CAPITAL MARKETS AUTHORITY
Promoting the Integrity and Growth of the Capital Markets

CODE OF CORPORATE GOVERNANCE FOR ISSUERS OF SECURITIES TO THE PUBLIC – STAKEHOLDER FEEDBACK STATEMENT

The Authority hosted issuers' audit committees, MDs/CEOs, company secretaries and governance auditors in three separate fora from 30th October to 1st November 2018 to deliberate on the report on state of corporate governance of issuers of securities to the public in Kenya. Following the successful deliberations at the fora, we publish the following feedback statement on the key matters highlighted by the participants: -

	Comment	Consideration
1.	There was not sufficient clarity on Authority's expectations on the conduct of self-assessment by issuers when completing the CG Reporting Template.	The CG assessments rely on publicly available information considering this is what is accessible to shareholders, potential investors and other relevant stakeholders.
2.	What trends could be derived from the assessments noting that the firms reported to be in leadership were all from the banking sector.	Generally, most firms with a primary industry regulator, especially those in the financial sector, and who are already obligated to make public disclosures by other regulatory instruments posted a higher rating. However, other firms, other than those from the banking sub-sector, were also assessed to be in leadership in different principles although on average not registering "leadership" ratings.
3.	The rationale for analysis of performance of issuers on sectoral basis and impact of outliers on overall sectoral ratings due to the impact of the law of averages.	The Authority's decision to analyze the performance by sectors was based on the need to develop an appropriate CG scorecard cognizant of the fact that this was the first year of application of the Code and balancing this with the need to establish a baseline for future comparison. However, the Authority will

		continue engaging key stakeholders to determine an appropriate time to make additional and more granular disclosure of specific-issuer performance in the future.
4.	Issuers raised concerns with respect to multiplicity of audits and the associated compliance costs. It was indicated that issuers in some of the sectors are required to undergo several other audits in addition to financial, governance and legal and compliance audits for instance AML/CFT, systems, risks, among others. Issuers sought to know if there is an opportunity to consolidate and synchronize some of these audits to reduce the compliance burden.	It was indicated that the additional audits highlighted are either statutory or sector-specific regulatory requirements and the Authority may not have jurisdiction to determine their suitability and timing. Where there are inconsistencies or overlaps between different regulatory provisions (including where an issuer is regulated across different jurisdictions), issuers are advised to meet the higher regulatory standards. The rationale for the requirement of distinct governance and legal and compliance audits was elaborated. Legal and compliance audits cover compliance with all legal and regulatory requirements whereas governance audits transcend specific governance-legal related requirements stipulated in the Code to include operational governance instruments and structures delving deeper into the application of both the letter and spirit of the provisions. The Authority specifically noted the concern raised around the frequency, cycle, cost and scope of governance audits and will be engaging stakeholders to agree and inform an appropriate way forward. Nonetheless, the Authority continues to welcome proposals on areas of reform to further enhance the effectiveness of the regulatory frameworks.
5.	The rationale for the nine-year benchmark for the tenure of independent directors after which they are re-designated as non-executive was sought. Guidance was also requested on the applicable standard where there are conflicting requirements in this regard.	The 9-year tenure was informed by best practice paying due regard to local circumstances. An independent director is generally deemed to have become too familiar with the company after such a period and therefore there would be a likelihood of loss of independence. The Authority will provide feedback to governance trainers to focus on emerging roles of independent directors.
6.	Guidance was sought in relation to the rationale for the term of office of external auditors which has been pegged at 6-9 years.	It was explained that this provision was drafted after a robust stakeholder engagement process and is reflective of best practice in this area. Generally, an external auditor is considered to have lost their independence after a continuous audit of a company for several years. The period of 6-9 years

