

LEGAL NOTICE NO.

**THE CAPITAL MARKETS ACT
(Cap.485A)**

IN EXERCISE of the powers conferred by section 12 of the Capital Markets Act, the Capital Markets Authority makes the following Regulations-

**THE CAPITAL MARKETS (CORPORATE GOVERNANCE)
(MARKET INTERMEDIARIES) REGULATIONS, 2011**

Citation. **1.** These regulations may be cited as the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations 2011.

Interpretation. **2.** In these Regulations, unless the context otherwise requires-

“board” means the board of directors of the market intermediary;

“close relation” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

“management of a market intermediary” means the persons who the Authority has been informed, in writing, are responsible for the day to day administration of a market intermediary;

“market intermediary” means a company licensed under Part IV of the Act;

“independent non-executive director” means a director who:

- (a) has not been employed by the market intermediary in an executive capacity within the last five years;

- (b) is not associated to an adviser or consultant to the market intermediary or a member of the market intermediary's senior management or a person employed by the market intermediary in an executive capacity within the last five years or a significant client or supplier of the market intermediary or with a not-for-profit entity that receives significant contributions from the market intermediary or within the last five years, has not had any business relationship with the market intermediary (other than service as a director) for which the market intermediary has been required to make disclosure;
- (c) does not have contract of service with the market intermediary, or a member of the market intermediary's senior management;
- (d) is not a close relation of an adviser consultant to the market intermediary or a member of the market intermediary's senior management or a significant client or supplier of the market intermediary ; or
- (e) has not had any of the relationships described in paragraphs (a), (b), (c) and (d) with any affiliate of the market intermediary.

Directors.

3. (1) The Board of a market intermediary shall be composed of –

- (a) a minimum of three directors of whom at least two shall be natural persons;
- (b) at least one third independent non-executive director;
- (c) not more than one third of the directors who are close relations of any director.

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(2) A person shall not be a director in more than two market intermediaries unless the market intermediaries are subsidiaries or holding companies.

(3) A market intermediary shall not change the composition of its board without the prior written

consent of the Authority.

Fit and proper requirements for appointment as director.

4. A market intermediary shall not appoint a person to be a director unless-

(a) that person is fit and proper to hold such position; and

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(b) has undergone a relevant training on corporate governance:

Provided that a market intermediary shall ensure that any person appointed as a director undergoes corporate governance training within six months of appointment.

Register of directors.

5. A market intermediary shall keep a register of its directors and avail the register for inspection by the public, without any charge, at its registered office.

The Board.

6. (1) A market intermediary shall have a board that shall lead, control and shall be collectively responsible for the conduct and governance of its securities business.

(2) The board shall provide leadership within a framework of prudent and effective control that facilitates risk assessment and management.

(3) The board shall ensure that the necessary financial and human resources are available to meet its objectives and review management performance.

(4) The chairman of the board shall not be appointed as the chief executive officer of the market intermediary, and the board shall specify the roles and responsibilities of the chairman and chief executive, in writing.

(5) The chairman of the board shall be a non-executive director.

Strategic direction and control.

7. The board shall-

- (1) give strategic direction to a market intermediary;
- (2) ensure the integrity of a market intermediary's accounting and financial reporting systems, including provision for independent audit, and that the appropriate systems for risk management and financial and operational control are in place;
- (3) maintain control and monitor the management of a market intermediary in implementing its plans and strategies; and
- (4) ensure that the market intermediary complies with the Act and other relevant legislation.

Code of conduct. of **8.** The board may adopt the code in the Schedule or develop a code of conduct for the directors, specified in the code of conduct set out in the Schedule:

Provided that where the code of conduct developed by the board of a market intermediary does not address all the issues specified or is inconsistent with the code of conduct set out in the Schedule, the code of conduct set out in the Schedule shall apply to the extent of such omission or inconsistency.

Board charter. **9.** (1) In order to discharge its responsibilities, the board shall prepare and write a charter that-

- (a) confirms its responsibility for the adoption of strategic plans, monitoring the operational performance, the determination of policy and processes that ensure that the integrity of the market intermediary's risk management and internal controls;
- (b) reserves specific powers to itself and delegates other matters to the management of a market intermediary;
- (c) provides a corporate code of conduct that addresses conflict of interest, relating to directors and management, which shall be regularly reviewed and updated as necessary;

and

(d) identifies key risk areas, that require regular monitoring.

