



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

REVISED DRAFT
SECURITIES INDUSTRY
(INTERNET TRADING) REGULATIONS 2009

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



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SECURITIES INDUSTRY (INTERNET TRADING) REGULATIONS 2009

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SECURITIES INDUSTRY (INTERNET TRADING) REGULATIONS 2009

IN EXERCISE of the powers conferred by section 66 of the Capital Markets Authority Act 2009, the Capital Markets Authority has made the following regulations –

1. Citation

These regulations may be cited as the Securities Industry (Internet Trading) Regulations 2009.

2. Definitions

In these regulations, unless there is anything repugnant in the subject or context –

“Act” means the Securities Industry Act 2009;

“stockbroker” means a stockbroker licensed by the Authority under the Act;

“stockbrokerage services” means the provision of services by a stockbroker as an agent for his clients in connection with their purchase or sale of securities, and includes the provision of any other matter reasonably incidental or ancillary to the provision of such services;

“collective investment scheme” has the meaning given in section 53 of the Act;

“electronic communications network” means a computer network that electronically matches buyers and sellers of securities;

“electronic prospectus” means a prospectus relating to an offer of securities to the public which is distributed via the Internet, a computer network, CD-ROMs, floppy disks or any other electronic medium;

“investment adviser” means an investment adviser licensed under the Act, and “investment advisory services” shall be construed accordingly;

“internet trading service provider” means any person approved by the Authority under these regulations to offer internet trading services in securities;

“listed securities” means securities that have been listed or admitted to trading on a securities exchange; and

“other electronic medium” means hand held or wireless, or voice activated or SMS messaging, trading or communications devices.

3. Approval of Authority required

- (1) No person may offer a trading service in a security in Kenya through the Internet or other electronic medium without the prior written approval of the Authority.
- (2) No person may, for remuneration, offer stockbrokerage services or investment advisory services in respect of a security or units of a collective investment scheme in Kenya through the internet or other electronic medium without the prior approval of the Authority.
- (3) No person may offer a security or units of a collective investment scheme for sale in Kenya through the Internet or other electronic medium other than in compliance with these regulations.
- (4) A trading service or offer of securities or units of a collective investment scheme for sale will be deemed to be taking place in Kenya if –
 - (a) it is provided by an organisation located in Kenya; or
 - (b) it is clearly targeted at Kenya investors.

4. Trading in listed securities

- (1) The Authority will not grant permission to any internet trading service that facilitates the trading of Kenya listed securities other

than through a securities exchange or an electronic communications network and in compliance with its rules.

- (2) Securities exchanges may provide internet trading services to stockbrokers that use a service supplied by the exchange provided that they comply with these regulations and obtain the prior written approval of the Authority.
- (3) Stockbrokers and electronic communications networks may supply their own internet trading service provided that they comply with these regulations and obtain the prior written approval of the Authority.
- (4) Stockbrokers and electronic communications networks may use an internet trading service supplied by other organisations (computer and/or internet service providers) provided that they comply with these regulations and obtain the prior written approval of the Authority.
- (5) Applicants shall provide details of the service to be provided and shall demonstrate compliance with these regulations.
- (6) Applicants shall have the systems, controls and procedures of the internet trading service independently audited by an audit firm approved by the Authority prior to consideration of the application by the Authority.
- (7) Persons that already offer an internet trading service may continue to do so, provided that they apply for approval from the Authority and conform to these regulations.

5. Application

- (1) An application for registration as an internet trading service provider shall be made in such form and contain such information as the Authority may from time to time require.
- (2) An application for registration as an internet trading service provider shall be accompanied by such fee as shall be prescribed from time to time by the Authority.

