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LAWS OF KENYA

THE CAPITAL MARKETS AUTHORITY RULES

NO. 429 OF 1992

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Kenya

Capital Markets Act

The Capital Markets Authority Rules

Legal Notice 429 of 1992

Legislation as at 31 December 2022

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The Capital Markets Authority Rules (Legal Notice 429 of 1992)
Contents

Part I – PRELIMINARY 1
1. Citation 1
Part II – RULES RELATING TO SECURITIES EXCHANGE 1
2. Conditions for approval 1
3. Books and records 2
4. Annual Report 3
5. Publication of accounts of listed companies 3
6. Periodic reports 3
7. Other reports by exchange 4
8. Publicity on transactions of securities 4
Part III – LISTING RULES 4
9. Securities exchange rules and guidelines to be approved 4
Part IV – KEEPING OF BOOKS AND RECORDS BY BROKERS AND DEALERS 5
10. Books of account 5
11. Records to be maintained 5
12. Submission of annual accounts Deposit of customers funds 6
13. Deposit of customers' funds 6
Part V – FINANCIAL LIMITS FOR BROKERS AND DEALERS 7
14. Financial limits for brokers and dealers 7
15. Margin trading 7
16. Interpretation 7
Part VI – INVESTMENT ADVISERS 8
17. Rules relating of investment advisers 8
18. Books and records to be kept by investment advisers 10
19. Supervision of investment adviser's representatives 11
Part VII – PRIVATE TRANSACTIONS 12
20. Interpretation 12
21. Prohibition on transfer of listed securities 12
Part VIII – PUBLIC COMMUNICATION 13
22. Rules relating to public communication 13
Part IX – INVESTORS COMPENSATION FUND 14
23. Meeting of Investor Compensation Committee 14
24. Statement of accounts 14
25. Compensation of investors 14

26. Power of Authority to require information 15
Part X – SHAREHOLDERS COMPLAINT 15
27. Meeting of Shareholders Complaints Committee 15
28. Power of Shareholders Complaints Committee 15
Part XI – PRIMARY ISSUE DISCLOSURE 15
Part XIII – TAKE-OVERS AND MERGERS 15
Part XIV – BLOCK SALES 15
SCHEDULE [r. 42] 16

CAPITAL MARKETS ACT

THE CAPITAL MARKETS AUTHORITY RULES

LEGAL NOTICE 429 OF 1992

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Part I – PRELIMINARY

1. Citation

These Rules may be cited as the Capital Markets Authority Rules.

Part II – RULES RELATING TO SECURITIES EXCHANGE

2. Conditions for approval

A person applying for approval to operate as a securities exchange shall make rules providing—

(a) for the admission or non-admission of members, including the required standards of competence and professionalism;

(b) for the expulsion from membership of persons who are not of good character and high business integrity or have been convicted of financial fraud or who have been declared bankrupt;

(c) for the expulsion, suspension or disciplining of members for a contravention of, or failure to comply with rules of the securities exchange or the provisions of the Act or rules or regulations made thereunder;

(d) with respect to the conditions under which securities may be listed for trading in the market;

(e) with respect to the conditions under which an application for the delisting of securities from the securities exchange may be allowed;

(f) with respect to, the conditions under which the listing of a particular security may be revoked;

(g) with respect to the conditions governing dealing in securities by its members so as to ensure protection of the rights of investors;

(h) with respect to timely and accurate disclosure of all material information necessary for investors to make informed investment decisions;

(i) with respect to the protection of investors in securities, from misleading information, fraud, deceit and other adverse practices in the issuing and trading of securities and from the abuse of privileged information not yet made available to the general public;

(j) with respect to prohibition of securities market manipulation in any form;

(k) for investigations into trading in securities and financial transactions of brokers and dealers and for conducting surprise checks on such members;

(l) for suspension of trading of any given security for the protection of investors or for the conduct of orderly and fair trading;

(m) with respect to the conduct of securities trading by brokers and dealers and the manner in which information relating to transactions is to, be maintained and reported to other members and customers;

(n) for ensuring that customers' funds and securities are segregated from other business accounts of members;

(o) for ensuring fair representation of persons in the selection of its governing body and administration of its affairs to include representatives of listed companies, investors and the general public not associated with any broker or dealer;

(p) for arbitration of disputes and provision for appeal to the Authority for aggrieved members, investors and listed companies;

(q) for efficient settlement of securities transactions;

(r) for proper safe keeping of securities in its custody;

(s) for the carrying out of the business of the securities exchange with due regard to interests of the investing public;

(t) for the admission and conduct of employees and representatives of member brokers and dealers;

(u) with respect to the responsibility of brokers and dealers for the actions of their employees or representatives in their dealings with the public; and

(v) with respect to the maintenance of required financial ratios for margin accounts and net capital position such as may be specified by the Authority.

