

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

**THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2019**

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## THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2019

IN EXERCISE of the powers conferred by Section 12 (1) (ka) of the Capital Markets Act, the Cabinet Secretary for the National Treasury makes the following Regulations –

### PART I - PRELIMINARY

- Citation.                   1. These Regulations may be cited as the Capital Markets (Commodity Markets) Regulations, 2019.
- Interpretation.           2. In these Regulations, unless the context otherwise requires –
- “Act” means the Capital Markets Act;
- “associate” has the meaning assigned to it under section 2 of the Act;
- “Authority” means the Capital Markets Authority;
- “board” means the board of directors of a commodity exchange or a commodity broker;
- “bucketing” means directly or indirectly taking the opposite side of a client’s order into a commodity broker’s own account or into an account in which a commodity broker has an interest, without open and competitive execution of the order on the trading platform of a commodity exchange;
- “clearing bank” means a bank as defined under section 2 of the Banking Act, to facilitate the maintenance of a segregated account, clearing and settlement functions on transactions executed on a commodity exchange, which is designated or appointed to provide banking and other facilities to a –
- (a) commodity exchange,
  - (b) the clearing house of a commodity exchange, and
  - (c) commodity broker.
- “clearing house” means an approved entity, by the Authority, recognized as a clearing institution on behalf of a commodity exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement by delivery to members of a commodity exchange, on behalf of the commodity exchange;
- “client” means a person on whose account a commodity broker carries on trading in any commodity contract, but does not include directors,

key personnel, representatives and related companies of the commodity broker;

“commodity” has the meaning assigned to it under Section 2 of the Act;

“commodity broker” means a company cleared by the exchange and licenced by the Authority to carry on the business of purchase or sale of commodities contracts as an agent for investors;

“commodity contract” has the meaning assigned to it under Section 2 of the Act;

“commodity market” has the meaning assigned to it under Section 2 of the Act;

“grading” means the inspection and assignment of certain quality parameters as specified by a commodity exchange for each commodity contract listed on it;

“key personnel” has the meaning assigned to it under section 2 of the Act;

“market participant” includes commodity brokers, commodity advisers, clearing house of a commodity exchange and a client of a commodity broker or commodity adviser;

“member” means any person, with the approval of the Authority, has been admitted to membership of a commodity exchange and includes a commodity broker, clearing bank of a commodity exchange and a commodity adviser;

“security deposit” means the amount which a commodity broker requires to be paid by a client in respect of a commodity contract either in cash or cash equivalent.

“settlement price” means the daily settlement price at the close of trading;

“sophisticated investor” has the meaning assigned to it under section 2 of the Act;

“trading system” includes any system or platform provided by a

commodity exchange, which makes available to the members of the commodity exchange, and disseminates information regarding trades effected, volumes and such other notifications as may be placed thereon by a commodity exchange;

“warehouse receipt” has the meaning assigned to it under the Warehouse Receipt System Act;

“warehouse receipt system” has the meaning assigned to it under the Warehouse Receipt System Act;

“warehouse operator” has the meaning assigned to it under the Warehouse Receipt System Act;

## **PART II – LICENSING OF COMMODITY EXCHANGES**

Licensing of commodity exchanges

**3.** (1) A person shall not carry on business as a commodity exchange or hold himself out as providing or maintaining a commodities exchange unless such a person has obtained a commodity exchange license from the Authority.

(2) A securities exchange or derivatives exchange intending to operate a commodities exchange shall set up a separate legal entity to conduct the business of a commodity exchange.

Application for license.

**4.**(1) A person who intends to establish a commodity exchange shall apply to the Authority for licensing in Form A set out in the First Schedule.

(2) An application for licensing shall be accompanied by –

- (a) copies of memorandum and articles of association;
- (b) rules governing the operations of the commodities exchange;
- (c) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (d) the prescribed application fees set out in the Second Schedule;
- (e) satisfactory bank references;
- (f) a business feasibility plan evaluated by an entity with a proven track record and expertise in commodity markets or commodity market development, establishment or management; and
- (g) such additional documents as the Authority may require.

