meet the requirements of this regulation, that individual shall be required to comply with the requirements of this regulation within five years from the date of issue of a license to operate a derivatives exchange.

(4) Subregulation (2) shall not apply where the ownership structure of a corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five percent of its shares, votes, directorship appointments or dividend.

18. (1) A person shall not, directly or indirectly, acquire or hold five per cent or more of the equity shares of a derivatives exchange unless that person has been certified by the Authority as fit and proper.

Eligibility for
acquiring or
holding shares.

(2) A person who, directly or indirectly, either individually or collectively with other persons, plans to acquire equity shares such that the shareholding of that person exceeds five percent of the paid up equity share capital of a derivatives exchange, shall seek approval of the Authority at least fifteen days prior to the proposed date of

acquisition.

(3) A person who holds more than five percent of the paid up equity share capital in a derivatives exchange, shall file a declaration within fifteen days of the end of every financial year to the derivatives exchange, as the case may be, that that person complies with the fit and proper criteria provided in the Act.

(4) Any person who —

- (a) holds five per cent or more of the equity shares of a derivatives exchange; and
- (b) does not in the opinion of the Authority, fulfill the fit and proper criteria as set out under the Act —
 - (i) shall cease to exercise any voting rights immediately upon the derivatives exchange being notified in writing by the Authority, that the shareholder does not fulfill the fit and proper criteria as set under the Act; and
 - (ii) reduce the holding of equity shares to less than five per cent of the share capital of the derivatives exchange within twelve months, or such longer period as the Authority may determine.

19. (1) Without prejudice to any provision of these Regulations, a derivatives exchange shall disclose to the Authority, in the format specified by the Authority, the shareholding pattern of the derivatives exchange on a quarterly basis within fifteen days from the end of each quarter.

Disclosure of
shareholding.

(2) The disclosure under subregulation (1) shall include —

- (a) the names of the ten largest shareholders and the number and percentage of shares held by each of them;
- (b) the names of the shareholders falling under regulations 17 and 18 who acquire shares in that quarter.

(3) A derivatives exchange shall at all times monitor and ensure compliance with this Part.

20. A derivatives exchange shall, in addition to the requirements under any other laws, retain and preserve all the books, registers, minutes of the board meetings and other documents for a period of not less than seven years.

Record keeping.

Governance of a Derivatives Exchange

21. (1) The board of a derivatives exchange shall comprise of—

- (a) shareholder directors;
- (b) at least one third public interest directors; and
- (c) a chief executive officer:

Provided that the chief executive officer of a derivatives

Composition of
the board.

exchange shall not be the chief executive officer of a subsidiary of a derivatives exchange.

(2) A derivatives broker who is a derivatives member or an associate or an agent of that derivatives broker shall not be a member of the board of any derivatives exchange.

(3) At least one public interest director shall be present in the meetings of the board to constitute the quorum.

22. (1) A derivatives exchange shall submit for approval by the Authority, the names of proposed directors for appointment to the board of a derivatives exchange thirty days prior to their appointment or re-appointment.

Conditions of
appointment of
directors.

(2) A public interest director appointed under subregulation (1) shall serve for a fixed term of three years and shall be eligible for re-appointment for one further term.

23. (1) A derivatives exchange may change its chief executive with the prior written consent of the Authority and in accordance with any conditions that may be imposed by the Authority.

Appointment of
chief executive
officer.

(2) A derivatives exchange shall, subject to the guidelines issued by the Authority from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

(3) The tenure under any contract for the chief executive officer of a derivatives exchange shall not be less than three years and not exceeding five years:

Provided that the tenure of office of the chief executive of a derivatives exchange may be renewed for one further term.

(4) No person shall be appointed as the chief executive officer of a derivatives exchange if the person is —

- (a) a shareholder or an associate of a shareholder of any derivatives exchange; or
- (b) a shareholder or an associate of a derivatives broker.

(5) The board of a derivatives exchange may, with the prior approval of the Authority, terminate the appointment of its chief executive officer—

- (a) if the chief executive officer fails to comply with the articles of association of the derivatives exchange; or

to give effect to the directions, guidelines and other orders issued by the Authority, under the Act or these Regulations.

(6) The Authority may on its own motion, terminate the appointment of a chief executive officer of a derivatives exchange if the Authority considers it to be in the public interest:

Provided that the Authority shall not terminate such services

without giving the chief executive officer a reasonable opportunity of being heard.

24. (1) Every director of a derivatives exchange shall abide by the Code of Conduct set out in Part A of the Third Schedule.

Code of conduct for directors and key personnel.

(2) Every director and key personnel of a derivatives exchange shall abide by the Code of Ethics set out in Part B of the Third Schedule.

(3) Every director and key personnel of a derivatives exchange and its clearing house shall be fit and proper persons as prescribed under section 24A of the Act.

(4) The Authority may, if a director of a derivatives exchange fails to abide by these Regulations, the Code of Conduct or the Code of Ethics or in case of any conflict of interest, either upon a reference from the derivatives exchange or on its own motion, take appropriate action including removing or terminating the appointment of any director, after providing that director a reasonable opportunity of being heard.

25. (1) A derivatives exchange shall establish a compensation committee comprising of a majority of public interest directors.

Compensation and tenure of key personnel.

(2) The compensation committee established under subregulation (1) shall —

- (a) be chaired by a public interest director; and
- (b) establish a compensation policy for all employees of the derivatives exchange.

(3) The compensation policy under subregulation (2) (b) shall be subject to the approval of the Authority.

(4) The compensation given to the key personnel shall be disclosed in the annual report of the derivatives exchange.

(5) The tenure of key personnel, other than a director, shall be for a fixed period, or as may be determined by the derivatives exchange compensation committee.

26. A derivatives exchange shall separate the regulatory department from other departments in the manner set out in Part C of the Third Schedule.

Segregation of regulatory departments.

27. (1) A derivatives exchange shall establish independent oversight committees of the board.

Oversight committees.

