REGULATORY IMPACT STATEMENT

ON

THE CENTRAL DEPOSITORIES (REGULATION OF CENTRAL DEPOSITORIES) (AMENDMENT) RULES, 2025

Conducted by the Capital Markets Authority, Kenya pursuant to the Statutory Instruments Act (No. 23 of 2013)

August 2024

Regulatory and Policy Context of the Central Depositories (Regulation Of Central Depositories) (Amendment) Rules, 2025

The amendment introduces a transaction-based levy structure set at Ksh. 150 per transaction on counter, with safeguards including a minimum annual levy of Ksh. 50,000 and a maximum cap of Ksh. 5,000,000, payable on a quarterly basis.

The rationale behind the amendment is to align the levy framework with transaction activity while maintaining a fair contribution structure across issuers. This structure aims to promote equity by ensuring that the deposit levy better reflects actual usage of the depository services, thus supporting growth and operational efficiency in the capital markets infrastructure.

The CDSC's system, hardware, third-party licence and maintenance costs associated with providing the depository services have increased over the past 21 years particularly due to inflation. CDSC has increasingly borne the rise in costs whilst the issuers continue to demand and enjoy high quality depository services. The increase in depository related costs standing at over KES 90 million have put a heavy strain on CDSC financial resources thus there is an urgent need for the revision of the fees set in 2004 to be reflective of the current cost of procuring the services.

Policy and Legal Considerations

These Rules are made pursuant to Section 65 (1) of the Central Depositories Act, which empowers the Capital Markets Authority, to make regulations and rules necessary for the effective implementation of the Central Depositories Act. The Rules are intended to operationalize the provisions of the Central Depositories Act prescribing procedures, obligations, and standards applicable to central depositories and their participants, in order to enhance transparency, efficiency, and investor protection within the securities settlement system.

Stakeholder Consultation

The proposal to amend was submitted by a stakeholder following a call for proposals by the Authority on 14th August, 2023. Thereafter, the Authority held a Roundtable meeting with stakeholders on 28th September, 2023 in which this proposal was discussed and approved by stakeholders to progress. The purpose of the roundtable meeting was to provide a platform for strategic dialogue with capital market players, market participants, strategic partners and policy makers to discuss the necessary policy, legal, institutional, and legislative reforms to be undertaken to deepen the market.

Statement on Regulatory and Non-Regulatory Options

This section analyses the alternative courses of action explored by the Authority as the best form of regulatory action. Section 5 of the Statutory Instruments Act requires a regulator to conduct an informed comparison of various regulatory and non-regulatory policy measures early in the regulatory process, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

Section 11 (1) of the Capital Markets Act mandates the Capital Markets Authority (CMA) to develop all aspects of the Capital Markets with emphasis on removing impediments to, and creating incentives for long-term investments in productive enterprises. Section 11(3) (a) & (b) states that for carrying out its objectives, the Authority may advise the Minister on all aspects of the development and operation of Capital Markets as well as implement policies and programs of the Government with respect to Capital Markets.

Option 1. Regulatory amendments

The Authority would undertake amendment of the Central Depositories (Regulation of Central Depositories) (Amendment) Rules, to introduce a transaction-based levy structure set at Ksh. 150 per transaction on counter, with safeguards including a minimum annual levy of Ksh. 50,000 and a maximum cap of Ksh. 5,000,000, payable on a quarterly basis

Option 2. Maintain the Status Quo

The Authority can choose not to amend the Central Depositories (Regulation of Central Depositories) (Amendment) Rules.

Impact Analysis

Option 1	Option 2
Regulatory Amendments on the Central Depositories (Regulation of Central Depositories) (Amendment) Rules	**Status Quo (Do Nothing)**
Benefits • Increase of transaction-based levy structure set at Ksh. 150 per transaction per counter, with safeguards including a minimum annual levy of Ksh. 50,000 and a maximum cap of Ksh. 5,000,000, will improve service delivery and efficiency in capital markets sector. **Disadvantages** • The proposal will slightly increase levy paid by capital markets issuers.	**Benefits** • **Stability:** Maintaining the status quo indicate that issuers shall continue lower depository levy costs. **Disadvantages** • **Inefficiency in Trading and Settlement Processes** Maintaining the status quo may prevent required level of efficencieny in the depository and settlement of securities in the Kenyan market.

	CDSC required additional resources for system upgrade which may not be viable with the current income levels. • **Inadequate Response to Emerging Risks:** Maintaining the status quo may prevent the CSDC from effectively addressing new or emerging risks and challenges in the depository and settlement of securities. Technology advancements, market developments, or systemic issues require contimous capacity building and up to date system upgrades to ensure adequate protection

	of stakeholders and maintain stability.

Analysis of the Regulatory Options

Option 1 would be highly recommended since by amending the Central Depositories Rules, the CDSC will be able to raise the long-term funds required to modernize its settlement and depository systems in order to bring them into compliance with technological standards and international best practices.

CDSC systems need to be upgraded to support increased market activity, enhance operational resilience, and ensure seamless post trade processes. Additionally, by receiving additional funding through this levy, the CDSC will be better equipped to maintain system stability, improve service delivery, and meet evolving investor and regulatory expectations.

Option 2 has more significant risks, since the CDSC requires additional resources to modernize depository and settlement systems. This fee has not been reviewed since 2004 as per the provisions of Section 8 (2) of the Regulation.

Financial Costs

The amendment of the Central Depositories Rules will impose no new financial costs on investors. The review will slightly raise the fees paid by capital markets issuers.

Cost-Benefits Analysis

The amendment will be beneficial to the capital markets sector. The additional funds raised through levy will facilitate modernization of depository and trading systems. The review of levy is designed to be non-disruptive to investors. Importantly, the cost will be borne by issuers, ensuring that investor participation and market access remain unaffected.

Recommendations

From the analysis of the regulatory impact we recommend the second Schedule of the Central Depositories (Regulation of Central Depositories) Rules, 2004 be amended.