3. Books and records

Every securities exchange shall maintain and preserve the following books of account and documents, or acceptable alternative accounting records in their place, for a period of seven years—

(a) minutes of the meetings of—

(i) its members;

(ii) its governing body; and

(iii) any standing committee or committees of its governing or general body of members;

(b) register of members showing their full names and address, and—

(i) in case of a company the full names and addresses of all the directors; and

(ii) in case of a partnership, the full names and addresses of the partners;

(c) register of authorized clerks and authorized assistants;

(d) record of security deposits;

(e) margin deposit books;

(f) ledgers;

(g) journals;

(h) cash book; and

(i) bank statements and bank reconciliation accounts.

4. Annual Report

A securities exchange shall, before the 31st March in each year, or such extended time as the Authority may from time to time allow, furnish the Authority with a report of its activities during the preceding calendar year which shall contain information on the following matters—

(a) changes in its rules and by-laws, if any;

(b) changes in the membership of its governing body;

(c) any new sub-committees set up and changes in the membership of existing ones;

(d) admissions, re-admissions, deaths or resignations of its members;

(e) disciplinary action against members;

(f) arbitration of disputes;

(g) defaults;

(h) action taken to combat any emergency in trading;

(i) securities listed and delisted; and

(j) other matters that the Authority may request.

5. Publication of accounts of listed companies

(1) A securities exchange shall, make available to the Authority and to the investors at the end of each year, details of the published accounts of companies that are listed on such securities exchange, and the details of securities transacted and the prices (i.e. high, low and mid-market), at which such securities have been transacted during the year.

(2) Communication to investors shall be by way of publication in a daily newspaper published and circulated in Kenya.

6. Periodic reports

(1) A securities exchange shall furnish the Authority with quarterly returns relating to—

(a) the official prices for the securities enlisted thereon;

(b) the number of shares delivered to the clearing facility;

(c) the number of securities listed and delisted during the preceding calendar quarters;

(d) a signed statement itemizing all outstanding positions beyond settlement date for each member; and

(e) any other matter that may be specified by the Authority.

(2) A securities exchange shall furnish the Authority at least quarterly, with a report of all securities transfers for each day, including each private transaction which has been effected through its members, along with their values, and in the case of private transactions, the names of the transferor and the transferee.

(3) A securities exchange shall furnish the Authority with quarterly report on the financial standing of each member, broker and dealer within four weeks of the close of each quarter and the report shall include the position of margin accounts and net capital provisions as prescribed by the Authority, with respect to each member.

7. Other reports by exchange

A securities exchange shall immediately report verbally and in writing to the Authority, whenever—

(a) there is a delay in opening the exchange;

(b) trading is to be suspended in any security;

(c) there is unusual activity in the market;

(d) the exchange receives any non-public information that it believes could have a material effect on the market in general or on any specific security or securities; or

(e) the Authority requests for market related information.

8. Publicity on transactions of securities

(1) A securities exchange shall issue to the Authority and the public media a daily list of transactions of securities made through its trading facilities, stating the security, the price and number of units transacted.

(2) A securities exchange shall issue to the Authority and the public media, at least once a month and in a form acceptable to the Authority, a report on the securities transacted and price movements for each security including low, high and average prices and the magnitudes of transactions in the security.

Part III – LISTING RULES

9. Securities exchange rules and guidelines to be approved

(1) Every securities exchange shall administer rules and guidelines for the listing and maintenance of listing of securities and the rules and guidelines shall be approved by the Authority prior to their publication.

(2) The Authority may, in consultation with a securities exchange, require the securities exchange to adopt any rule or guideline which it deems necessary.