(2) The Board may develop a code of conduct for directors, management and staff that addresses all the issues set out in the code of conduct set out in the Schedule or adopt the code of conduct set out in the Schedule.

Accountability
and
responsibility.

10. (1) The board shall be responsible and accountable for the performance and conduct of the business of the market intermediary.

(2) The board shall keep and maintain a schedule of the matters reserved for its decision and ensure that it directs and controls.

(3) The board shall not be discharged from its duties and responsibilities for matters or authority delegated to committees of the board or to the management of a market intermediary.

Board meetings.

11. (1) The board shall meet at least once in every three calendar months to review the market intermediary's processes and procedures to ensure the effectiveness of its internal systems of control.

(2) The board shall, at the beginning of each financial year, prepare an annual schedule of meetings of the market intermediary.

Remuneration
of directors.

12. The remuneration of directors and the chief executive of a market intermediary shall be commensurate with the nature and size of operations of the market intermediary and the remuneration offered for similar positions in the market.

Committees.

13. (1) The board shall establish an audit committee and such other committees, as it considers necessary and specify their terms of reference, in writing, including the reporting procedures and a written scope of authority.

(2) The audit committee shall, among others-

- (a) review regular internal audit reports prepared by the market intermediary's internal auditor for management and management's response to such reports;
- (b) review the market intermediary's periodical financial statements and any other financial reports or financial information, when necessary;
- (c) review with management and external auditors,-
 - (i) the audited and unaudited financial statements of a market intermediary before they are released to the public;
 - (ii) the effectiveness of the documented risk management policy report for the assessment, monitoring and managing the possible risk exposure;
- (d) review the effectiveness of the internal controls of the market intermediary and other matters affecting the financial performance and financial reporting of a market intermediary, including information technology security and control;
- (e) review the external auditors' proposed audit scope and approach;
- (f) monitor compliance of a market intermediary with its code of conduct and ethics;
- (g) consider the work plan of the market intermediary compliance activities;
- (h) regularly report to the board on the activities of the market intermediary, issues and related recommendations; and
- (i) institute and oversee special investigations, when necessary.

(3) The board may, refer to a relevant committee established under paragraph (1), any matter for consideration and determination.

(4) A decision of a committee shall not bind a market intermediary unless the decision has been presented to the board for consideration and ratification.

Corporate
governance
framework.

14. (1) A market intermediary shall establish a corporate governance framework that provides-

(a) strategic guidance of the market intermediary that promotes the effective monitoring of the management and accountability of the board; and

(b) for availability and documentation of timely and accurate information relating to the market intermediary, including its financial structure, performance, ownership and governance.

(2) The board shall review the management of the market intermediary, operations, accounts, major capital expenditure and corporate performance at least once in every three months.

(3) The board shall review its corporate governance structure annually.

(4) The board shall document the results of the reviews conducted under paragraphs (2) and (3).

Responsibilities
of shareholders.

15. (1) The shareholders of a market intermediary shall, jointly and severally, protect, preserve and actively exercise authority over the institution in general meetings.

(2) The shareholders shall-

(a) elect or appoint persons who are fit and proper, have the relevant experience and qualifications, and can provide effective leadership and guidance in the business of the market intermediary to the board of

directors;

(b) ensure that, the board is through general meetings and related forums, constantly held accountable and responsible for the efficient and effective governance of the market intermediary;

(c) to utilise powers vested in general meetings to change the composition of a board of directors that does not perform to expectation or in accordance with the mandate of the market intermediary.

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(3) The shareholders of a market intermediary shall ensure that the market intermediary applies to the Authority for approval of any acquisition or transfer if the acquisition or transfer results to a person being entitled to exercise control of over five per cent or more of the share capital of that intermediary.

(4) A market intermediary shall obtain the approvals required under paragraph (3), before the allotment of shares.

(5) A market intermediary shall not appoint a shareholder who holds more than twenty-five per centum shareholding in a market intermediary as an executive director of the market intermediary or to any senior position in the management of the market intermediary.

Appointment of employees

16. (1) The board shall formulate a policy for the appointment of employees, which shall be, approved by the Authority.