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- (3) An application for registration as an internet trading service provider shall at least include details of satisfactory arrangements that are in place to –
- (a) ensure confidentiality of information in such a way that information is only accessible to an authorized person or system; and in particular that satisfactory measures are in place to prevent –
 - (i) unwanted disclosure of personal data, transactions, activity and presence on the internet;
 - (ii) misappropriation of identification;
 - (iii) impersonation, leading to unauthorised (illegal) transactions;
 - (iv) unauthorised usage and inability to detect such malpractices in a timely fashion and/or identify the perpetrator;
 - (v) attacks from third parties designed to interrupt the service or aimed at the service becoming an agent for an attack against another web-site;
 - (vi) analysis of data by unauthorized third parties;
 - (b) safeguard the integrity of the service including controls to prevent –
 - (i) non-compliance with rules and regulations issued by the Authority, leading to illegal transactions, fraud or malpractice;
 - (ii) presentation of incorrect data, whether unintentionally or malevolently;
 - (iii) false presentation, or the use of incomplete information for transactions;
 - (iv) manipulation of data;

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- (v) viruses, leading to loss of data, unauthorized access to or manipulation of data, unavailability or threat of unavailability of systems;
 - (vi) cyber extortion, selling data stolen from (or illegally obtained from) service providers;
- (c) ensure the availability of the service in the event that –
- (i) the site is not reachable, and that there is no possibility to trade, or to get or give information;
 - (ii) that parts of the site are not reachable either through a denial of service attack or lack of capacity; or
 - (iii) that the provider of the service is unable to give timely access to the site or parts of the site;
- (d) ensure that satisfactory alternative arrangements and contingency plans are in place to ensure that business can continue in the event of a large-scale disruption;
- (e) ensure that the identity of the person or system accessing the service is properly verified by the use of PINs, passwords, electronic signatures or such other approved mechanism so as to exclude unauthorized access;
- (f) ensure that satisfactory arrangements are in place so that a stockbroker can at all times uniquely identify each and every order during the different stages of processing;
- (g) ensure that orders placed through its systems are fairly allocated in accordance with the rules of the relevant securities exchange;
- (h) ensure there is an effective audit trail to address risks arising from –
- (i) the opening, modification or closing of a client account;

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- (ii) any transaction with significant financial consequences;
 - (iii) any authorisation granted to a client to exceed a limit;
 - (iv) any granting, modification or revocation of systems access rights or privileges.
- (4) A stockbroker or electronic communications network applicant shall—
- (a) have an agreement with clients to whom it offers an internet trading service that contains appropriate and prominent risk disclosures highlighting the risks associated with internet transactions;
 - (b) have appropriate arrangements in place to assess a client's suitability to undertake securities transactions via the internet;
 - (c) have appropriate arrangements in place to approve a client's account for day trading;
 - (d) display a prominent statement on its system that "This internet trading service has been approved by the Capital Markets Authority of Kenya. The Authority shall not be liable to any action in damages suffered as a result of this approval.";
 - (e) have adequate risk management systems for controlling exposure to internet clients;
 - (f) have an adequate number of suitably qualified staff under the control of a senior manager to control and monitor transactions and render clients services in accordance with the rules and regulations;
 - (g) either have suitably qualified staff to operate and maintain the systems used for internet trading services or have an irrevocable agreement with a suitably qualified third party provider for the operation and maintenance of those systems;

- (h) be responsible for settlement of each and every trade executed through the internet trading service that it utilises.
- (5) A securities exchange may specify its own requirements, in addition to these regulations, for allowing a stockbroker or electronic communications network to connect to a system operated by the exchange.
- (6) A stockbroker or electronic communications network applicant shall provide the Authority with details as to how it will satisfy itself as to the true identity of a person opening an account and what measures it intends to take to ensure that the account will be maintained and operated by the person opening the account.
- (7) An application for approval for an internet trading service to be operated on behalf of a stockbroker or electronic communications network shall be accompanied by a statement from the stockbroker or electronic communications network detailing the contingency arrangements that will be put into effect in the event that the supplier of the service is unable to continue to provide a service.
- (8) An application for approval for an internet trading service shall be accompanied by a copy of the report of the audit required under regulation 4(6).