(2) The committees established under subregulation (1) shall —

- (a) be chaired by a public interest director; and
- (b) address the conflicts of interest in respect of—
 - (i) the regulation of futures brokers who are derivatives members;

- (ii) derivatives contracts design; and
- (iii) trading and surveillance functions.

(3) A head of department handling the matters referred to in subregulation (2)(b) shall report directly to the respective committee and to the chief executive officer.

(4) Any action of a derivatives exchange against a head of a regulatory department specified under subregulation (2) (b) shall be subject to an appeal to the respective committee, within such period as the board may determine.

28. (1) The board of a derivatives exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product design, technology, charges and levies.

Advisory
Committee

(2) The advisory committee established under subregulation (1) shall comprise of the derivatives brokers who are members of a derivatives exchange.

(3) The chairperson of the board and the chief executive officer shall be permanent invitees to every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year but a period of three months shall not elapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the derivatives exchange for consideration and appropriate decision of the board, and such recommendations along with the decision of the board on the same, shall be disclosed on the website of the derivatives exchange.

(6) A derivatives member shall not be a member of any other committee of the derivatives exchange.

29. (1) A derivatives exchange shall establish a risk management committee comprising of directors and independent external experts.

Risk management
Committee.

(2) The risk management committee established under subregulation (1), shall —

- (a) report to the board;
- (b) formulate a detailed risk management policy which shall be approved by the board;
- (c) monitor the implementation of the risk management policy; and
- (d) keep the Authority and the board informed on the implementation of policy and any deviation.

(3) The head of the risk management department shall —

- (a) be responsible for implementation of the risk management

policy; and

- (b) report to the risk management committee and to the chief executive officer of the derivatives exchange.

30. (1) A derivatives exchange shall appoint a compliance officer from amongst its employees.

Appointment of compliance officer.

(2) A compliance officer appointed under subregulation (1) shall be responsible for —

- (a) monitoring compliance by the derivatives exchange with its articles of association, rules, these Regulations, the Act, any guidelines or directions issued thereunder; and
- (b) the redress of investors' grievances.

(3) The compliance officer shall, immediately and independently, report to the Authority, the lack of compliance with any provision stated in subregulation (2).

31. (1) A derivatives exchange shall establish an investor protection fund which —

Establishment of an investor protection fund.

- (a) is separate from the board of a derivatives exchange;
- (b) comprises of contributions by derivatives brokers and derivatives exchanges; and
- (c) is intended to satisfy the claims of clients against derivatives brokers.

(2) The fund referred to subregulation (1) shall be managed by trustees appointed and holding office under a trust deed drawn by the board of a derivatives exchange.

32. A derivatives exchange shall comply with the disclosure requirements and corporate governance norms applicable to listed companies where no specific provisions have been made under these Regulations.

Disclosure and corporate governance norms.

33. (1) A derivatives exchange may levy penalties for breach of these Regulations.

Transfer of penalties

(2) All penalties levied under subregulation (1) shall be credited to the investor protection fund established by the derivatives exchange.

Duties of a Derivatives Exchange

34. (1) A derivatives exchange shall ensure —

Duties of Derivatives exchange.

- (a) a fair, efficient and transparent market in derivatives contracts that are traded on its derivatives market; and
- (b) that risks associated with the business and operations of that derivatives exchange are managed in a prudent manner.

(2) A derivatives exchange, in discharging its duty under subregulation (1), shall —

- (a) act in the interest of the public; and

- (b) ensure that the interest of the public prevails where it conflicts with the interest of the derivatives exchange, derivatives brokers who are its members, shareholders or the management.

(3) A derivatives exchange shall operate its facilities in accordance with the rules approved by the Authority.

(4) A derivatives exchange shall regulate the operations, standards of practice and business conduct of derivatives brokers who are its members and representatives or other employees of those derivatives brokers in accordance with the rules, policies, procedures and practices of the derivatives exchange.

(5) A derivatives exchange shall formulate and implement appropriate procedures for ensuring that the derivatives brokers who are its members and representatives or other employees of those derivatives brokers comply with the rules of the derivatives exchange.

(6) A derivatives exchange shall preserve confidentiality with regard to all information in its possession concerning derivatives brokers who are its members and their clients, except that such information may be disclosed by the derivatives exchange when required in writing to do so by the Authority or if the derivatives exchange is ordered to do so by a court of law.

(7) A derivatives exchange shall immediately notify the Authority, if the derivatives exchange becomes aware —

- (a) that any derivatives broker who is a member of the derivatives exchange is unable to comply with any rules of the derivatives exchange or any financial resources requirements; or
- (b) of a financial irregularity or other matter which, in the opinion of the derivatives exchange, may indicate that the financial standing or integrity of a derivatives broker, who is its member, is in question, or that a derivatives broker, who is its member, may not be able to meet its legal obligations.

35. A derivatives exchange shall at all times provide and maintain

- (a) adequate and properly equipped premises;
- (b) competent and trained personnel to effectively discharge the functions of a securities exchange ; and
- (c) an automated trading system which meets the requirements under regulation 7 and pre-approved by the Authority for the conduct of its business.

Facilities to be maintained by a Derivatives exchange

36. (1) A derivatives exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority.

Derivatives exchange to assist Authority

- (2) Any assistance provided under subregulation (1) may include

- (a) the furnishing of returns and the provision of books and other information relating to the business of the derivatives exchange;
- (b) information in respect of trading in derivatives contracts; or
- (c) such other specified information as the Authority may require for the proper administration of its functions under the Act.

Self-Regulatory Organization

37. A derivatives exchange shall have —

Self- Regulation.

- (a) a procedure and appropriate system of exercising self-regulation over its derivatives members;
- (b) a code of conduct for its derivatives members;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

38. A derivatives exchange shall, as a condition for a license to operate a derivatives market, implement a system of self- regulation with respect to derivatives brokers, who are its derivatives members, and shall ensure the day to day management of trading, clearing settlement, delivery and all other activities of derivatives brokers, who are its derivatives members, are in accordance with—

Derivatives
Exchange to
oversee its
members.