(2) The board shall review the policy formulated under paragraph (1) at least once in every three years and submit any changes made to the policy to the Authority for approval.

Chief executive officer.

17. (1) The chief executive officer of a market intermediary shall be responsible to the board for the day to day running of the market intermediary and shall-

(a) implement the policies and the corporate

strategy developed by the board;

- (b) identify and recommend to the board employment of officers who are competent to manage the operations of the market intermediary;
- (c) co-ordinate the operations of the departments within the market intermediary;
- (d) establish and maintain efficient and adequate internal control systems for the management of the market intermediary;
- (e) design and implement management information systems necessary to facilitate efficient and effective communication within the market intermediary;
- (f) regularly appraise the board adequately on the operations of the market intermediary; and
- (g) ensure that the market intermediary complies with the Act and other relevant laws.

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(2) A market intermediary shall not change its shareholders, directors, chief executives or key personnel except with the prior confirmation, in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions imposed by the Authority.

Separation of employees' duties.

18. (1) The management of a market intermediary shall maintain adequate separation of employee duties, particularly between-

- (a) those responsible for incurring commitment;
- (b) those responsible for making payments; and
- (c) those responsible for preparing accounts.

(2) The market intermediary shall maintain such internal controls, functional lines and systems to restrict the flow of information between key departments or

other demarcations as may be considered necessary.

Employees.

19. (1) The board shall ensure that all employees are fit and proper for their roles, including having the necessary qualifications and experience for their responsibilities and that there is no evidence of lack of probity and capacity in managing their own financial affairs or those of clients.

(2) The management of a market intermediary shall determine and document the experience and qualifications for each post that shall meet any relevant requirements of the Authority.

(3) The management shall ensure and document that all employees have an appropriate training programme based on the needs of the market intermediary and the requirements of the Authority.

Management of a market intermediary.

20. (1) The management of a market intermediary shall operate and manage the market intermediary on a day-today basis.

(2) The management of a market intermediary shall,-

- (a) implement and adhere to the policies, practices and standards developed by the board;
- (b) adhere to the systems established to facilitate efficient operations and communications;
- (c) adhere to the planning process that has been developed to facilitate achievement of targets and objectives;
- (d) promote human resource development and training and deal with other issues relating to staff;
- (e) comply with the code of conduct, the Act and any other relevant laws; and
- (f) keep and maintain records, and comply with all the reporting requirements.

(3) The management of a market intermediary shall ensure that-

- (a) each employee has a job description that defines his duties and responsibilities;
- (b) all employees familiarise themselves with and adhere to the code of conduct;
- (c) employees, collectively, have the necessary knowledge, skills, information and authority to establish, operate and monitor the system of internal controls;
- (d) the areas of discretion of each employee and the criteria governing the actions of each employee are adequately defined, and that each employee is subject to oversight by another employee and in the case of management, oversight by the board;
- (e) the ability of any employee to commit the market intermediary to expenditure, market positions or any other trading matter is sufficiently defined; and
- (f) there are adequate financial controls, including a requirement for dual signatures for material payments.

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(4) Every intermediary shall report any change in its management as required under regulation 17(2).

Finance officers and internal auditors.

21. The chief finance officer or any other person who is responsible for finance department of a market intermediary and the person responsible for the internal audit function, shall be members of the Institute of Certified Public Accountants of Kenya (ICPAK).

Internal audit.

22. (1) The market intermediary shall establish an effective internal audit function.

(2) The board shall formulate an internal audit charter to bring a systematic, disciplined approach, to evaluate and improve the effectiveness of risk

management, control and governance processes and define the purpose, authority and responsibility of the internal audit function.

(3) The internal audit charter shall provide-

- (a) assurance that the management processes are adequate to identify and monitor significant risks;
- (b) confirmation of the effective operation of the established internal control system;
- (c) credible processes for feedback on risk management and assurance; and
- (d) objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable.

Internal auditor. **23.** The board shall appoint an internal auditor who shall-

- (a) not be the compliance officer and shall not be involved in any function that is being audited;
- (b) have sufficient authority to carry out his function as an internal auditor;
- (c) have direct access to the board;
- (d) subject to the oversight of the audit committee, develop an internal audit programme; and
- (e) submit quarterly reports to the audit committee.

Responsibility for risk management **24.** (1) The board shall be responsible for the development and implementation of the process of risk assessment and management and shall regularly review the effectiveness of the process.