		provides the ceiling and issuers are encouraged to adopt even shorter timeframes.
7.	There was concern that the current assessment methodology is more focused on disclosures, without necessarily confirming application of good corporate governance practices, and may therefore be more quantitative rather than qualitative. This may encourage box ticking instead of adoption of good corporate governance practices. A firm may for example hire a consultant to develop all required policies and upload them on the website, yet the company does not in practice actualize the policies. The Authority was challenged to come up with a more qualitative methodology.	The requirement that the Chairman of the Board, CEO and Company Secretary sign off the reporting template is meant to ensure ownership and accountability. It should however be noted that honesty, integrity and ethics on the part of key stakeholders including directors and management is key in adopting good corporate governance practices in setting up governance structures, gaining credibility in the business community and achieving long term sustainability. The Authority will continue to welcome feedback to inform improvement of the assessment methodology.
8.	Concerns were raised that there are entities that are analyzing, ranking and publishing corporate governance reports whose objectivity is in doubt due to opaque metrics employed.	The Authority reiterates that they are no entities which have been commissioned to conduct corporate governance assessments and rankings for issuers of securities to the public. The Authority will take appropriate measures to address misleading publications. It is noteworthy that any other assessments and rankings are not pegged on the Code but are subjective evaluations based on metrics and methodology which has neither been approved by the Authority nor aligned to the provisions of the Code.
9.	Issuers sought to find out the rationale for an annual governance audit especially considering that findings from a governance audit are expected to include short, medium and long-term measures.	The feedback was noted and will inform further stakeholder engagements which may necessitate regulatory reforms, if deemed appropriate.

10.	The Authority was challenged to enhance the analysis provided in the Corporate Governance Scorecard/Report including demonstrating the link between governance and financial performance to further buttress the value proposition for adoption of good corporate governance practices.	The Authority has taken the feedback from the stakeholders and expects to prepare much more enriched reports in future.
11.	The Authority was tasked to consider incentivizing issuers who demonstrate leadership in application of good corporate governance practices. However, it was also pointed out that this should be balanced against management of conflict of interest by the regulator.	The Authority considers the best incentive to be the value derived by the firm as a consequence of adoption of good corporate governance practices. This proposal will be considered alongside the extent of future disclosures of performance by individual issuers.
12.	Some issuers interrogated the basis for extensive disclosures required vis a vis sensitive information and risk of loss of competitive advantage by issuers.	Investors are increasingly demanding information necessary for them to make investment decisions. The spirit of the Code is espoused under the principle of transparency and disclosure. However, in making the disclosures, issuers are expected to assess and balance the scope and content of such disclosures against stakeholder expectations and commercial considerations.
13.	Issuers wanted to understand how the Authority was leveraging technology in enhancing its regulatory mandate especially in relation to protection of investor interests.	One of the strategic objectives in of the Authority in its 2018-2023 Strategic Plan is leveraging technology in execution of its mandate. In this regard, the Authority has identified activities that will lead to realization of this objective.

14.	Issuers wanted to know if the CMA was going to provide a specific format for Integrated Reporting and Environmental Social and Governance (ESG) reporting.	The Authority does not purpose to be prescriptive and therefore issuers are encouraged to adopt best practices including relevant frameworks developed by the Integrated Reporting Council, The Global Reporting Initiative, the G4 Sustainability Guidelines and/or the Sustainability Accounting Standards Board. In respect of ESG, the Authority will incrementally guide the adoption of ESG standards by issuers ensuring a consultative approach at every stage of the process.
15.	The Authority was challenged to demonstrate how present-day challenges and opportunities presented by youth and technology are being considered in execution of its mandate.	The Code considers technology as an enabler as well as a source of risk. Furthermore, the Social and Governance aspects of the ESG framework incorporate technology and youth. The Authority is very conscious of the role of capital markets in wealth and employment creation considering Kenya's and Africa's demographics.
16.	In order to encourage new issuers, participants sought to know if there are any plans to have a staggered approach for compliance with the corporate governance and other regulatory requirements.	The Authority continuously encourages stakeholders to provide feedback necessary to facilitate further development and deepening of the Kenyan capital market.

We encourage issuers to also refer to FAQs in relation to the Code available on -
https://www.cma.or.ke/index.php?option=com_phocadownload&view=category&id=92&Itemid=285