6. Certificate of registration

- (1) The Authority may, if it is satisfied that the applicant is eligible for registration as an internet trading service provider, grant a certificate of registration to the applicant on payment of the prescribed fee.
- (2) The certificate of registration as an internet trading service provider shall be valid for one year.
- (3) An application made under regulation 5 (1) shall not be refused except after giving the applicant a reasonable opportunity of being heard.
- (4) In the event that the Authority refuses the grant of certificate of registration to an applicant after providing an opportunity of being

heard under paragraph (3), the decision shall be communicated to the applicant within fourteen days of the last hearing given to the applicant, stating the grounds for refusal.

- (5) An applicant aggrieved by the decision of the Authority under paragraph (4) may apply, within a period of thirty days from the date of receipt of such intimation, to the Authority for review of its decision.
- (6) The Authority shall not be liable to any action in damages suffered as a result of its registration of an applicant as an internet service provider.

7. Effect of refusal for registration

A person whose application for a grant of a certificate of registration as an internet trading service provider has been refused by the Authority shall, from and on the date of receipt of the decision under regulation 6 (4) , not offer an internet trading service.

8. Renewal of registration

- (1) The certificate of registration shall be renewable on payment of fee as prescribed from time to time by the Authority.
- (2) Requirements of these regulations as they apply to initial registration shall also apply to renewal of the registration.

9. Suspension of registration

- (1) The Authority may, if it considers necessary in the public interest so to do, by order in writing, suspend the registration of an internet trading service provider or place restrictions on the use of the service for such period as may be specified in the order or impose on the internet trading service provider a fine not exceeding shillings [??] where the Authority is of the opinion that an internet trading service provider –
 - (a) has failed to remain in compliance with any conditions subject to which certificate of registration was granted under these regulations;

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- (b) has otherwise failed to comply with any requirement of the Act or of any regulations or direction made or given thereunder;
 - (c) has failed to furnish such information related to the internet trading service as may be required by the Authority;
 - (d) has failed to submit periodical returns as required by the Authority;
 - (e) has furnished wrong, false or misleading information;
 - (f) has not co-operated in any enquiry or inspection conducted by the Authority; or
 - (g) has had its licence to operate as a stockbroker, electronic communications network or securities exchange suspended by the Authority.
- (2) Provided that no such order shall be made except after giving the internet trading service provider an opportunity of being heard.

10. Cancellation of registration

- (1) The Authority may, if it considers necessary for the protection of investors so to do, by order in writing, cancel the registration of the internet trading service provider where the Authority is of the opinion that the cause of suspension of registration under regulation 9 continues during the period of such suspension, or an internet trading service provider whose registration has been suspended –
- (a) has been found guilty of fraud, or convicted of a criminal offence;
 - (b) has had its licence to operate as a stockbroker, electronic communications network or securities exchange cancelled by the Authority;
 - (c) has not complied with a direction of the Authority.
- (2) Provided that no such order shall be made except after giving the internet trading service provider an opportunity of being heard.
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11. Automatic cancellation of registration

A certificate of registration granted under these regulations shall stand cancelled automatically if an internet trading service provider to whom such certificate has been granted –

- (a) ceases to be a stockbroker, electronic communications network or securities exchange;
- (b) voluntary surrenders the certificate of registration to the Authority; or
- (c) is wound up by a Court order.

12. Security of data

- (1) To reduce the risk of third party interception of information sent between a client's computer and the system of an internet trading service provider, the system shall to use some form of encryption.
- (2) The encryption shall apply not only to orders being entered and to any communication with clients that contains confidential information.
- (3) The system shall use a firewall to prevent intrusions by unauthorized persons (e.g., a cracker or hacker, who may obtain unauthorized access to a computer system by bypassing passwords or otherwise breaching computer security).
- (4) The system shall be configurable to allow auto-logoff in case of inactivity of the trading terminal and the trading website.
- (5) Internet trading service providers shall demonstrate that they have in place a written security policy based on or containing these regulations as part of their security policy.