(2)The management of a market intermediary shall be accountable to the Board for designing, implementing, monitoring and integration of the risk management process into the day-to-day business of the market intermediary.

(3) The risk assessment process developed under paragraph (2) shall, having regard to the size and nature of operations of a market intermediary, and the extent to which the risks may impact on the business of the market intermediary, address-

- (a) compliance risks;
- (b) payment systems risks;
- (c) physical and operational risks;
- (d) human resource risks;
- (e) technology risks;
- (f) business continuity and disaster recovery;
- (g) credit and market risks;
- (h) reputational risks;
- (i) political risks; and
- (j) any other risks that the board considers may be relevant to its business.

(4) The board shall, in consultation with the management of a market intermediary, develop and document the risk management policies and processes designed to mitigate the risks to its business.

(5) The management of a market intermediary shall-

- (a) communicate the risk management policies to all employees;
- (b) maintain back up and contingency plans for dealing with eventualities relating to risks, including catastrophic information technology failure, the loss of records and the loss of access to their business premises;
- (c) make arrangements for business continuity in the

event of the loss of key personnel through illness, resignation or otherwise; and

(d) evaluate the contingencies plans on a regular basis.

(6) The board shall appoint a risk management officer to-

(a) assist the board in the discharge of its duties relating to corporate accountability and risk management, assurance and reporting;

(b) review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed;

(c) define the nature, role, responsibility and authority of the risk management function of the market intermediary;

(d) monitor external developments relating to the practice of corporate accountability and the reporting of associated risk, including emerging and prospective impact;

(e) provide independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, taking account of risk concerns raised by management at the audit committee meetings on financial, business and strategic risk; and

(f) obtain such external or other independent professional advice as he considers necessary to carry out his duties.

Annual review.

25. The board shall, annually, review its risk management procedures and contingency plans, and document the results and conclusions of such reviews.

Information management system.

26. The board shall develop and implement an information management system that provides information relating to its implementation, the effect of the board's policies and procedures, the realisation of

risks, substantial market positions and the financial position of the market intermediary.

Responsibility for internal controls.

27. (1) The board shall be responsible for the market intermediary's system of internal controls.

(2) The board shall establish and monitor appropriate policies on internal controls and satisfy itself that the system is functioning effectively.

(3) The board shall adopt procedure manuals to implement its policies and controls.

Role of management and employees.

28 (1) The management of a market intermediary shall implement the board's policies on risk and internal controls.

(2) The management of a market intermediary shall identify and evaluate the risks that the market intermediary is exposed to for consideration by the board and design, operate and monitor a suitable system of internal control that implements the policies of the board.

(3) The employees shall be responsible for internal control as part of their accountability towards the achievement of the objectives of the market intermediary.

Periodical review of internal controls

29. (1) The management of a market intermediary shall be accountable to the board for monitoring the system of internal controls and reporting on such monitoring activities.

(2) The board shall periodically review and enquire, based on the information and assurances provided to it by management of a market intermediary, to determine the effectiveness of internal controls established by the management of the market intermediary.

(3) The board shall document the results and conclusions of its periodic reviews and actions taken thereon.

Compliance officer.

30. The board shall appoint a compliance officer who

shall-

- (a) monitor compliance with the regulatory requirements prescribed by the Authority, and shall not be involved with any function that is the subject of compliance;
- (b) have sufficient authority to carry out such function;
- (c) have unfettered access to information;
- (d) have direct access to the board;
- (e) take necessary action to rectify any non-compliance;
- (f) report any non-compliance issues that cannot be rectified to the board;
- (g) report to the board any material breaches of the regulatory requirements; and
- (h) submit an annual corporate governance report to the board.

(2) The officer in charge of compliance may be held personally liable for the failure to ensure proper compliance by the market intermediary with the regulatory requirements of the Authority.

Receipt of client funds.

31. A market intermediary shall establish and implement systems that ensure that all funds to be received on behalf of clients are deposited directly in the intermediary's client bank account to ensure employees avoid the receipt of cash.

Regulatory requirements.

32. A market intermediary shall maintain all the records that are required to be kept under the Act and Regulations made thereunder.

Board records.

33. The board shall maintain a record of all the decisions of the board and all actions taken to comply with the regulatory requirements of the Authority.