(3) The rules and guidelines made by every securities exchange shall include provisions—

(a) enabling the listing of securities by the securities exchange following application by an issuer to the securities exchange, through procedure acceptable to the Authority;

(b) enabling the delisting or suspension of securities by the securities exchange through procedure acceptable to the Authority;

(c) for ensuring that listed companies have a public share-holdings sufficient to make the companies responsive to public investors, in keeping with the development of the stock market;

(d) for ensuring that listed companies have as broad a base of public shareholders as possible in keeping with company capital size and the development of the stock market;

(e) for encouraging the listing of companies such that investors will have a range of investments conforming to the major business activities in the economy;

(f) for encouraging the listing of companies with large capital issues so as to improve the availability of shares;

(g) for encouraging the listing of companies with audited accounts showing a history of profits so as to improve the quality of the market;

(h) requiring the disclosure of all material information, including payments on substantial management contracts and substantial business contracts, to enable fair appraisal of an issue by investors;

(i) requiring prompt disclosure in a manner fair to all investors of material information of a price sensitive nature;

(j) facilitating the development of a second tier market with lower costs and less stringent requirements;

(k) for ensuring that all common equity issues are of fully paid-up shares of equal class carrying full voting rights; and

(l) for ensuring that all debenture issues are fully secured by charges on assets equal to at least one hundred per cent of the amount of issue and ranking *pari passu* in all respects with any other debentures.

Part IV – KEEPING OF BOOKS AND RECORDS BY BROKERS AND DEALERS

10. Books of account

Every broker or dealer shall maintain and preserve for a period of seven years the following books of accounts and documents or other accepted accounting documents and, if so required, produce the same for inspection by a securities exchange of which he is a member or by the Authority—

(a) journals (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all debits and credits; and the records shall show the account for which each such transaction was effected, the name and amount of securities the unit and aggregate purchase or sale price (if any) the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) ledgers, (or other records) reflecting all assets and liabilities, income, expense and capital accounts;

(c) all cheque books, bank statements, cancelled cheques and bank reconciliation accounts;

(d) ledger accounts (or other records) itemizing separately each account of a customer, all purchases, sales, receipts and deliveries of securities and all other debits and credits;

(e) a memorandum of each brokerage order received for the purchase or sale of securities; and the memorandum shall show orders in chronological sequence, the time of receipt, the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry into the market for execution, the price at which executed and, to the extent feasible, the time of execution or cancellation;

(f) copies of confirmations of all purchases and sales of copies of notices of all other debits and credits for securities and other items for the account of customer; and

(g) contract books, showing details of all contracts entered into by him with members of a securities exchange or duplicates of memoranda of confirmation issued to such other members.

11. Records to be maintained

(1) Every broker or dealer shall maintain and preserve for each person who becomes a customer after the commencement of this Rules, a record for a period of seven years which shall state—

(a) the customer's name, date of birth or registration, address, nationality or citizenship, signature of the customer, the representative regularly handling the account and a designated supervisor;

(b) if the broker or dealer, or any of its representatives has made any recommendations to the customer to purchase, sell or exchange any security, the record of such customer shall also state the customer's occupation, marital status where applicable, investment objectives, other information concerning the customer's financial situation and needs which the broker or dealer or the representative considered in making the recommendation, and the signature of the broker or dealer or representative who made the recommendation to the customer.

(2) If, after the effective date of these Rules a broker or dealer or any representative of such broker or dealer, has made any recommendation, to a person who became a customer prior to the effective date of these Rules, the broker or dealer shall make and keep current a record for such customer which shall contain the information required by paragraph (1).

(3) Any item of information required by paragraph (1) shall not be entered in the customer's records if, after reasonable inquiry, the customer declines to furnish such items of information and a statement to that effect is placed in records; provided, however, that the customer's records s state the customer's name, and address.

(4) Every broker or dealer shall maintain and preserve for a period of seven years—

(a) a record or records with respect to each discretionary account which shall include—

(i) the customer's written authorization to exercise discretionary power or authority in his account;

(ii) the reason given by the customer for granting discretionary power or authority in his account; and

(iii) the written approval of a designated supervisor of each transaction in such account indicating the exact time and date of such approval;

(b) a separate file for all complaints by customers and persons acting on behalf of customers; and the complaints shall be filed alphabetically by customer's name and shall include copies of all material relating to the complaint, and record of what action, if any, has been taken by the broker or dealer; and copies of such material and record of action taken shall be kept in the office through which the customer's account is handled; and

(c) such other records as the Authority shall direct.

12. Submission of annual accounts Deposit of customers funds

Every broker or dealer shall submit to the Authority and to the securities exchange of which the broker or dealer is a member audited annual accounts within three months following the closure of the broker's or dealer's financial year provided that the Authority may require such other form of financial statement as the Authority may specify.