13. Operational Capacity

Operational capacity shall be re-evaluated at regular intervals and internet trading service providers shall give the Authority details of the procedures for undertaking such an evaluation, the time at which such an evaluation will be undertaken, and a copy of the results of such evaluation.

14. Systems Modification

Internet trading service providers shall provide the Authority, in advance, with information relating to any significant changes to its systems or any changes to the functionality of its systems identifying the areas and the reasons for the change. In the event that the changes to the system are deemed to be material, the internet trading service provider shall lodge with the Authority a copy of its testing and implementation strategies. In addition, the Authority may be present and participate during testing of the systems before the changes are introduced into live operation.

15. Client information

(1) Any internet trading system accessed by clients shall provide the following information in plain English language and in an easily accessible form –

- (a) a basic explanation of securities trading; including definitions of common terms used on the trading screen;
- (b) a general statement and information regarding the manner in which orders are accepted, processed, settled and cleared via the internet;
- (c) disclosure about the risks of securities trading, including the risk of systems outages and failures and any alternative means of placing orders;
- (d) procedures to cancel pending orders during a system failure;
- (e) a glossary explaining key investment terms and concepts such as;
 - (i) the differences between the various types of orders that may be placed (including a market order, a limit order);
 - (ii) notice that a market order may be executed at a price higher or lower than the quote displayed on the website at the time of order entry;

- (iii) an explanation of how the client's orders are executed;
 - (iv) any situations in which clients may not receive an execution;
 - (v) any restrictions on the types of orders that clients can place; and
 - (vi) how market volatility can affect clients' orders.
- (f) the regulations affecting client stockbroker relationship, arbitration rules, investor protection rules.
 - (g) a hyperlink to the website/page on the website of the relevant securities exchange displaying rules/regulations/circulars.
 - (h) a “Terms of Use” policy document which shall be approved by the Authority.
- (2) Ticker/quote/order book displayed on the system shall display the time stamp as well as the source of such information against the given information.

16. Duplicate orders

The system shall have mechanisms to prevent executions of unintended duplicate orders.

17. Independent assessment

The Authority may employ technical experts to undertake an independent assessment of the operational capacity and security of a system, for which approval is sought, and may charge to the applicant the costs incurred, subject to the applicant agreeing in advance to a maximum charge.

18. Order/Trade Confirmation

- (1) Trade confirmations and contract notes shall be sent to the client. Subject to the rules of the securities exchange, these may be sent by email on condition that the stockbroker –

- (a) notifies the Authority and the exchange concerned of the intention to use of electronic trade confirmations and/or contract notes one month in advance; and
 - (b) obtains prior written consent from the clients concerned.
- (2) Any trade confirmations and/or contract notes sent by email shall be digitally signed by electronic signature.

19. Investment Advice

- (1) No person shall offer investment advice over the internet for payment unless they are licensed by the Authority as a stockbroker or an investment adviser.
- (2) Stockbrokers may sponsor chat rooms or bulletin boards for clients or anyone online (collectively referred to as "forums") where specific recommendations are made by participants in response to questions posed by other participants, provided that –
- (a) a prominent disclaimer is made at the forum's point of entry and on the banner along with the stockbroker's name and/or logo indicating that –
 - (i) the stockbroker does not intend to make or endorse the recommendations made in the forums;
 - (ii) that information on this site does not constitute advice and shall be treated with caution as whatever is entered represents only the opinion of the persons taking part; and
 - (b) if stockbrokers arrange for third parties to participate in the forums, the stockbroker discloses the identity and professional experience of such participants and any compensation arrangements and any other association the stockbroker has with such participants.

20. Outsourcing

- (1) Notwithstanding entering into outsourcing arrangements with a third party supplier of internet trading services, stockbrokers and

electronic communications networks shall not contract out of their core functions and regulatory obligations.