Employee records.

34. A market intermediary shall maintain records relating to each of its employees demonstrating that it

has effectively assessed all relevant qualification, experience, fitness and propriety. In particular an employee's records shall include:

- (1) his job application with copy of documentation verifying qualifications and experience;
- (2) his job description;
- (3) his qualifications, experience and training;
- (4) his remuneration;
- (5) any securities transaction undertaken with details of permission received;
- (6) any declaration of an existing or potential conflicts of interest made; and
- (7) details of all listed or publicly traded securities owned.

Third party records

35. Where the market intermediary contracts with a third party to undertake any functions on its behalf, it shall maintain appropriate records, including-

- (a) the contract specifying the services to be provided;
- (b) details of the third party including its legal status, verification documents and all documentation necessary to establish its financial viability; and
- (c) details of the qualifications and experience of the employees to be engaged on the business of the market intermediary:

Provided that any delegation of a function shall not discharge the market intermediary from any responsibility for the proper execution of the delegated function.

Exemption or variation of applicability.
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36. (1) Subject to paragraphs (2) and (3), the Authority may, upon an application, made in writing by a market intermediary, where it considers it appropriate

in the special circumstances of the market intermediary, exempt from or vary the application regulations 13, 15(5), 18, 21,22,23,24 (6) and 30 to the market intermediary:

Provided that in all circumstances where the Authority grants an exemption or a variation, it shall indicate the period for which the exemption or variation shall be valid.

(2) A market intermediary shall, in the application, provide the reasons for seeking an exemption or variation and shall specify any other alternative arrangements that it shall establish to comply with the regulatory requirements.

(3) A market intermediary shall, despite having made an application under paragraph (1), comply with the respective regulatory requirements until the Authority formally exempts it or varies the regulatory requirements, in writing.

(4) Where the Authority grants an exemption or variation under this regulation, it shall give the reasons for the grant, in writing, and shall publish the exemption or variation.

(5) Any market intermediary that has obtained an exemption or variation under this regulation shall, immediately report to the Authority any change in its circumstances that may reasonably be of relevance in the determination of whether it should continue to enjoy the exemption or variation.

(6) The Authority may revoke or reverse any exemption or variation where it is satisfied that there has been a change in the circumstances that gave rise to the grant of the exemption.

(7) The Authority shall, for the purposes of determining the special circumstances of a market intermediary under these regulations, prescribe assessment criteria.

Remedial
measures and
administrative

37. (1) When a director or an officer is assessed and found not to be fit and proper to work for a market

sanctions

intermediary, the affected market intermediary shall:

- (a) be required to terminate the services of such a director or officer;
- (b) immediately put in place mechanisms to mitigate any loss or damage to clients, the business or the market as a whole resulting from such termination of services; and
- (c) inform the Authority of such a decision and actions being taken immediately.

(2) All directors of a market intermediary shall be liable jointly and severally to indemnify the market intermediary against any loss arising from contravention of any of the provisions of the Act or these regulations.

(3) An officer of a market intermediary may be held liable for the acts or omissions of the employees under his supervision arising from his failure to adequately and effectively supervise such employees in accordance with internal controls and the code of conduct.

(4) A market intermediary that contravenes a requirement of these regulations commits a disciplinary offence that may lead to sanctions and/or penalties under the Act.

Transition

38. A market intermediary that was licensed before the commencement of these Regulations shall comply with these Regulations within one year of the commencement of these Regulations.

SCHEDULE

PRESCRIBED CODE OF CONDUCT

1. Conflict of Interest

Directors, management and staff should not engage directly or indirectly in any business activity that competes or conflicts with the market intermediary's interest or those of its clients unless fully disclosed to the clients. These activities include, although are not necessarily limited to, the following:

- (a) **Outside Financial Interest:** Where directors, management or staff have a financial interest in a client, such an interest must be disclosed immediately to the management and the client. Thereafter, the affected director, member of management or employee should not be directly involved in the market intermediary's dealings with the client so long as the interest continues to exist.
- (b) **Other Business Interests:** It is considered a conflict of interest if an executive director, member of management or member of staff conducts business other than the market intermediary's business during office hours.