13. Deposit of customers' funds

Every broker or dealer shall—

(a) deposit customers' funds in one or more bank accounts which account shall contain only those funds;

(b) maintain such accounts in the customer's name or in the name of agent or trustee of such customer; and

(c) maintain a separate record for each account showing the name and address of the bank where the account is maintained, the dates, amounts of deposits and withdrawals and also the exact amount of each customer's beneficial interest in the account.

Part V – FINANCIAL LIMITS FOR BROKERS AND DEALERS

14. Financial limits for brokers and dealers

(1) The licence of a broker or dealer shall be revoked if the broker's or dealer's—

(a) aggregate indebtedness exceeds one thousand and two hundred per cent of the broker's or dealer's net capital; or

(b) net capital falls below one hundred thousand shillings for two consecutive months.

(2) No broker or dealer shall—

(a) grant unsecured advances or loans to any of its directors or associates in excess of twenty thousand shillings; nor

(b) allow deficits in the account of a single client to exceed thirty per cent of its monthly net capital; nor

(c) allow its exposure to a single listed security to exceed three hundred per cent of the broker's or dealer's monthly net capital; nor

(d) allow the book value of the listed securities it carries on its own account to exceed one hundred and fifty per cent of its monthly net capital.

15. Margin trading

In relation to margin accounts, no broker or dealer or a representative of either shall—

(a) execute any transaction in a margin account—

(i) except in the case of securities approved for margin trading by the securities exchange of which the broker or dealer is a member with the concurrence of the Authority; or

(ii) without securing a properly executed written margin agreement with a customer prior to such transaction;

(b) permit the sum of the margin and market value of securities bought or carried in a client's margin account to fall below one hundred and thirty per cent or other percentage prescribed by the Authority in lieu thereof of the debit balance in that account; nor

(c) fail to keep separately a client's margin account from his other accounts.

16. Interpretation

In this rule, the following terms shall have the following meaning—

(a) aggregate indebtedness, which shall be calculated monthly, means the total liabilities of the broker or dealer less—

(i) deferred taxes;

(ii) amounts due to a director or an associate;

(iii) non-current liabilities fully secured by non-current assets excluded from net capital; and

(iv) subordinated loans accepted for this purpose by the Authority;

(b) the debit balance shall be the cash amount owed by a client in the client's margin account without deducting any cash deposited by the client as margin; and

(c) margin shall mean the aggregate amount of cash and market value of securities deposited by a client into the client's margin account but shall not include securities which are bought or carried in the margin account;

(d) net capital, which shall also be calculated monthly, means the shareholders funds or the proprietor’s capital investment for carrying out the business of a broker or dealer, and subordinated loans accepted for this purpose by the Authority less—

(i) non-current assets and pre-paid expenses;

(ii) unsecured loans and advances included under current assets;

(iii) amounts due from a director or associate included under current assets;

(iv) excess of the book value of securities carried in the broker's or dealer's own account over market value; and

(v) deficits in clients accounts, less any provisions for bad or doubtful debts already made, this amount being computed in detail satisfactory to the Authority.

Part VI – INVESTMENT ADVISERS

17. Rules relating of investment advisers

(1) No investment adviser or investment adviser's representative shall—

(a) recommend to a client to whom investment supervisory management or consulting services are provided, the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of the client's financial records;

(b) place an order to purchase or sell a security for the account of a client without written authority to do so;

(c) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client;

(d) exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when an order involving a definite amount of a specified security shall be executed, or both;

(e) induce trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

(f) borrow money or securities from a client unless the client is a broker or dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities;

(g) loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(h) misrepresent to any advisory client, or prospective advisory client, his qualifications or misrepresent the nature of the advisory services being offered or fees to be charged for such service, or omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(i) provide a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact;

(j) charges a client an unreasonable advisory fee in light of the fees charged by other investment advisers providing the same services;

(k) fail to disclose to clients in writing, before any advice is rendered, any material conflict of interest relating to the investment adviser or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including—

(i) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

(ii) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or his employees;

(l) guarantee a client that a specific result will be achieved arising from the advice which will be rendered;

(m) publish, circulate or distribute any advertisement which does not comply with the Act or the Regulations or Rules made thereunder;

(n) disclose the identity, affairs, or investment of any client to any third party unless required by law, court order or a regulatory agency to do so, or unless consented by the client;