- (a) the rules of the derivatives exchange approved by the Authority; and
- (b) laws, regulations and guidelines relating to derivatives contracts issued by the Authority.

Accounts and Audit

39. (1) A derivatives exchange shall keep proper books of account and records of income and expenditure, assets and liabilities and all other transactions of the derivatives exchange.

Accounts and
audit.

(2) The derivatives exchange shall, as soon as practicable after the end of each financial year, prepare a statement of accounts of the derivatives exchange for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) The derivatives exchange shall submit the statement of accounts prepared under subregulation (2) to its auditors for audit.

(4) The auditors shall prepare a report on the accounts and submit the report to the derivatives exchange.

(5) A derivatives exchange shall, immediately upon receipt of the auditor's report referred to under subregulation (4), send a copy of the report and a copy of the statement of accounts to the Authority.

(6) The auditors' report shall include —

- (a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of the derivatives exchange; and
- (b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of the derivatives exchange financial affairs at the end of that financial year.

(7) Every derivatives exchange and any employee or agent of a derivatives exchange, shall on demand by an audit firm —

- (a) provide any information; and
- (b) produce for inspection any books, vouchers and other records

that the audit firm may consider necessary for the performance of its duties.

40. The Authority may, where the Authority is satisfied that it is in the public interest to do so, appoint an auditor, in writing, at the expense of the derivatives exchange, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the derivatives exchange.

The Authority may appoint an auditor

41. (1) A derivatives exchange shall, within four months after the end of its financial year, submit to the Authority an annual report.

Annual report

(2) The annual report submitted under subregulation (1) shall include —

- (a) a description of the activities undertaken by the derivatives exchange in that financial year;
- (b) the resources, including financial, technological and human resources, that the derivatives exchange had available and used, in order to ensure compliance with its obligations and, in particular, the obligation of the derivatives exchange to ensure that the derivatives market operates in a fair, efficient and transparent manner;
- (c) an analysis of the extent to which the derivatives exchange considers that the activities undertaken, and resources used have resulted in full compliance with all of the obligations of the derivatives exchange under these Regulations and the rules of the derivatives exchange;
- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify.

PART III

CLEARING HOUSE OF A DERIVATIVES EXCHANGE

42. A derivatives exchange shall have a clearing house which may be —

- (a) managed and operated as a department of the derivatives exchange;
- (b) a wholly-owned subsidiary of the derivatives exchange;
- (c) an associate of the derivatives exchange; or
- (d) a third party contracted company.

Clearing house of a derivatives exchange

43. (1) A clearing house shall ensure that —

- (a) in so far as reasonably practicable, there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in derivatives contracts, cleared or settled through its facilities; and
- (b) the risks associated with its business and operations are managed in a prudent manner.

Duties of a clearing house of a derivatives exchange.

(2) In discharging its duty under subregulation (1), a clearing house shall —

- (a) act in the interest of the public; and
- (b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.

(3) A clearing house shall —

- (a) operate its facilities in accordance with the established clearing rules;
- (b) formulate and implement appropriate procedures to ensure that derivatives brokers comply with its rules;
- (c) ensure confidentiality of any information in its possession concerning its derivatives brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, the derivatives exchange or if it is ordered by Court to do so; and
- (d) have efficient procedures and arrangements to address investor complaints.

(4) A clearing house shall immediately notify the Authority if it becomes aware —

- (a) that any of its derivatives brokers is unable to comply with any rule of the clearing house or the derivatives exchange; and
- (b) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that-
 - (i) the financial standing or integrity of a derivatives broker is in question; or
 - (ii) a derivatives broker may not be able to meet its legal

obligations.

(5) A clearing house shall, for the conduct of its business, provide and maintain at all times —

- (a) adequate and properly equipped premises;
- (b) competent personnel;
- (c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,
- (d) security arrangements; and
- (e) technical support for the conduct of its business.

44. (1) A derivatives exchange shall make rules for its clearing house.

Clearing and
settlement rules
of a derivatives
exchange

(2) Where a clearing house is a distinct entity from a derivatives exchange, the clearing house shall make its own rules.

(3) The rules made under subregulations (1) or (2) shall be subject to the approval of the Authority and shall provide for —

- (a) registration of derivatives contracts;
- (b) settlement of transactions involving derivatives contracts;
- (c) guarantee to its derivatives brokers the settlement of derivatives contracts;
- (d) types of margins to be applied on all open positions;
- (e) periodic marking to market of all open positions;
- (f) determining the daily settlement price and the final settlement price;
- (g) setting up a settlement guarantee fund;
- (h) setting up an investor protection fund; and
- (i) the procedure of expulsion, suspension or disciplining of a derivatives broker who contravenes the clearing and settlement rules of the derivatives exchange.

(4) In addition to the requirements of subregulations (1) and (2), the rules of a derivatives exchange and its clearing house shall also include default provisions, which shall provide for the procedure which a derivatives exchange may undertake in instituting default proceedings or taking any other action against a derivatives broker who has failed, appears to be unable, or is likely to become unable to meet its obligations for all unsettled or open market contracts to which the derivatives broker is a party.

(5) The default provisions shall in particular —

- (a) enable the settlement of all derivatives contracts;
- (b) provide, for the purposes of paragraph (a), for payment by or to a derivatives broker, a sum of money in relation to

- each contract if that is required after taking into account all the rights and liabilities of the derivatives broker under or in respect of the derivatives contract concerned;
- (c) enable all sums of money payable by or to the derivatives broker as determined in accordance with paragraph (b), to be aggregated or set-off so as to produce a net sum, if any, payable by or to the derivatives broker;
- (d) provide that, if any net sum referred to in paragraph (c) is payable by the derivatives broker the net sum to be set-off against all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral or set-off against the proceeds of the realization of such property so as to produce a further net sum, if any, payable by or to the derivatives broker;
- (e) provide that, if any net sum referred to in paragraph (c) is payable to the derivatives broker, all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral shall cease to be subject to the market charge but without prejudice to any other form of charge to which it may be subject or to be market collateral but without prejudice to its provision as any other form of collateral, as the case may be; and
- (f) provide for the certification by the clearing house of any net sum referred to in r paragraph (c) payable to the derivatives broker, or of any further net sum referred to in paragraph (d) payable by or to the derivatives broker, as the case may be, or if there is no such sum, the certification by the clearing house of that fact.