Where the acquisition of any business interest or participation in any business activity outside the market intermediary and office hours demands excessive time and attention from the member of staff, thereby depriving the market intermediary of the employee's best efforts on the job, a conflict of interest is deemed to exist.

- (c) **Other Employment:** Before making any commitment, executive directors, management and employees are to discuss possible part-time employment or other business activities outside the market intermediary's working hours with their manager or departmental head. A written approval of the board of directors, chief executive, manager or departmental head respectively should be obtained before an executive director, member of management or employee embarks on part-time employment or other business activities. Approval should be granted only where the interest of the market intermediary will not be jeopardised.
- (d) **Corporate Directorship:** Employees, members of management and executive directors must not solicit corporate directorships. All such persons should not serve as a director of

another corporation without approval of the board of directors. Those who hold directorships without such approval must seek approval immediately, if they wish to remain as directors of other corporations. However, such persons may act as directors of non-profit public service corporations, such as religious, educational, cultural, social, welfare, and philanthropic or charitable market intermediaries, subject to policy guidelines of the market intermediary.

- (e) **Trusteeships:** Directors, management and staff must not solicit appointments as executors, administrators or trustees of clients' estates. If such an appointment is made and the individual is a beneficiary of the estate, his signing authority for the estate's bank account or accounts must be approved by the board of directors, who will not unreasonably withhold such approval.

2. Misuse of Position

- a) Directors, management and staff must not use the market intermediary's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Such persons and their relatives must also not use their connection with the market intermediary to borrow from or become indebted to clients or prospective clients. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.
- b) Directors, management and staff must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favours to a client in the conduct of the business of the market intermediary to which they are entrusted either jointly or individually.
- c) Further, directors, management and staff must not use the market intermediary's facilities and influence for speculating in securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and prosecution.
- d) Directors, management and staff should also not engage in "back-scratching" exercises with employees and directors of other market intermediaries to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical guidelines.

3. Misuse of Information

- a) Directors, management and staff should not deal in the securities of any company listed or pending listing on a stock exchange at any time when in possession of information, obtained by virtue of employment or connection with the market intermediary, which is not generally available to shareholders of that company and the public, and which, if it were so available, would likely bring a material change in the market price of the shares or other securities of the company concerned. “insider dealing” as this is called, is a crime.
- b) Directors, management and staff who possess insider information are also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

4. Integrity of Records and Transactions

- a) Accounting records and reports must be complete and accurate. Directors, management and staff should never make entries or allow entries to be made for any account, record or document of the market intermediary that are false and would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions.
- b) All records and computer files or programmes of the market intermediary, including personnel files, financial statements and client information must be accessed and used only for management purposes for which they were originally intended.

5. Confidentiality

- a) Confidentiality of relations and dealings between the market intermediary and its clients is paramount in maintaining the market intermediary’s reputation. Thus directors, management and staff must take precaution to protect the confidentiality of client information and transactions. No member of staff, management or director should during, or upon and after termination of employment with the market intermediary (except in the proper course of his duty and or with the market intermediary’s written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the market intermediary or its clients. No member of staff, management or director shall in any way use information so obtained for financial gain.

- b) Business and financial information about any client may be used or made available to third parties only with prior written consent of the client or in accordance with the arrangements for the proper interchange of information between market intermediaries about credit risks, or when disclosure is required by law.

6. Fair and Equitable Treatment

All business dealing on behalf of the market intermediary with the current potential clients, with other members of staff and with those who may have cause to rely upon the market intermediary, should be conducted fairly and equitably. Staff, management and directors must not be influenced by friendship or association, either in meeting a client's requirement, or in recommending that they be met.

Such decisions must be made on a strictly arms-length business basis. All preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and duly authorised by the Board of Directors or any other independent party.

7. Insider Loans

Directors, management and staff should not use their positions to further their personal interests. A market intermediary shall not in Kenya therefore:

- a) Grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates.
- b) Grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its officers, significant shareholders or their associates.
- c) Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the market intermediary unless it is:
 - (i) approved by the full board of directors of the market intermediary upon being satisfied that it is viable.

- (ii) is made in the normal course of business and on terms similar to those offered to ordinary clients of the market intermediary. The market intermediary shall notify the Authority of every such approval within seven days of the granting of the approval.

- d) Grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance of the Act and the regulations made thereunder.

Made on the....., 2011.

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