(o) enter into, extend or renew any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula computing the fee, the amount of prepaid fee to returned in the event of contract termination or no performance, whether the contract grants discretionary power to the investment adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(2) Any investment adviser who takes or has custody of any securities or funds of a client shall be required to keep and maintain additional records as may be required by the Authority and shall—

(a) notify the Authority that it has or may have custody of customer's securities;

(b) segregate the securities of each client, mark such securities to identify the particular client having the beneficial interest therein and hold the securities in safekeeping in some place reasonably free from risk of destruction or loss;

(c) deposit clients' funds in one or more bank account containing only clients' funds;

(d) maintain the account or accounts referred to in paragraph (c) in its name or in the name of the agent or trustees of such clients;

(e) maintain a separate record for each account, showing the name and address of the bank where the account is maintained, the dates and amounts of deposits and withdrawals and the exact amount of each client's beneficial interest in the account;

(f) notify the client in writing, immediately after accepting custody or possession of funds or securities, of the place and the manner in which the same will be maintained;

(g) send each client a detailed statement, at least once every three months, showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and

(h) have an independent certified public accountant verify all client funds and securities at least once every calendar year by actual examination at a time chosen by the accountant without prior notice to the investment adviser.

(3) A certificate signed by such accountant stating that he has made an examination of such funds and securities under paragraph 2(h), and describing the nature and extent of the examination, shall be sent by the investment adviser to the Authority promptly after each examination.

18. Books and records to be kept by investment advisers

(1) Every investment adviser shall maintain, preserve, and if required, produce for inspection by the Authority the following books, records and ledgers or other accepted accounting documents for a period of seven years—

(a) a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(b) general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

(c) a memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction, and the memorandum shall—

(i) show the terms and conditions of the order, instruction, modification or cancellation;

(ii) identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and

(iii) show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate;

(iv) show orders entered pursuant to the exercise of discretionary power;

(d) all cheque books, bank statements, cancelled cheques and cash reconciliations of the investment adviser;

(e) all bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser;

(f) all trial balances, financial statements, and internal audit working papers relating to the investment adviser's business;

(g) originals of all written communications received from clients and copies of all written communications sent by the investment adviser relating to—

(i) any recommendation made or proposed to be given;

(ii) any receipts, disbursement or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security; provided, however, that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with a copy of such notice, circular or advertisement, a memorandum describing the list and the source thereof;

(h) a list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(i) all evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;

(j) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the investment adviser's business;

(k) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof; and all advertisements by the investment adviser and all records, worksheets, and calculations necessary to form the basis for performance data in such advertisements;

(l) a record of every transaction in a security in which the investment adviser or any of his representatives acquires any direct or indirect beneficial ownership; and the record shall state the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the broker or dealer with, or through whom the transaction was effected; and an investment adviser shall not be deemed to have violated the provisions of this paragraph for failing to record securities transactions of any investment adviser representative if he can show that he had adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded; and

(m) a copy of each written statement, the amendment or revision thereof, given or sent to any client or prospective client of such investment adviser and a record of the dates that the same was given or offered to be given.

(2) If an investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept shall include—

(a) a journal or other record showing all Purchases, sales, receipts and deliveries of securities (including certificate numbers) and all other debits and credits to such accounts;

(b) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

(c) copies of confirmations of all transactions effected by or for the account of any such client; and

(d) a record for each security in which the client has a position, showing the name of the client, the amount or interest of the client, and the location of such security.

(3) Every investment adviser who renders any investment advisory or management service to a client shall, in addition to records kept under paragraph (2), with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by him, make and keep true, accurate and current—

(a) records showing the securities purchased, sold, date, amount and price of each security; and

(b) records for each security in which the client has a current position, records from which the investment adviser can promptly furnish the name of each client, and the current amount or interest and the name of the client.

19. Supervision of investment adviser's representatives

(1) Every investment adviser's representative employed by an investment adviser shall be subject to the supervision of a supervisor designated by the investment adviser who may be the investment adviser in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment adviser representative in the case of entities other than sole proprietorships.

(2) As part of its responsibility under this rule, every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set

forth the procedures adopted by the investment adviser, which shall include but not be limited to the following duties—

(a) the review and written approval by the designated supervisor of the opening of each new client account;

(b) the frequent examination of all client accounts to detect and prevent irregularities or abuses;

(c) the prompt review and written approval by a designated supervisor of all advisory transactions by investment adviser representatives and of all correspondence pertaining to the solicitation or execution of advisory transactions by investment adviser representatives; and

(d) the prompt review and written approval of the handling of all client complaints.