(6) Where a clearing house takes default proceedings against a defaulter, all subsequent action taken under the rules of the clearing house for settlement of market contracts to which the defaulter is a party, shall be treated as taken under the default proceedings.

(7) The rules of a clearing house of a derivatives exchange shall apply to the employees of its derivatives brokers.

(8) The derivatives brokers of a clearing house shall ensure that its employees comply with the rules of the clearing house.

45. (1) Where property is subject to a market charge or has been provided as a market collateral, no execution or other legal process for the enforcement of a judgment or an order may be commenced or continued, and no distress may be levied, against the property by a person seeking to enforce any interest in or security over the property, except with the consent of the clearing house concerned.

Ranking of
default
proceedings of
clearing house in
insolvency

(2) Where a person is not entitled, by virtue of this regulation, to enforce judgment or an order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

46. (1) For the purposes of these Regulations, where a derivatives broker —

- (a) enters into any transaction, including a market contract with a clearing house of a derivatives exchange; and
- (b) is likely to be a party to that transaction as an agent,

notwithstanding any other law, as between the clearing house and any other person, including the derivatives broker and the person who is his principal in respect of that transaction, the derivatives broker shall for all purposes, including any action, claim or demand, either civil or criminal, be deemed not to be a party to that transaction as agent but as principal.

(2) For the purposes of these Regulations, where —

- (a) two or more derivatives brokers enter into any transaction; and
- (b) any such derivatives broker is likely to be a party to that transaction as agent,

notwithstanding any other law, any such derivatives broker to whom this regulation applies shall for all purposes, including an action, claim or demand, either civil or criminal, except as between that derivatives broker and the person who is its principal in respect of that transaction shall be deemed not to be a party to the transaction as an agent but as a principal.

47. (1) Subject to regulation 44, where a derivatives broker deposits any property with a clearing house as market collateral in accordance with the clearing and settlement rules of a derivatives exchange, then, notwithstanding any other law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person shall lie, or shall be commenced or allowed against the derivatives exchange or its nominees.

(2) The operation of subregulation (1) shall be subject to any modifications and exclusions provided in the clearing and settlement rules of the derivatives exchange.

48. These Regulations, except to the extent where they expressly provide for, shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person;
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Derivatives broker to be party to certain transactions as principal

Property deposited with a clearing house

Preservation of rights etc.

PART III

APPROVAL OF DERIVATIVES CONTRACT

49. (1) The Authority shall, by notice, prescribe transactions which may be conducted on a derivatives market.

Transactions that may be conducted on a derivatives exchange

(2) The transactions prescribed under subregulation (1) shall only be dealings in derivatives contracts or other financial products.

50. (1) Every derivatives contract shall be approved by the Authority prior to becoming eligible for listing on a derivatives exchange.

Approval of derivatives contracts.

(2) A derivatives exchange shall submit an application for approval of a derivatives contract to the Authority.

(3) Each application for approval of a derivatives contract shall include the following information —

- (a) size of the contract;
- (b) tick size;
- (c) duration of the contract;
- (d) mode of final settlement;
- (e) grade and quality of the underlying asset, if applicable;
- (f) position limits at the derivatives broker and client levels; and
- (g) any other information which the Authority may consider necessary.

(4) Upon receipt of an application under subregulation (2), the Authority may, if it is satisfied that the application fulfills the requirements under subregulation (3), approve the derivatives contract for listing on the derivatives exchange.

(5) If after the approval of the derivatives contract, the Authority finds the application or operationalization of the approved derivatives contract deficient in any material respect or that the derivatives exchange has failed to comply with any of the prescribed conditions or requirements or that the continued listing of the derivatives contract would not be in the public interest, the Authority may —

- (a) direct the derivatives exchange to correct the deficiency;
- (b) direct the derivatives exchange to comply with the prescribed condition or requirement within the specified time;
- (c) amend the specification of any derivatives contract; or
- (d) revoke the derivatives contract.

(6) An application submitted under subregulation (2) shall not be refused and an approval of a derivatives contract shall not be revoked unless the derivatives exchange has been given the opportunity of being heard.

PART V

LICENSING OF DERIVATIVES BROKERS

51. A person shall not carry on or purport to carry on business as a derivatives broker unless that person is licensed as a derivatives

Obligation to seek a license

broker by the Authority.

52. (1) A person who intends to operate as a derivatives broker shall submit an application for a license to operate as such to the Authority in Form 2 as set out in the Fourth Schedule.

Licensing of a derivatives broker.

(2) An application under subregulation (1) shall be accompanied by –

- (a) the prescribed fees as set out in the Fifth Schedule;
- (b) the documents, information and declarations specified under regulation 52; and
- (c) a letter from the derivatives exchange stating that the applicant meets all the relevant requirements of that derivatives exchange and that the derivatives exchange will admit the applicant if licensed by the Authority.

53. (1) An applicant seeking a license under regulation 51 shall be required to –

Consideration for grant of license.

- (a) be a company limited by shares;
- (b) have a chief executive who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, commodity derivatives contracts or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by the derivatives exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another securities exchange in addition to the derivatives exchange, the applicant shall provide an undertaking that it shall allocate a prescribed percentage of the net capital balance to support its activities at the derivatives exchange.

(3) The net capital required under regulation (3) shall –

- (a) not be less than the minimum required net capital balance at the derivatives exchange;
- (b) be kept segregated; and
- (c) be maintained at all times.

(4) A shareholder, a director and key personnel of the applicant shall be persons who have not defaulted in payment of dues at a clearing house.