- (2) Stockbrokers and electronic communications networks shall consider the following matters when negotiating an outsourcing arrangement –
- (a) notification and reporting requirements;
 - (b) the kind of access that might be needed by the stockbroker or electronic communications network, its auditor, the Authority;
 - (c) intellectual property and information ownership rights, confidentiality agreements and Chinese Walls;
 - (d) the need for, and adequacy of, any guarantees or indemnities;
 - (e) compliance with the stockbroker's or Electronic Communications Network's own policies, for example on information security;
 - (f) arrangements to ensure business continuity and the extent to which facilities that provide the outsourcing are or are not available to provide business continuity for third parties;
 - (g) approval process for changes to outsourcing arrangements; and
 - (h) agreed conditions for terminating outsourcing arrangements.
- (3) The Authority will expect stockbrokers and electronic communications networks entering into outsourcing arrangements with a supplier of internet trading services to enter into a service level agreement that includes –
- (a) qualitative and quantitative performance targets;
 - (b) evaluation of performance, for example by third parties, internal audits, self certification; and

- (c) remedial action and escalation processes for dealing with inadequate performance.
- (4) A stockbroker or electronic communications network that enters into an outsourcing arrangement with a supplier of internet trading services shall have appropriate contingency arrangements in place in the event that the supplier of the service is unable to continue to provide a service.

21. Monthly reporting

- (1) Internet trading service providers shall provide monthly reports to the Authority on the reliability of the service.
- (2) These reports shall show –
 - (a) the number of users of the system as at the end of the month –
 - (i) for securities exchanges, the number of stockbrokers;
 - (ii) for stockbrokers and electronic communications networks, the number of clients.
 - (b) the daily average number of transactions (of all types) processed by the system during the month and the highest number of transactions processed by the system on a single day during the month;-
 - (c) the percentage of the scheduled time for availability for which the service was not available; and
 - (d) the reason for non-availability.

22. Cooperation with Authority

- (1) To assist the Authority in investigating instances of suspected insider trading and market manipulation, internet trading service providers shall provide full and prompt responses to all requests for information by the Authority.

- (2) Information displayed on the website of an internet trading service provider shall be kept in an accessible form for a minimum of twelve months.

23. Collective Investment Schemes

- (1) Every advertisement for a collective investment scheme targeting investors in Kenya shall comply with the Securities Industry (Advertising) Regulations 2009 and a hard copy of the relevant web-pages shall be submitted to the Authority.
- (2) If the website supports multimedia presentation then a script and description of the presentation shall also be submitted.
- (3) Advertisements shall not be false, misleading, disparaging or deceptive. Information on the website is required to be updated and current, and outdated information is required to be appropriately removed or archived in order to avoid confusion.
- (4) With regard to dealings in units of collective investment schemes on the Internet, all the proper operational procedures, including client identity authentication, shall be followed and all applicable regulations complied with.
- (5) Where information or documents are required to be delivered to holders of interests in collective investment schemes, such notices may be delivered by any media provided that the media permits effective communication and the investors concerned have consented to the use of the specified media for the delivery of specified communications.
- (6) Where information or documents are distributed by electronic means to investors in accordance with their consent, the Authority requires that paper copies are made available to these investors if they revoke their consent and ask to obtain paper copies.
- (7) Documents on a website shall remain available for as long as it is necessary for investors to have a reasonable opportunity to access or read them. As in the case of paper documents, investors shall have the opportunity to retain the information by printing or downloading the documents or have ongoing access equivalent to personal retention.

- (8) Consent to receive information through electronic means shall be obtained from investors in a manner that assures its authenticity and a record shall be retained. Consent shall be revocable by investors at any time and the means to revoke consent prominently displayed. Where consent is given by an investor that a communication (such as a notice to scheme holders) can be posted on the website to satisfy delivery to the investor, there shall be effective means to ensure that the investor is notified or made aware on a timely basis that new information exists.