Considerations  
in granting a  
license.

5. (1) In considering an application for a licence to operate a commodity exchange an applicant shall be required to –
- (a) be a company limited by shares;
  - (b) be demutualized;
  - (c) ensure that the clearing and other arrangements made, its clearing house and its members are such as to provide a reasonable assurance that all obligations arising out of contracts entered on the proposed commodity exchange will be met;
  - (d) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;
  - (e) satisfy all requirements relating to ownership and governance structure specified in these Regulations;
  - (f) have its directors and shareholders who hold or intend to hold shares, determined as fit and proper persons as prescribed under section 24A of the Act;
  - (g) satisfy the minimum liquid net-worth requirements specified in these Regulations;
  - (h) have a minimum amount of money, as may be determined by the Authority from time to time, in the settlement guarantee fund before the commencement of trading;
  - (i) satisfy requirements relating to financial capacity, functional expertise and infrastructure to –
    - (i) establish and operate a fair and efficient commodity exchange,
    - (ii) meet contingencies or disasters including events such as technical complications occurring with automated systems, and
    - (iii) provide adequate security arrangements on risk identification and mitigation, data protection and fail-safes on critical infrastructure;
  - (j) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience;
  - (k) have measures in place to actively enforce compliance by its members with its rules and for the prevention of manipulation and excessive speculation;
  - (l) have adequate provision to record and publish details of trading, including volume and open interest; and
  - (m) comply with any other conditions as may be specified by the Authority.

6. (1) An applicant seeking approval to operate a commodity exchange shall prepare and adopt commodity exchange rules, approved by the board of directors of the commodity exchange, for approval by the Authority.

(2) The rules adopted shall contain provisions on –

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;
- (b) the powers of the chief executive officer including in emergency situations;
- (c) the granting of membership to the commodity exchange including the procedures for admission as a member of a commodity exchange and requirements for membership inclusive of fees;
- (d) powers to levy fees and impose penalties for breach of its rules;
- (e) the granting of trading rights and non-transferable memberships of the commodity exchange;
- (f) general obligations of the trading participants who are members of the commodity exchange, including requirements on minimum net worth, maintenance of accounting records and compliance to the Laws of Kenya and the rules of the commodity exchange;
- (g) the termination of membership to a commodity exchange;
- (h) specifications on the minimum parameters to be disclosed in respect of commodity contracts to be listed, with prior approval from the Authority;
- (i) the clearing and settlement of all trades in commodity contracts by the appointed clearing house, whether the clearing house is independent, wholly owned by the commodity exchange or its subsidiary;
- (j) the performance of novation, netting and guarantee settlement of trades;
- (k) complete segregation of business accounts of trading participants from that of their clients and between different clients;
- (l) trading including validation of order on the commodity exchange;
- (m) the suspension of trading of any commodity contract for the protection of investors or for the conduct of orderly and fair trading;
- (n) investigation into trading practices and financial transactions of commodity brokers and their clients;
- (o) the clearing house and designated clearing banks of the

- commodity exchange;
- (p) commodity categories;
- (q) the operation of warehousing facilities on commodities;
- (r) the delivery, declaration, management and delivery of various commodities traded on a commodity exchange;
- (s) detailed provisions on direct market access by clients of the commodity exchange;
- (t) detailed provisions on give-up and take-up transactions, position transfers, assignments, transaction separations, open or close transaction designations and adjustments, and average pricing including transaction mergers and de-mergers;
- (u) the methodology for determining the daily and final settlement prices with provisions for adjustments in contract prices to compensate for allowable adjustments in quality and quantity;
- (v) the closing out of commodity contracts in case of non-compliance with the rules of the commodity exchange;
- (w) the mandatory maintenance of a settlement guarantee fund and investor protection fund including provisions for pay in, pay out and topping up;
- (x) the declaration of an event of default and disposal of a defaulter's assets under lien or pledge;
- (y) the exclusion from membership to a commodity market of persons who are not fit and proper as provided for under the Act;
- (z) the expulsion, suspension or disciplining of members of a commodity market for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed commodity market;
- (aa) the trading days and business hours of the commodity exchange;
- (bb) the resolution of disputes and provision for appeal to the Authority by trading participants and investors;
- (cc) generally, for the carrying on the business of the proposed commodity market with due regard to the interests and protection of the public; and
- (dd) any other provisions specified by the Authority or the commodities exchange.