(3) Every investment adviser who has designated more than one supervisor shall designate from among its partner officers, or other qualified investment adviser representatives, a person or group of persons who shall—

(a) supervise and periodically review the activities of the supervisors; and

(b) periodically inspect each business office under his supervision to ensure that the written procedures are being enforced.

Part VII – PRIVATE TRANSACTIONS

20. Interpretation

In these Rules, "close relation" means a spouse, a parent, sibling, child, in-laws, a grandchild, and a spouse of grandchild.

21. Prohibition on transfer of listed securities

(1) No person shall transfer the ownership of a listed security outside the securities exchange on which it is listed except in the course of—

(a) a sale or gift to a close relation, charity or approved organization for a receipt of donations;

(b) the settlement of a will or estate of a deceased person;

(c) the operation of an employee share option scheme or employee share ownership scheme of a listed company with respect to its own shares, provided such a scheme has been approved by the Authority;

(d) restructuring or mergers or acquisitions in a scheme which has been accepted by the Authority;

(e) setting off the value of listed securities that are pledged against a loan from a commercial bank or other licensed lending institution, in settlement of such loan at the current established market value of such listed securities by mutual agreement between such lending institution and such borrower, and certified by the securities exchange as being a fair market price for such security; or

(f) any other private transaction of listed securities of an exceptional nature that the securities exchange and the Authority consider to be proper and acceptable.

(2) Where a private transaction in a listed security is authorized no brokerage fee shall be payable for the transaction, but a nominal charge may be levied as may be determined by the securities exchange on which the security transferred through private transaction is listed.

Part VIII – PUBLIC COMMUNICATION

22. Rules relating to public communication

(1) All advertisements, sales literature and other communication with the public, by persons licensed under the Act and financial journalists shall be factual and any statements made shall be for the purpose of assisting in the evaluation of a particular security, type of securities, promoting the industry, service offered or the desirability of investing in securities in general.

(2) No material fact or qualification may be omitted if such omission would cause the advertisement or sales literature to be misleading in the light of the context of other information presented.

(3) In making a recommendation with respect to any security, a licensed person shall disclose the price at the time of the recommendation and, if applicable, the fact that—

(a) he makes a market in the securities recommended; and

(b) he or an associated person owns more than a nominal amount of such securities.

(4) Any offer of a report, analysis or other service without any charge must be provided as such without any condition or obligation other than what is clearly described in the offer.

(5) No claim with respect to research or analysis facilities or capacity may be made beyond those actually possessed by the person making the claim.

(6) All statements made in advertising directed to the general public shall be supported by source of facts.

(7) Every company whose securities are traded on, or subject to the rules of, a securities exchange in Kenya, shall disclose promptly to the securities exchange any material information that may affect the price of their securities or influence investment decisions, including the following—

(a) a merger, acquisition or joint venture;

(b) a stock split or stock dividend;

(c) earnings and dividends of an unusual nature;

(d) the acquisition or loss of a significant contract;

(e) a significant new product or discovery;

(f) a change in control or a significant change in management;

(g) a call of securities for redemption;

(h) the public or private sale of a significant amount of additional securities;

(i) the purchase or sale of a significant asset;

(j) a significant labour dispute;

(k) a significant law suit against the company;

(l) establishment of a programme to make purchases of the company's own shares;

(m) a tender offer for another company's securities; or

(n) any other peculiar circumstances that may prevail with respect to, the company or the relevant industry.

Part IX – INVESTORS COMPENSATION FUND

23. Meeting of Investor Compensation Committee

The Investor Compensation Committee meetings shall be convened by the chairman whenever the business of the Fund so requires and the Authority shall determine the procedure for such meetings.

24. Statement of accounts

(1) The Investor Compensation Committee shall keep proper accounts and records and in every financial year, prepare a statement of accounts showing the state of affairs, income and expenditure.

(2) The accounts shall include premium paid and any contribution by any person and investments by the Investor Compensation Fund.

(3) The statement of account shall be audited by an auditor who is qualified under section 161 of the Companies Act (Cap. 486) and appointed by the Authority.

(4) The Authority shall include information relative to the Investor Compensation Fund in its annual report to the Cabinet Secretary.

