



REPUBLIC OF KENYA
MINISTRY OF FINANCE
FINANCIAL AND LEGAL SECTOR TECHNICAL ASSISTANCE
PROJECT

DRAFT
SECURITIES INDUSTRY
(DISCIPLINARY PROCEEDINGS) REGULATIONS
2009
14 April 2009

Consultancy assistance to review and strengthen legal and regulatory framework for the
Capital Markets Authority



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DRAFT Securities Industry (Disciplinary Proceedings) Regulations 2009

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**SECURITIES INDUSTRY (DISCIPLINARY PROCEEDINGS)
REGULATIONS 2009**

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**SECURITIES INDUSTRY (DISCIPLINARY PROCEEDINGS)
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IN EXERCISE of the powers conferred on it by section 135 of the Securities Industry Act, the Capital Markets Authority has made the following regulations

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**PART I
PRELIMINARY**

1. Citation and commencement

These regulations may be cited as the Securities Industry (Disciplinary Proceedings) Regulations 2009 and shall come into operation on the day of 2009.

2. Interpretation

In these regulations, unless the context otherwise requires –

“Act” means the Securities Industry Act;

“misconduct” has the meaning given in section 109(6) of the Act; and

“regulated person” has the same meaning as in the Act.

**PART II
ESTABLISHMENT OF DISCIPLINARY COMMITTEE**

3. Institution of disciplinary proceedings

Where it appears to the Authority in the light of an inspection conducted under section 104, or an investigation under section 105, of the Act, or otherwise, that –

- (a) there are circumstances suggesting that the regulated person is not a fit and proper person to carry on the business of dealing in securities;

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- (b) a regulated person is, or was at any time, guilty of misconduct; or
- (c) it is desirable for the protection of investors,

and the Authority decides that the matter should be the subject of disciplinary proceedings, the Authority may delegate the disciplinary proceedings to the Disciplinary Committee for determination.

4. Establishment of Disciplinary Committee

The Authority shall establish a Disciplinary Committee that shall hear and determine disciplinary proceedings against a regulated person referred to it by the Authority under regulation 3.

5. Appointment of Disciplinary Committee Panel

- (1) The Authority shall appoint from time to time a Panel of not less than [8] individuals who shall be considered of sufficient standing and general experience to sit as members of the Disciplinary Committee on such terms as the Authority sees fit.
- (2) The Authority shall appoint one Panel member to be the chairman of the Panel and another member to be the deputy chairman of the Panel.
- (3) Any function required to be performed by the chairman under these regulations may be performed by the deputy chairman if the chairman is unavailable, unwilling or for any other reason unable to act.

6. Revocation of appointment to Disciplinary Committee Panel

The Authority may revoke the appointment of any member of the Panel if in all the circumstances the Authority considers it to be desirable for the effective performance by the Disciplinary Committee of its functions.

7. Convening of Disciplinary Committee

- (1) Where disciplinary proceedings are referred by the Authority to the Disciplinary Committee, the chairman of the Panel shall select [3] members of the Panel to sit as the Disciplinary Committee to hear and determine the matter.

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- (2) The Disciplinary Committee shall always include at least one Member of the Authority and one individual who is independent of the Authority.

8. Secretary

- (1) The Authority shall appoint a suitably qualified and experienced individual to act as secretary to the Disciplinary Committee to carry out its administrative functions.
- (2) The secretary may sit with the Disciplinary Committee but may not take part in its deliberations.

9. Majority decision

If the members of the Disciplinary Committee are not unanimous as to any finding, penalty or other matter, the decision of the Disciplinary Committee shall be that of the majority provided that, if the members are equally divided, the decision shall be that which most favours the regulated person.

**PART II
PRE-HEARING MATTERS**

10. Statement of case

Within [3] days of the referral of disciplinary proceedings to the Disciplinary Committee, the Authority shall serve on the regulated person and the secretary to the Disciplinary Committee a statement of case which shall comprise the charge or charges and a summary of the principal facts to be relied on.

11. Exchange of evidence

After the service of a statement of case under regulation 9, except where the regulated person has notified the Authority in writing that all charges are to be admitted –

- (a) the Authority shall, within [7] days of the service of the statement of case, serve on the regulated person and the secretary to the Disciplinary Committee copies of any documents on which it intends to rely and a list of the witnesses it proposes to call together with an outline of their proposed evidence; and

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- (b) the regulated person shall, within [14] days of the Authority complying with the requirement under paragraph (a), serve on the Authority and the secretary to the Disciplinary Committee a statement of defence which shall include its intended pleas to the charges, which evidence of the Authority is agreed, which documents are agreed, what admission of facts the regulated person makes, and a list of the witnesses it proposes to call together with an outline of their proposed evidence.