(3) The Authority may prescribe the manner, form and procedure for making the rules of a commodity exchange or clearing house and any amendment thereof including provisions for disallowing the whole or part of any rule or any amendment thereto as it considers fit.



(4) The Authority shall ensure that it makes a written decision concerning any proposed amendments to the rules of a commodity exchange and the amendments shall not have any effect without the Authority's express approval.

Grant of a licence.

**7.**(1) The Authority may, if satisfied that the applicant has met all the requirements for licensing as a commodities exchange, and upon payment of the licensing fees, grant the applicant a licence to operate as a commodity exchange.

(2) The Authority may grant a provisional or conditional licence with such conditions or restrictions as it considers fit for the proper conduct of the commodities exchange and the conditions or restrictions may, at any time, be varied by the Authority.

(3) A license granted shall remain valid unless suspended or revoked by the Authority.

(4) A commodity exchange shall pay a fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

Suspension, restriction or revocation of a licence.

**8.** The Authority may suspend, restrict or revoke a commodity exchange licence in accordance with Section 26 and 26A of the Act.

Obligations of a commodity exchange.

**9.** (1) A commodity exchange shall have a duty to ensure that –

- (a) an orderly, fair and transparent market in commodity contracts traded at the exchange is maintained at all times;
- (b) adequate market information is readily available to all participants, investors, media and other relevant stakeholders in a commodity market;
- (c) risks associated with the operations of the market and the commodity exchange are managed prudently; and
- (d) the exchange complies with these Regulations.

(2) A commodity exchange shall operate its facilities in accordance with its rules as approved by the Authority.

(3) A commodity exchange shall –

- (a) regulate the operations, standards of practice and business conduct of its members, their employees, representatives and associates, in accordance with the exchange's rules;
- (b) keep such records as are necessary for the proper recording of each transaction in the commodity exchange;
- (c) preserve confidentiality of all information in its possession concerning its members and their clients, except such information as may be disclosed by the commodity exchange when required to do so, in writing, by its clearing house, the Authority, an order of a Court of law in Kenya and the provisions of any Law of Kenya.;
- (d) publish its rules, fees and charges;
- (e) identify and manage conflicts of interest;
- (f) ensure that only licensed warehouses and warehouse operators are used in connection with trading in a commodity market; and
- (g) provide a robust mechanism for clearing and settlement.

(4) A commodity exchange shall immediately notify the Authority where it becomes aware that –

- (a) a member is unable to comply with any rule of the exchange or any rules relating to financial resources; or
- (b) a financial irregularity or other matter which, in the opinion of the exchange, may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet its legal obligations.

Board of the  
commodities  
exchange.

**10.**(1) A commodity exchange shall have a board responsible for the overall leadership, governance and strategic direction of the commodities exchange.

(2) The board of a commodities exchange shall comprise the chairperson, chief executive of the commodity exchange, executive and non-executive directors with at least one third of the members of the board being independent directors.

(3) The non-executive and independent directors shall be persons who have knowledge and experience in commodity exchanges, capital markets and corporate governance and shall represent the interests of investors and the public interest.

(4) The chief executive officer or any other executive director of a commodity exchange shall not hold any management position during

his tenure in a securities or derivatives exchange.

(5) At least one independent director shall be present in the meetings of the board to constitute a quorum.

Conditions for appointment of directors.

**11.**(1) A commodity exchange shall submit, for the Authority's approval, the names of proposed directors for appointment to the board of a commodity exchange thirty days prior to their appointment or re-appointment.