25. Compensation of investors

(1) Whenever an investor has suffered pecuniary loss due to the failure of a licensed person to, meet his contractual obligations, which loss has not been recovered or recovered in full—

(a) from the bank guarantee furnished by such license person to the securities exchange of which such licensed person is a member; or

(b) from the compensation fund of the securities exchange of which such licensed person is a member; or

(c) in legal proceedings including bankruptcy or liquidation proceedings against such licensed person,

(hereinafter called "the net loss") the investor shall apply to the Authority for compensation from the Investor Compensation Fund cash or securities equal to the net loss.

(2) An application by any investor for compensation shall be made to the Authority within six months of obtaining a final order in bankruptcy or liquidation proceedings against such licensed person.

(3) The Investor Compensation Committee shall, after examination of the evidence produced in support of a claim, make a recommendation to the Authority with respect to whether to allow or disallow such claim and, if the recommendation is to allow the claim, an assessment of the amount payable.

(4) The Authority shall give notice of its decision to the investor in writing.

(5) The net loss to an investor shall be subject to a maximum of one hundred thousand shillings provided that the Cabinet Secretary may, by order, on the recommendation of the Authority increase the sum specified in this paragraph to a sum specified in such order provided further that the net loss payable on all claims in any one year shall not exceed the total sum in the Investor Compensation Fund for the year in question.

(6) Where the Authority has made, or is under a liability to make, a payment to an investor, on behalf of a licensed person, such licensed person shall be liable to the Authority for an amount equal to the payment made out of the Investor Compensation Fund.

(7) In the case of an insolvent licensed person, the duty of a liquidator shall be to pay the Authority the amount paid by the Authority to all investors on behalf of the insolvent person under these Rules instead of to such investors and if the liability to any investor exceeds the amount paid by the Authority, the liquidator shall thereafter distribute any remaining proceeds.

26. Power of Authority to require information

The Authority may, by notice in writing served on the liquidator of an insolvent licensed person, require him, as specified in the notice, to—

(a) furnish to the Authority; or

(b) permit any person duly authorized by the Authority to inspect and obtain copies of,

such books, records or other information as the Authority may require to carry out its functions under the Act, the Regulations and these Rules.

Part X – SHAREHOLDERS COMPLAINT

27. Meeting of Shareholders Complaints Committee

The meeting of the Shareholders Complaints Committee shall be convened by the chairman at least once every three months or whenever its business so requires and the Authority shall prescribe the procedure for its meetings.

28. Power of Shareholders Complaints Committee

(1) The Shareholders Complaints Committee shall on receipt of a written complaint from any shareholder of a listed company, examine the documents and other evidence produced, if any, in support of such complaint, and determine whether the subject of the complaint has violated any provisions of the Act or any rule or regulation or any by-law, rule or regulations of the securities exchange; and no final determination of violation shall be made without affording the subject of the complaint an opportunity of being heard.

(2) Where the Shareholders Complaints Committee determines that a person under the Authority's jurisdiction has violated any provision of the Act, any rule or regulation or any securities exchange by-law, rule or regulation, the Shareholders Complaints Committee shall recommend to the Authority the nature of action to be taken against such person.

Part XI – PRIMARY ISSUE DISCLOSURE

[Deleted by L.N. 60/2002, r. 24.]

Part XIII – TAKE-OVERS AND MERGERS

[Deleted by L.N. 125/2002, r. 35.]

Part XIV – BLOCK SALES

[Deleted by L.N. 87/2002, r. 2.]

SCHEDULE [r. 42]

TAKE-OVER OFFERS

Part A

1. Requirements with which take-over offers to comply

(1) The offer shall be dated and shall be despatched to the offeree within three days of its date and shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree for at least twenty-one days from the date of despatch.

(2) The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree company or any company which is deemed by virtue of paragraph 42(4) to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office.

(3) The offer shall state—

(a) whether or not the offer is conditional upon acceptance of offers made under the take-over scheme being received in respect of a minimum percentage of share and, if so, that percentage;

(b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and

(c) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

(4) Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify—

(a) a date not being a date later than sixty days after the date of the despatch of the offer or such later date as the registrar may in a competitive situation or in special circumstances allow as the latest date on which the offeror company can declare the offer to have become free from that condition; and

(b) a further period of not less than fourteen days from the date on which the offer would otherwise have expired during which the offer will remain open for acceptance after it has been declared unconditional.