12. Directions by Disciplinary Committee

The Disciplinary Committee may give all such directions and take such other steps as it considers appropriate for the clarification of the facts and issues and generally for their fair and efficient presentation.

**PART III
THE DISCIPLINARY COMMITTEE HEARING**

13. Notice of hearing

The secretary to the Disciplinary Committee shall give the regulated person and the Authority not less than [15] days written notice of the time and place of hearing.

14. Admission of charges

The regulated person may admit all or any of the charges referred to in the Authority's statement of case by notice in writing to the secretary to the Disciplinary Committee not less than [2] days before the day of the hearing.

15. Attendance

- (1) The regulated person shall attend the hearing by its chief executive officer or other senior officer.
- (2) If the regulated person fails to attend the hearing, the Disciplinary Committee may proceed in its absence.

16. Burden and standard of proof

- (1) The burden of proof shall be on the Authority.

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- (2) The standard of proof shall be that applicable in civil proceedings in a court of law (the balance of probability).

17. Evidence and directions

Proceedings at the Disciplinary Committee hearing shall be governed by these regulations and by the rules of natural justice, subject to which the Disciplinary Committee may –

- (a) admit any evidence whether oral or written, whether direct or hearsay, without any requirement that it be on oath, and whether or not the same would be admissible in a court of law;
- (b) make all such directions with regard to the conduct of and the procedure at the hearing as the Disciplinary Committee considers appropriate for securing a proper opportunity for the regulated person to answer the case against it and otherwise as may be just.

18. Conduct of hearing

In conducting the hearing the Disciplinary Committee may regulate its sittings and apply such rules on procedure and practice as it sees fit, provided that –

- (a) the Disciplinary Committee shall act fairly and shall give the regulated person a reasonable opportunity to make written or oral representations, to call witnesses and to cross-examine any witness called against him;
- (b) the Disciplinary Committee may determine the issue and any penalty on the basis of written evidence and representations if, having regard to the nature and gravity of the matter in issue, it is satisfied that it is suitable for such determination and the regulated person consents to such a procedure being adopted;
- (c) in determining the issue by way of oral hearing, the Disciplinary Committee –

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- (i) shall hear the matter in private;
 - (ii) may at its discretion permit the regulated person to be legally represented;
- (d) where the matter in issue against a regulated person is found to be proved, the Disciplinary Committee shall, before exercising its disciplinary powers, allow the regulated person, or anyone on its behalf, to address it in mitigation of penalty.

19. Record of hearing

- (1) The Disciplinary Committee shall cause a record to be made of the hearing electronically or otherwise.
- (2) The regulated person is entitled to a transcription or copy of the record on payment of the cost.

20. Penalties

On each charge admitted or proved, the Disciplinary Committee may impose on the regulated person one or more of the following penalties –

- (a) issue a private warning or reprimand;
- (b) issue a notice of public censure;
- (c) in the case of misconduct, make an order under section 112 of the Act;
- (d) suspend its license granted under Part IV of the Act;
- (e) revoke its license granted under Part IV of the Act.

21. Decision

- (1) Following the conclusion of the hearing of the disciplinary proceeding, the Disciplinary Committee shall deliver to the regulated person and the Authority a written decision comprising a summary of –
 - (a) the charges admitted;
 - (b) its findings, with a statement of its reasons, as to whether any charges not admitted are proved;
 - (c) its findings or views on any facts or matters to which it wishes to draw attention; and

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- (d) any penalties and order for costs imposed.
- (2) The decision of the Disciplinary Committee shall be the decision of the Authority.

22. Costs

- (1) The Disciplinary Committee may order either party to the disciplinary proceedings to pay costs as it thinks fit, including any costs that in the view of the Disciplinary Committee, regardless of the outcome of the proceedings, have been unnecessarily caused.
- (2) Costs may be awarded against the Authority only if, in the opinion of the Disciplinary Committee, the Authority has behaved unreasonably in the commencement or conduct of the proceedings.
- (3) The Disciplinary Committee may determine or delegate the determination of the amount of costs.
- (4) Costs awarded shall be payable within [15] days of the written notice of the determination of the amount or the conclusion of any appeal against that determination.