24. Offer of Securities

- (1) An offer of securities or units of a collective investment scheme for sale in Kenya by the publication of an electronic prospectus may only take place following approval of the prospectus by the Authority.
- (2) The information provided on a website including application and allotment procedures shall comply with all relevant legislation relating to the publication of a prospectus and the issue of securities.

25. Electronic Prospectus

- (1) Where an issue of securities or units of a collective investment scheme is offered online, adequate information shall be provided to investors, including an electronic prospectus, by using one or more of the following methods –
- (a) a full version of the prospectus is made available on the website, and which can be effectively read, printed, and downloaded;
 - (b) a full version of the prospectus is made available via hyperlink to another website (for example, from the website of an intermediary to an issuer's website), and which can be effectively read, printed, and downloaded;
or
 - (c) such other method, including e-mail, provided that the distribution method is clearly identified on the website and does not involve any charges;

- (2) There shall be a prominent statement on the website, which is capable of being seen or read with reasonable ease by investors accessing an electronic prospectus, that printed copies of the prospectus are also available, as well as where and how they can be obtained. The required prominence shall have regard to the font sizes used in the relevant web-page and the presentation of the information therein. This statement shall if possible be presented in type of the same size as the rest or the majority of the text in the page.
- (3) A prospectus shall be available to investors prior to their gaining access to an application form or the web-pages for the execution of an order to purchase securities, i.e. a prospectus shall be available “up front”. A prominent statement shall be placed on the website to advise investors to read the prospectus prior to submitting an application or executing an order. In this connection, the offerees are required to –
 - (a) implement measures to ensure that investors can access a web-page for executing an order only if they have been given sufficient opportunity to read or access the electronic prospectus, *e.g.* the web-page for executing an order shall be preceded by web-pages containing the prospectus or a web-page containing a hyperlink to the prospectus; and
 - (b) implement measures to ensure that investors can access a web-page for executing an order only if they have confirmed that sufficient opportunity has been given to them to read or access the electronic prospectus, *e.g.* a confirmation facility is provided on the web-page containing the prospectus or the hyperlink to allow investors to declare, for instance by clicking on the facility, that they have been provided with sufficient opportunity to access or read the relevant prospectus and the information disclosed therein;
 - (c) unless and until investors have made a positive declaration referred to in paragraph (b) above they

shall not be given access to the web-page for executing an order to purchase securities.

- (4) All reasonable steps shall be taken to ensure that electronic prospectuses are identical to the most up-to-date paper versions as authorised by the Authority.
- (5) An electronic prospectus shall contain the same entire content in the same sequence in all material aspects as in the paper version, without having to refer investors to other websites, for example by hyperlinks, for parts of the prospectus.
- (6) A prospectus may be amended from time to time and the amendments, which shall be approved by the Authority, are sometimes incorporated into the paper version of the prospectus in the form of an addendum, before the prospectus is reprinted. Notwithstanding paragraph (5) above, the Authority generally would have no objection to the full incorporation of such amendments into the electronic version of the prospectus and the availability of such updated electronic version on the website, although its appearance may be different from the printed version.
- (7) The incorporation of a search facility or prompts to assist investors to navigate to or find different parts of the electronic prospectus is encouraged if this would enhance the comprehensibility, readability and legibility of the document.
- (8) A website shall clearly specify the areas that contain the electronic prospectus; hyperlinks from an electronic prospectus on a website to other documents or web-pages are not acceptable unless the other documents and information on the other web-pages are required to be made available for inspection and/or directly referred to in or form part of the prospectus. A hyperlink providing exit from the electronic prospectus to the previous start point is acceptable.
- (9) The offeror shall specify clearly –
 - (a) the procedures for payment;
 - (b) the procedures for refunding money to applicants;

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- (c) the procedures for distribution of securities certificates or crediting the applicant's securities account in the event that an application is successful;
- (d) a description of any additional remuneration (such as fees, charges) that is to be paid by the applicant other than anything already specified in the prospectus;
- (e) the deadline for the submission of an application by the applicant.