(2) An independent director shall serve for a fixed term of three years and shall be eligible for re-appointment, at the option of a commodity exchange, for one further term.

Appointment of a chief executive officer.

**12.**(1) A commodity exchange shall, subject to any prescription of the Authority from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

(2) A person shall not be appointed as the chief executive officer of a commodity exchange where the person is –

- (a) a shareholder or an associate of a shareholder of any commodity exchange; or
- (b) a shareholder or an associate of a market participant.

(3) The tenure under any contract of appointment of the chief executive officer of a commodity exchange shall not be less than three years and not exceeding five years, which may be renewable once.

(4) A commodity exchange may change its chief executive officer with the prior written consent of the Authority and in accordance with any conditions that may be imposed by the Authority.

(5) The board of a commodity exchange may, with the prior approval of the Authority, terminate the appointment of its chief executive officer if the chief executive officer–

- (a) fails to comply with the rules or articles of association of the commodity exchange; or
- (b) fails to give effect to the directions, guidelines and other orders issued by the Authority under the Act or these Regulations.

(6) The Authority may recommend to the board of the commodity exchange the termination of the appointment of a chief executive officer of a commodity exchange if the Authority considers it to be in the public interest.

Code of conduct and ethics for directors and key personnel.

**13.**(1) Every director and key personnel of a commodity exchange shall abide by the Code of Conduct set out in the Third Schedule.

(2) Every director and key personnel of a commodity exchange and its clearing house shall be fit and proper persons, as prescribed under Section 24A of the Act.

(3) The Authority may, if a director of a commodity exchange fails to abide by these Regulations, the Code of Conduct, the Code of Ethics or in case of any conflict of interest, take appropriate action as provided for in the Act including disqualifying the director from appointment as a director of licensed or approved person, after providing that director reasonable opportunity of being heard.

Committees of the board and audit committee.

**14.**(1) The board of a commodity exchange shall establish relevant committees to deal with the functions of the commodities exchange such as audit, nomination, risk management, finance and information technology.

(2) The committees of the board shall have written terms of reference which set out their authority and duties.

Audit committee and internal audit function

**15.** (1) The board of a commodity exchange shall establish the audit committee where-

(a) at least one third of its members are independent directors;

(b) the chairperson of the audit committee is an independent director;

(c) at least one of the members of the audit committee holds professional qualification in audit or accounting.

(2) The board shall establish an internal audit function which reports directly to the audit committee.

(3) The internal audit function shall be responsible for providing assurance to the board on the adequacy of the commodity exchange's internal controls and processes.

Advisory committee.

**16.** (1) The board of a commodity exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product innovation and design, technology, charges and levies.

(2) The advisory committee shall comprise persons with technical expertise on commodity markets matters.

(3) The chairperson of the board and the chief executive officer shall be permanent invitees to every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year, but a period of three months shall not lapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the commodity exchange for consideration and decision making by the board.

Risk management committee.

**17.** (1) A commodity exchange shall establish a risk management committee comprising directors and independent external experts.

(2) The risk management committee shall –

- (a) report to the board;
- (b) formulate a detailed risk management policy which shall be approved by the board;
- (c) monitor the implementation of the risk management policy;
- (d) keep the Authority and the board informed on the implementation of policy and any deviation; and
- (e) perform any other responsibilities as may be assigned by the board.

(3) The head of the risk management department shall –

- (a) be responsible for implementation of the risk management policy; and
- (b) report to the risk management committee and to the chief executive officer of the commodity exchange.

Appointment of a compliance officer.

**18.** (1) A commodity exchange shall appoint a compliance officer responsible for-

- (a) monitoring compliance by the commodity exchange, with the Act, these Regulations, any guidelines or circulars issued under the Act, its articles of association, and rules; and
- (b) reporting on how the commodity exchange has complied with the applicable laws and internal policies, rules and procedures.

(3) The compliance officer shall, immediately and independently, report to the board, the state of compliance with any provision stated in sub-

regulation (2).