Where the offer becomes or is declared unconditional as to acceptances on or by an expiry date and the offeror company has given at least fourteen days' notice in writing to the shareholders of the offeree company that the offer will not be open for acceptance beyond that date, the offer need not remain open for acceptance for the further period specified in sub-paragraph (b). No such notice may be given between the time when a competing offer has been announced and the resultant competitive situation has ended.

(5) Every offer document shall contain the following words which are to be displayed prominently in that document:

"If you are in any doubt about this offer you should consult your stockbroker, bank manager, lawyer or other professional adviser".

Part B

2. Requirements with which statement given by offeror company to comply

(1) The statement shall—

(a) specify the names, descriptions addresses of all the directors of the offeror company;

(b) contain a summary of the principal activities of the offeror company;

(c) specify the number and description and amount of marketable securities in the offeree company held by or on behalf of the offeror company, or if none are so held contain a statement to that effect;

(d) if the shares are to be acquired for a consideration which consists of shares or debentures in the offeror company or in a company which is by virtue of paragraph 42(4) deemed to be related to the offeror company—

(i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree company, would be required to be set out in it under paragraph 19 in Part II of the Third Schedule of the Companies Act and Part XII of these Rules.

(ii) specify details of any alterations in the capital structure of the offeror company or of any subsidiary of the offeror company during the period of five years immediately preceding the date on which notice of the take-over scheme is given to the offeree company and particulars of the source of any increase in capital;

(e) if the shares are to be acquired for a consideration other than wholly in cash or other than for a consideration such as is referred to in sub-paragraph (d) contain such information and details as to the consideration as the registrar requires.

(2) The statement shall contain particulars of any restriction on the right to transfer the shares to which the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of` requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree company or to any other person and, if there is any such restriction, the arrangements, if any, being made to enable the shares to be transferred in pursuance of the take-over scheme.

(3) If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

(4) The statement shall set out—

(a) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any company which is by paragraph 42(4) deemed to be related to the offeree company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;

(b) whether or not there is any other agreement or arrangement made between the offeror company and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme, and, if so, particulars of any such agreement or arrangement;

(c) whether or not there has been within the knowledge of the offeror company any material changes in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the offeree company in general meeting, and, if so, particulars of any such change; and

(d) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror company in pursuance of the scheme will or may be transferred to any other person, and, if so—

(i) the names of the persons who are a party to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and

(ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of these persons, or if no such shares are so held, a statement to that effect.

(5) Paragraphs (6) to (8) apply only where the consideration to be offered in exchange for share of the offeree company consists in whole or in part of marketable securities issued or to be issued by the offeror company or by any other company.

(6) Where the marketable securities are quoted or dealt in on a securities exchange, the statement shall state this fact and specify the securities exchanges concerned and specify—

(a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree company;

(b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and

(c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means, the latest market sale price immediately prior to the public announcement.

(7) Where the securities are quoted or dealt in on more than one securities exchange, it is sufficient compliance with paragraph 6(a) if information with respect to the securities is given in relation to the securities exchange at which there have been the greatest number of recorder dealings in the securities in the three months immediately preceding the date on which notice of the take-over scheme is given to the offeree company.

(8) Where the take-over scheme relates to securities which are not quoted or dealt in on a securities exchange, the statement shall contain all the information which the offeror company may have as to the number, amount and price at which the securities have been sold in three months immediately preceding the date on which notice of the scheme is given to the offeree company and, if the offeror company has no such information, a statement to that effect.

Part C

3. Requirements with which statement given by offeree company to comply

(1) The statement shall indicate whether or not the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror company under the take-over scheme.

(2) The statement shall set out—

(a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company or, in the case of a director where none are so held, that fact;

(b) in respect of each such director of the offeree company by whom, or on whose behalf, shares to which the take-over scheme relates are held—

(i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or

(ii) that the director has not decided whether he will accept such a take-over offer;

(c) whether or not any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;

(d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any other company which is by virtue of paragraph 42(4) deemed to be related to that company as consideration for,

or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;

(e) whether or not there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;

(f) whether or not any director of the offeree company has any direct or indirect interest in any contract entered into by the offeror company and, if so, particulars of the nature and extent of such interest;

(g) if the shares to which the scheme relates are not quoted or dealt in on a stock exchange all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the take-over scheme was given to the offeree company; and

(h) whether or not there has been any material change in the financial position of the offeree company since the date of the last balance sheet laid before the company in general meeting and, if so, particulars of such change.