54. (1) The Authority may, in considering an application made under regulation 51, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

Furnishing of information, clarifications, etc.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

55. (1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a derivatives broker.

Grant of license.

(2) The Authority shall duly inform the derivatives exchange and the applicant of the grant of a licence under subregulation (1).

(3) A licence granted under subregulation (1) shall remain valid unless suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the derivatives exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority under subregulation (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

56. A derivatives broker shall pay an annual licence fee as set out in the Fifth Schedule.

Annual license fees

57. (1) Where the Authority is satisfied that —

Suspension of a license.

- (a) a derivatives broker has failed to comply with any conditions subject to which the licence was granted under these Regulations;
- (b) a derivatives broker has failed to comply with the Act, these Regulations or any directions made or given thereunder;
- (c) a derivatives broker has contravened the rules of the derivatives exchange;
- (d) a derivatives broker has failed to adhere to any requirement of the code of conduct as laid down under these Regulations;
- (e) a derivatives broker has failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;
- (f) a derivatives broker has failed to furnish any information relating to the transactions of the derivatives broker in derivatives contracts as may be required by the Authority;

- (g) a derivatives broker has failed to submit periodical returns as required by the Authority;
- (h) a derivatives broker has furnished the Authority or the derivatives exchange with wrong or false information;
- (i) a derivatives broker has failed to settle an investor complaint where such complaint has been adjudicated by a securities exchange, a derivatives exchange, a committee of an exchange or the Authority;
- (j) a derivatives broker has not co-operated in any enquiry or inspection conducted by the Authority;
- (k) a derivatives broker has indulged in market manipulation, price rigging or cornering activities at a derivatives exchange;
- (l) a derivatives broker has experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the derivatives broker in the business of dealing in derivatives contracts is no longer in the interest of investors;
- (m) a derivatives broker has been suspended by a securities exchange or a derivatives exchange; or
- (n) a derivatives broker has failed to pay the annual fees; or
- (o) it is necessary in the public interest to do so,

the Authority may, by order in writing, suspend the licence of a derivatives broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under subregulation (1), give a derivatives broker an opportunity to be heard.

58. (1) The Authority may, by order in writing, revoke the licence of a derivatives broker where it is satisfied that —

Revocation of a license

- (a) the reasons for suspension of a licence under regulation 56 continue during the period of such suspension;
- (b) a derivatives broker whose licence has been suspended —
 - (i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;
 - (ii) has been found guilty of fraud or convicted of a criminal offence;
 - (iii) has not complied with a directive of the Authority; or
- (c) the membership of that derivatives broker has been cancelled by a derivatives exchange or another securities exchange; or

(d) it is necessary for the protection of investors,

(2) The Authority shall, before issuing an order of revocation under subregulation (1), give a derivatives broker an opportunity to be heard.

59. (1) A licence granted under regulation 54 shall automatically be revoked if the derivatives broker —

Automatic revocation of a license.

- (a) ceases to be a trading member of a derivatives exchange;
- (b) is declared a defaulter by a securities exchange or a derivatives exchange and is not re-admitted to membership within a period of six months from such declaration;
- (c) surrenders its membership in all derivatives exchanges where it is a member;
- (d) is declared insolvent by a court of law;
- (e) voluntarily surrenders the license to the Authority; or
- (f) is wound up by a court order.

60. A derivatives broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

Appeal against suspension or revocation of licence.

61. Despite a suspension or revocation of a licence under regulations 56, 57 or 58, a derivatives broker shall be responsible for clearing all its outstanding obligations up to the date on which that derivatives broker has been operating as such.

Derivatives broker to clear liabilities.

62. (1) A derivatives broker shall, as a condition of continued admission as a derivatives broker, provide to the Authority through the derivatives exchange a certified copy of —

Continuing obligations

- (a) the net capital balance;
- (b) net worth statements; and
- (c) a report of the auditor;

in a form that may be prescribed by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART VI

CONDUCT OF BUSINESS OF DERIVATIVES

63. The provisions of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 and the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 shall apply to derivatives brokers.

Standards of conduct
L.N 144/2011
L.N 145/2011

64. A derivatives broker shall undergo a periodic system audit in accordance with the directions issued by the Authority from time from time.

Systems audit.

65. A derivatives broker shall not open a derivatives trading account for a client unless the derivatives broker has —
- Risk disclosure statements
- (a) furnished the client with a separate written risk disclosure statement which shall be in such form and contain such information as may be prescribed by the derivatives exchange and approved by the Authority; and
 - (b) received an acknowledgement from the client signed and dated by the client confirming that the client has received and understood the nature and contents of the risk disclosure statement.
66. (1) A derivatives broker shall maintain strict segregation between its own funds and each individual clients' funds without any co-mingling between —
- Segregation of clients' funds.
- (a) it's own funds and clients' funds; and
 - (b) individual clients' funds.
- (2) A derivatives broker shall establish a Client Group Account with the designated clearing bank of the derivatives exchange of which that derivatives broker is a derivatives member.
- (3) A derivatives broker shall ensure that all deposits and withdrawals on behalf of clients are only made through the Client Group Account established under subregulation (2).
- (4) A derivatives broker shall only accept a deposit towards initial margins, special margins, delivery margins, variation margins or fees by way of —
- (a) a cheque;
 - (b) a bank draft; or
 - (c) online bank transfer or via mobile banking transfer from a client designated account.
- (5) A derivatives broker shall immediately deposit any deposits under subregulation (4) in the Client Group Account maintained by the derivatives broker with the derivatives exchange designated clearing bank for onward transfer and credit to each individual clients' account at the clearing house of the derivatives exchange.
- (6) Any withdrawals requested by a client shall be processed by transferring funds from the individual clients' account maintained at the clearinghouse of the derivatives exchange to the Client Group Account maintained by the derivatives broker at the designated clearing bank of a derivatives exchange.
- (7) A withdrawal under subregulation (6) shall be settled either by a cheque drawn on the Client Group Account of the derivatives broker, by online bank transfer or by mobile banking transfer, to a designated client account, from the same account maintained at the designated clearing bank of a derivatives exchange.
- (8) A derivatives broker shall undertake and complete

reconciliation on a daily basis between-

- (a) the Client Group Account maintained at the designated clearing bank of a derivatives exchange;
- (b) the Client Group Account at the clearing house of a derivatives exchange; and
- (c) individual clients' account maintained at the clearing house of a derivatives exchange.