Disclosure and corporate governance norms.

**19.** A commodity exchange shall comply with the disclosure requirements and corporate governance norms and conduct of business requirements applicable to market intermediaries, issued by the Authority and as amended from time to time.

Net worth requirements.

**20.** (1) A commodity exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that commodity exchange to ensure that there are no significant risks that liabilities may not be met as they fall due.

(2) The minimum liquid net worth capital requirement for a commodity exchange shall be –

- (a) an amount equal to one half of the estimated gross operating costs of the commodity exchange for the next twelve-month period; or
- (b) such other liquid net worth amount as may be prescribed by the Authority.

(3) A commodities exchange shall establish systems and controls to enable the commodity exchange to determine and monitor the sufficiency of its liquid net worth.

(4) A commodity exchange shall, on a quarterly basis within thirty days after the end of every quarter, submit to the Authority an audited liquid net worth certificate from an auditor.

Penalties levied by a commodity exchange.

**21.** Any penalty imposed by the commodity exchange on its members shall be credited to the investor compensation fund.

Self-regulatory organisation.

**22.** (1) For the purpose of Section 18B of the Act, a commodity exchange seeking to operate as a self-regulatory organisation shall have –

- (a) a procedure and appropriate system of exercising self-regulation over its commodity market members;
- (b) a code of conduct for its commodity market members;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

(2) A commodity exchange shall, as a condition for a license, implement a system of self-regulation with respect to its members and shall ensure the day to day management of trading, clearing, settlement, delivery and all other activities of its members in accordance with –

- (a) the rules of the commodity exchange, and any amendments thereto, approved by the Authority; and
  - (b) laws, regulations and guidelines relating to commodity contracts issued by the Authority.
- (3) A commodity exchange shall operate a regulatory department that shall be distinct from other departments in the manner set out in the Third Schedule.

Categories of membership.

- 23.** (1) A commodity exchange shall have ordinary members and limited members, comprising of –
- (a) commodity brokers;
  - (b) commodity trading advisers;
  - (c) warehouse operators;
  - (d) clearing banks; and
  - (e) any other category of membership as may be approved by the Authority.

(2) Subject to the approval of the Authority, through an approved commodity contract, a limited commodity broker may enter trades on his own account and for a client's account, strictly, only on the sale side of a single approved commodity contract.

### **PART III - COMMODITY CLEARING HOUSE AND COMMODITY BROKERS**

Establishment of a clearing house

- 24.** (1) A person seeking to establish and operate a clearing house for a commodities exchange shall-
- (a) be a body corporate;
  - (b) satisfy the commodity exchange as to its technical, financial and human resources, including fit and proper requirements under the Act; and
  - (c) be approved by the Authority as a clearing house.

(2) The Authority may, in writing, approve an application to act as a clearing house, if it is satisfied that –

- (a) the applicant will ensure that that there are orderly, fair and expeditious clearing arrangements for transactions in commodity contracts;
- (b) the rules of the commodity exchange make satisfactory provision relating to guaranteeing to its members of the performance of commodity contracts made in a commodity market;

- (c) the interests of the public will be served by granting the application; and
- (d) all conditions imposed by the Authority on the applicant clearing house have been met.

(3) A clearing house shall be exclusively engaged in its clearing business except only in respect of such other matters as are ancillary or incidental thereto as may be expressly permitted by the Authority.

(4) Where the Authority proposes to impose a condition, the Authority shall give reasons for its decision and shall give the applicant clearing house an opportunity to be heard before a final decision is made.

Duties of a clearing house.

**25.** (1) A clearing house shall ensure that -

- (a) there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in commodity contracts through its facilities; and
- (b) the risks associated with its business and operations are managed prudently.

(2) In discharging its duty, a clearing house shall-

- (a) act in the interest of the public; and
- (b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.