(9) A derivatives broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(10) A derivatives broker shall maintain a record of transactions with the banks including clients deposits and withdrawals from the client group account maintained with the derivatives exchange designated clearing bank.

PART VII

INSPECTION

67. (1) The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a derivatives broker, where there is need to —

The right of the Authority to inspect.

- (a) establish that the books of accounts and other records are being maintained in the manner required;
- (b) ensure that the provisions of the Act are being complied with;
- (c) investigate into the complaints received from investors, other derivatives brokers or any other person on any matter having a bearing on the activities of the derivatives broker; and
- (d) investigate on its own motion, in the interest of derivatives business or the interest of investors, into the affairs of a derivatives broker.

68. (1) The Authority shall, before undertaking an inspection under regulation 66, give the derivatives broker a reasonable notice of the intention to undertake an inspection.

Procedure for inspection.

(2) Notwithstanding subregulation (1), the Authority may direct, in writing, that an inspection of a derivatives broker be carried out without notice to the derivatives broker, if the Authority is satisfied that it is in the interest of the investors or in the public interest that no such notice should be given.

(3) The inspecting officers appointed under regulation 66, shall have the power to undertake the inspection of the derivatives broker as directed by the Authority and that derivatives broker is bound to discharge its obligation as provided under regulation 68.

69. (1) An inspecting officer may require a shareholder, director, officer or an employee of the derivatives broker under inspection to

Obligations of derivatives broker who is

produce, such books, accounts and other documents in his or her custody or control and furnish the inspecting officer with the statements and information relating to the transactions in derivatives market within such time as the inspecting officer may require.

under inspection.

(2) A derivatives broker shall —

- (a) allow the inspecting officer reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;
- (b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and
- (c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, in the course of inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a derivatives broker under inspection.

(4) A director, an officer or an employee of the derivatives broker under investigation shall give to the inspecting officer any assistance in connection with the inspection which the derivatives broker may reasonably be expected to give.

70. The Authority may, after considering an inspection report, take such action as provided for under the Act.

Action on inspection report.

71. (1) The Authority may, in the interest of investors, appoint a qualified auditor to audit the books of accounts or to investigate any affairs of a derivatives broker at the cost of that derivatives broker.

Appointment of an auditor.

(2) Any shareholder, director, officer or employee of the derivatives broker which is being audited or investigated shall produce, to the auditor, such books, accounts and other documents in his or her custody or control and furnish the auditor with the statements and information relating to the transactions in derivatives market within such time as the auditor may require.

(3) A derivatives broker shall —

- (a) allow the auditor reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;
- (b) extend reasonable facilities to the auditor to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and
- (c) provide copies of documents or other materials which, in the opinion of the auditor, are relevant.

(4) An auditor shall, in the course of an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor or employee of a derivatives broker under audit or

investigation.

(5) A director, an officer or an employee of the derivatives broker under audit or investigation shall give the auditor all assistance in connection with the audit or investigation which the derivatives broker may reasonably be expected to give.

PART VIII

MARKET OFFENCES

72. (1) A person who creates, causes to be created, or does anything that is calculated to create a false or a misleading appearance of trading activity in a derivatives market, commits an offence.

False trading.

(2) Without limiting the generality of subregulation (1), a false or a misleading appearance of trading activity is created if a person executes or holds himself or herself out as having executed an order for the purchase or sale in a derivatives market, without having effected a bona fide purchase or sale in accordance with the regulations, rules and practices of the derivatives market.

73. A person who directly or indirectly takes the opposite side of a client's order into a derivatives broker's own account or into an account in which a derivatives broker has an interest, without open and competitive execution of the order on the derivatives exchange, commits an offence.

Bucketing.

74. (1) A person who directly or indirectly —

Manipulation of price of a Derivatives contract and cornering.

- (a) manipulates or attempts to manipulate the price of-
 - (i) a derivatives contract that may be traded on a derivatives market;
 - (ii) any commodity which is the underlying of a derivatives contract; or
- (b) corners, or attempts to corner, any commodity which is the underlying of a derivatives contract, commits an offence.

75. (1) A person who, directly or indirectly, in connection with any transaction with any other person involving trading in a derivatives contract —

Employment of fraudulent or deceptive devices, etc.

- (a) employs any device, scheme or artifice to defraud that person;
- (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that person; or
- (c) makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, misleading,

commits an offence.

76. (1) A person who directly or indirectly, induces or attempts to

Fraudulently

induce another person to trade in a derivatives contract by —

- (a) making or publishing any statement, promise or forecast that is false, misleading or deceptive;
- (b) concealing material facts; or
- (c) recording or storing in, or by means of, any mechanical, electronic or other device, information that is false or misleading in a material fact particularly to induce or attempt to induce that person to trade in a derivatives contract,

commits an offence.

77. A derivatives broker shall ensure that any derivatives business that the derivatives broker conducts in relation to derivatives contracts shall be concluded on or through the facilities of a derivatives exchange as may be provided by the rules of the derivatives exchange.

78. A person who is found guilty of an offence under this Part shall be liable to the penalty as specified under section 34A of the Act in addition to any action for damages in respect of the loss occasioned.

inducing trading
in derivatives
contracts.

Trading of
derivatives
contracts off-
exchange is
illegal.

Penalty

PART IX

GENERAL PROVISIONS

79. The Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 are repealed.

80. An exchange which was licensed under the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 and repealed by these Regulations shall continue to operate as if it is licensed under these Regulations and shall be required to comply with these Regulations.