(3) A clearing house shall-

- (a) operate its facilities in accordance with the established commodity exchange rules relating to clearing and settlement;
- (b) formulate and implement appropriate procedures to ensure that commodity brokers comply with commodity exchange rules;
- (c) preserve confidentiality on all information in its possession concerning its commodity brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, a commodity exchange or if it is ordered by court to do so; and
- (d) have efficient procedures and arrangements to address investor complaints.

(4) A clearing house shall immediately notify the Authority if it becomes aware –

- (a) that any of its commodity brokers or warehouse operators



are unable to comply with any rule of the clearing house or a commodity exchange; and

- (b) of a financial irregularity or any other matter which in the opinion of the clearing house may indicate that-
  - (i) the financial standing or integrity of a commodity broker or warehouse operator is in question; or
  - (ii) a commodity broker or warehouse operator may not be able to meet its legal obligations.

- (5) A clearing house shall provide and maintain at all times, -
  - (a) adequate and properly equipped premises;
  - (b) competent personnel;
  - (c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,
  - (d) security arrangements; and
  - (e) technical support for the conduct of its business.

Licensing of commodity brokers.

- 26.** A person shall not carry on or purport to carry on business as a commodity broker unless –
  - (a) that person is licensed as a commodity broker by the Authority; and
  - (b) conducts its business in accordance with the rules and practices of a commodity exchange on which the trading takes place.

Application for a licence.

- 27.** (1) A person who intends to carry on the business of a commodity broker shall apply for a license to operate as such to the Authority in Form B as set out in the First Schedule.
- (2) The application shall be accompanied by –
  - (a) the prescribed fees as set out in the Second Schedule;
  - (b) the relevant application form and documents in support of the information and declarations; and
  - (c) a letter from a commodity exchange stating that the application meets all the relevant requirements of that commodity exchange and that the commodity exchange will admit the applicant if licensed by the Authority.

Consideration for grant of license.

- 28.**(1) An applicant seeking a license to operate as a commodity broker shall be required to –
  - (a) be a company limited by shares;
  - (b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or

dealing in commodities, commodity contracts, derivatives contracts or other securities;

- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by a commodity exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another securities exchange or a derivatives exchange in addition to a commodity exchange, the applicant shall provide an undertaking that it shall allocate a prescribed percentage of the net capital balance to support its activities at the commodity exchange.

- (3) The net capital required, shall –
- (a) not be less than the minimum required net capital balance at a commodity exchange;
  - (b) be kept segregated; and
  - (c) be maintained at all times.

(4) Shareholders, directors and key personnel of the applicant shall be persons who have not defaulted in payment of dues at a clearing house of a commodity exchange.

Furnishing of information, clarifications, etc.

**29.** (1) The Authority may, in considering an application made for a commodity broker license, require an applicant to furnish such further information regarding any previous dealings in securities, derivatives, commodities and any other related matter as the Authority may consider necessary.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

Grant of license.

**30.** (1) The Authority, shall, within thirty days from the date of the application, grant a license to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a commodity broker.

(2) The Authority shall duly inform a commodity exchange and the applicant of the grant of a license.

(3) A license granted shall remain valid unless suspended or revoked.

(4) The Authority shall not refuse to grant a license without first giving the applicant an opportunity of being heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a license, the Authority shall communicate the decision to the applicant and the commodity exchange within fourteen days of the hearing, stating the grounds for refusal, in writing.

(6) An applicant aggrieved by the decision of the Authority to refuse the grant of a license may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

Annual license fees.

**31.** A commodity broker shall pay an annual license fee as set out in the Second Schedule.

Suspension or restriction of a license.