Repeal of L.N
108/2013

Savings
L N 108/2013

FIRST SCHEDULE

Form 1

(r. 4(1))

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015
APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A
DERIVATIVES EXCHANGE

Application is made for a derivatives exchange license under the Act and the following are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application or renewal.

1. Name of the Company.....Limited
2. Registered office.....
3. Date of incorporation.....
4. Address.....
5. E-mail.....
6. Location, address and telephone number of principal office.....
-
7. Location, address and telephone number of branch offices.....
-
-
8. Details of capital structure:
 - (a) Nominal/authorized capital (Kshs.).....
 - (b) Number of shares.....
 - (c) Paid-up capital (Kshs.).....
9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held

10. (a) Directors (please attach a list)

Name	Identity card/Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company

(b) Secretary

Name.....

Address.....

Institute of Certified Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

Name	Identity card or Passport number.	Date of appointment	Date of birth.	Permanent address and telephone number	Academic and professional qualifications	Number of shares held in the company.
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11. Particulars of other directorship (s) of the directors and secretary.....

12. Particulars of shares held by the directors and secretary in other companies.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No

If Yes, give details.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodities exchange? Yes/No. If "yes" give details..

(2) have any of the above persons been-

(a) refused admission as a member of any securities organization? Yes/No. if Yes, give details.....

(b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details.....

(c) subjected to any other form of disciplinary action by any stock exchange? Yes/No if Yes, give details.....

18. Business references:

Name	Address	Telephone number(s)	Occupation

19. Profile of the chief executive officer and key personnel in the applicant company

.....
.....

20. List of office facilities of the applicant.....

.....
.....
.....
.....

21. Any other additional information considered relevant to this applicant.....

.....
.....
.....
.....

We.....(Director)..... (Director)
and.....(Secretary) declare that all the information given
in this application and in the attached documents is true and correct.

Dated this.....day of.....20....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

- I. The following shall be submitted with the application for a license:
 - (a) memorandum and articles of association;
 - (b) certificate of incorporation;
 - (c) feasibility plan complying with regulation 4 (2)(e);
 - (d) rules of the proposed derivatives exchange containing provisions in compliance with the matters detailed under regulation 3;
 - (e) details of the proposed trading system complying with the requirements of regulation 7;
 - (f) statements of the unaudited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in case of application of license);
 - (g) a declaration by directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of application-

- (i) the business of the company has, in their opinion, been satisfactorily maintained;
 - (ii) they have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;
- (h) a declaration by persons authorized as prescribed to accompany the application form; and
- (i) application fee.

SECOND SCHEDULE

(r. 4(2)) (c), 12)

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015
 LICENSING AND ANNUAL FEES FOR DERIVATIVES EXCHANGES

Application fees.....	Kshs. 2,500.00
Licensing fees.....	Kshs. 2,500,000.00
Annual regulatory fees.....	Kshs. 2,500,000.00

THIRD SCHEDULE

PART A

(r. 24(1))

Code of conduct for the directors on the board

i. Meetings and minutes.

Every director of the derivatives exchange shall—

- (a) not participate in discussions on any subject matter in which any conflict of interest exists or arises, whether pecuniary or otherwise, and in such cases the same shall be disclosed and recorded in the minutes of the meeting;
- (b) not encourage the circulation of agenda papers during the meeting, unless circumstances so require;
- (c) offer their comments on the draft minutes and ensure that the same are incorporated in the final minutes;
- (d) insist on the minutes of the previous meeting being placed for approval in subsequent meeting;
- (e) endeavor to have the date of next meeting fixed at each board meeting in consultation with other members of the board;
- (f) endeavor to ensure that in case all the items of the agenda of a meeting were not covered for want of time, the next meeting is held within fifteen days for considering the remaining items.

ii. Code of Conduct for the public interest directors.

- (a) In addition to the conditions stated in paragraph (i), public interest directors of the derivatives exchange shall, endeavor to attend all the board meetings and they shall be liable to vacate office if they remain absent for three consecutive meetings of the board or do not attend seventy five percent of the total meetings of the board in a calendar year.
- (b) Public interest directors shall meet separately, at least once in six months to exchange views on critical issues.

iii. Strategic planning.

Every director of the derivatives exchange shall—

- (a) participate in the formulation and execution of strategies in the best interest of the Derivatives exchange and contribute towards pro-active decision making at the board level;
- (b) give benefit of their experience and expertise to the Derivatives exchange and provide assistance in strategic planning and execution of decisions.

iv. Regulatory compliances.

Every director of the derivatives exchange shall—

- (a) endeavor to ensure that the derivatives exchange abides by all the provisions of the Act and regulations framed thereunder and the circulars, directions issued by the Authority from time to time;
- (b) endeavor compliance at all levels so that the regulatory system does not suffer any breaches;
- (c) endeavor to ensure that the derivatives exchange takes steps commensurate to honour the time limit stipulated by Authority for corrective action;
- (d) not support any decision in the meeting of the board which may adversely affect the interest of investors and shall report forthwith any such decision to the Authority.

v. General responsibility.

Every director of the derivatives exchange shall—

- (a) place priority for redressing investor grievances and encouraging fair trade practice so that the derivatives exchange becomes an engine for the growth of the derivatives market;
- (b) endeavour to analyze and administer the derivatives exchange issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- (c) submit the necessary disclosures/statement of dealings in derivatives contracts as required by the derivatives exchange from time to time as per their rules or articles of association;
- (d) unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in the discharge of their duty and no such information shall be used for personal gains;

- (e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties in order to inspire public confidence and shall not engage in acts discreditable to their responsibilities;
- (f) perform their duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official duties;
- (g) perform their duties with a positive attitude and constructively support open communication, creativity, dedication, and compassion;
- (h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the derivatives exchange.

PART – B

(r. 24(2))

Code of Ethics for directors and key personnel of Derivatives Exchange

The 'Code of Ethics' for directors and key personnel of the derivatives exchange, is aimed at improving the professional and ethical standards in the functioning of derivatives exchange thereby creating better investor confidence in the integrity of the derivatives market.

i. Objectives and underlying principles.

The Code of Ethics for directors and key personnel of the derivatives exchange seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key personnel, towards establishing a fair and transparent marketplace. The Code of Ethics is based on the following fundamental principles:

- (a) airness and transparency in dealing with matters relating to the derivatives exchange and the investors;
- (b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ derivatives exchange;
- (c) Exercising due diligence in the performance of duties; and
- (d) Avoidance of conflict of interest between self-interest of directors/ key management personnel and interests of derivatives exchange and investors.

ii. Ethics committee.

For overseeing implementation of this Code, an ethics committee shall be constituted by every Derivatives exchange under the respective board.

iii. General standards.

- (a) Directors and key personnel shall endeavor to promote greater awareness and understanding of ethical responsibilities;
- (b) Directors and key personnel, in the conduct of their business shall observe high standards of commercial honor and just and equitable principles of trade;
- (c) The conduct of directors and key personnel in business life should be exemplary which will set a standard for other members of the derivatives exchange;

- (d) Directors and key personnel shall not use their position to give/get favors to/from the executive or administrative staff of the derivatives exchange, technology or service providers and vendors of the Derivatives exchange;
- (e) Directors and key personnel shall not commit any act which will put the reputation of the derivatives exchange, in jeopardy; and
- (f) Directors, committee members and key personnel of the derivatives exchange, should comply with all rules and regulations applicable to the derivatives market.

iv. Disclosure of dealings in Derivatives Contracts by key personnel of the Derivatives Exchange.

Key personnel of the Derivatives exchange shall disclose on a periodic basis as determined by the laws, regulations, guidelines, rules relating to the Derivatives markets (which could be monthly), all their dealings in Derivatives contracts, directly or indirectly, to the board/ ethics committee/ Compliance Officer.

vi. Avoidance of conflict of interest.

- (a) No director of the board or member of any committee of the Derivatives exchange participate in any decision making/adjudication in respect of any person /matter in which he is in any way, directly or indirectly, concerned or interested.
- (b) Whether there is any conflict of interest or not in a matter, should be decided by the board.

vii. Role of the Chairperson and directors in the day to day functioning of the Derivatives exchange or clearing corporation.

- (a) The chairperson and directors shall not interfere in the day to day functioning of the Derivatives exchange and shall limit their role to decision making on policy issues and to issues as the board may decide;
- (b) The chairperson and directors shall abstain from influencing the employees of the Derivatives exchange in conducting their day to day activities; and
- (c) The chairperson and directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the board.

viii. Access to information.

- (a) Directors shall call for information only as part of specific committees or as may be authorized by the board.
- (b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.
- (c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/ gain.
- (d) Any information relating to the business/operations of the Derivatives exchange, which may come to the knowledge of directors/ key personnel during performance of their duties shall be held in strict confidence, shall

not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

ix. Misuse of position.

Directors/ committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

x. Ethics committee to lay down procedures.

- (a) The ethics committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code.
- (b) The compliance officer shall execute the requirements laid down by the ethics committee.

While the objective of this Code is to enhance the level of market integrity and investor confidence, it is emphasized that a written code of ethics may not completely guarantee adherence to high ethical standards. This can be accomplished only if directors and key personnel of the Derivatives exchange commit themselves to the task of enhancing the fairness and integrity of the system in letter and spirit.

PART – C

(r. 26)

Measures to ensure segregation of regulatory departments

In order to ensure the segregation of regulatory departments, every Derivatives exchange shall adopt a "Chinese Wall" policy which separates the regulatory departments of the Derivatives exchange from the other departments. The employees in the regulatory departments shall not communicate any information concerning regulatory activity to any one in other departments. The employees in regulatory areas may be physically segregated from employees in other departments including with respect to access controls. In exceptional circumstances employees from other departments may be given confidential information on "need to know" basis, under intimation to the compliance officer

FOURTH SCHEDULE

FORM 2

(r.52(1))

APPLICATION FORM FOR LICENCE AS DERIVATIVES BROKER

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

APPLICATION FORM

APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A
DERIVATIVES BROKER

Application is made for a derivatives broker licence under The Capital Markets (Derivatives Business) Regulations, 2015 and the following statements are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office.....
7. Location, address and telephone number of branch offices
8. Details of capital structure:
 - (a) Nominal capital (Kshs.)
 - (b) Number of shares
 - (c) Paid-up capital (Kshs)

9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held
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10 (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company
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(b) Secretary

Name.....

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic or Professional qualification	Number of shares held in the company
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11. Particulars of other directorship(s) of the directors and secretary.

12. Particulars of shares held by directors or secretary in other companies

.....
13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details
.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....
(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.
.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.
.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.
.....

16. Is the applicant and/or a person associated with the applicant now the subject of anyproceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,', give details.
.....

17 (1) Is the applicant, or any shareholder, director or the secretary of the applicant, amember or director of a member company of any securities exchange? Yes/ No.

If 'yes', give details.
.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details
.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

(c) subjected to any other form of disciplinary action by any stock/securities exchange? Yes/No. If 'yes', give details.

18. Business references:

Name	Address	Telephone number (s)	Occupation
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19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
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21. List the office facilities of the applicant

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

23. Any other additional information considered relevant to this application:

We(Director), (Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence:

- (a) memorandum and articles of association
- (b) certificate of incorporation;
- (c) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years or an auditor's certificate in case of a newly established entities (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

- (d) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application –
- (i) the business of the company has, in their opinion, been satisfactorily maintained;
 - (ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries.
- (e) a declaration by persons authorized as prescribed to accompany the application form;
- (f) an application fee of Kshs. 2,500

FIFTH SCHEDULE

(r 52(2) (a), 56)

DERIVATIVES BROKER LICENCE FEES

	Kshs
(a) Licensing fees	50,000
(b) Annual fees	50,000

Dated the 23rd December, 2015.

HENRY ROTICH
Cabinet Secretary for the National Treasury.