**32.**(1) The Authority by order in writing, suspend or restrict the license of a commodity broker for such period as may be specified in the order or take such administrative action as it may consider necessary if the Authority is satisfied that a commodity broker has –

- (a) failed to comply with any conditions subject to which the license was granted under these Regulations;
- (b) failed to comply with the Act, these Regulations or any directions made or given thereunder;
- (c) contravened the rules of a commodity exchange;
- (d) failed to adhere to any requirement of the code of conduct as laid down under these Regulations;
- (e) failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;
- (f) failed to furnish any information relating to its transactions in commodity contracts as may be required by the Authority;
- (g) failed to submit periodical returns as requested by the Authority;
- (h) furnished the Authority or a commodity exchange with wrong or false information;
- (i) failed to settle an investor complaint where such a complaint has been adjudicated by a commodities exchange, a committee of a commodity exchange or the Authority;
- (j) not co-operated in any enquiry or inspection conducted by the Authority;
- (k) engaged in market manipulation, price rigging or cornering

- activities at a commodity exchange;
- (l) experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the commodity broker in the business of dealing in commodity contracts is no longer in the interest of investors;
- (m) been suspended by a securities exchange or a commodity exchange; or
- (n) failed to pay the annual fees; or
- (o) acted in a manner that it is necessary in the public interest to suspend or restrict the license.

(2) The Authority shall, before issuing an order of suspension or other administrative action under sub-regulation (1), give a commodity broker an opportunity to be heard.

Revocation of a commodity broker's license.

**33.** (1) The Authority may, by order in writing, revoke the license of a commodity broker where it is satisfied that –

- (a) the reasons for suspension or restriction of a license continue during the period of such suspension;
- (b) a commodity broker whose license has been suspended –
  - (i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice, market abuse or other offence outlined in the Act or these Regulations,
  - (ii) has been found guilty of fraud or convicted of a criminal offence,
  - (iii) has not complied with a directive of the Authority; or
- (c) the membership of that commodity broker has been cancelled by a commodity exchange or another securities or derivatives exchange; or
- (d) it is necessary for the protection of investors.

(2) The Authority shall, before issuing an order of revocation, give a commodity broker an opportunity to be heard.

Automatic revocation of a license.

**34.** (1) Any license granted to a commodity broker shall automatically be revoked if the commodity broker –

- (a) ceases to be a trading member of a commodity exchange;
- (b) has not complied with the admission requirements of a securities exchange, derivatives exchange or commodity exchange and is not re-admitted to membership within a period of six months from such declaration;
- (c) surrenders its commodity exchange membership in all commodity exchanges where it is a commodity exchange

member;

- (d) is declared insolvent by a court of law;
- (e) voluntarily surrenders the license to the Authority; or
- (f) is wound up by a court order.

Appeal against suspension or revocation of license.

**35.** A commodity broker aggrieved by the decision of the Authority to suspend or revoke its license may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

Commodity broker to clear its liabilities.

**36.** In the event of a suspension or revocation of a commodity broker's license, a commodity broker shall be responsible for clearing all of its outstanding obligations up to the date on which that commodity broker had been operating.

Continuing obligations.

**37.** (1) A commodity broker shall, as a condition of continued admission to a commodity exchange, provide to the Authority, through a commodity exchange, a certified copy of –  
(a) the net capital balance,  
(b) net worth statements, and  
(c) a report of the auditor thereon.

(2) The certified copies of the documents in sub-regulation (1) above shall be submitted to the Authority quarterly within thirty days of the end of the quarter in a form that may be prescribed by the Authority from time to time.

#### **PART IV – TRADING AND CONDUCT OF BUSINESS**

Trading system and platform.

**38.** (1) All trades on a commodity exchange shall take place on the trading system of the commodity exchange, on an electronic platform provided by a commodity exchange, or on such other facility a commodity exchange provides, subject to the approval of the Authority.

- (2) The trading system deployed shall –
- (a) be integrated with a clearing and settlement system;
  - (b) have an online screen-based trading system for providing direct market access up to the client level via the internet;
  - (c) be integrated with the electronic central registry of the warehouse operators prescribed under the Warehouse Receipt System Act.

Transactions on a commodity exchange.

**39.** Transactions to be conducted in a commodity exchange shall include dealings in commodity contracts and related financial products.

Approval of commodity contracts.

**40.**(1) Every commodity contract shall be approved by the Authority prior to becoming eligible for listing on a commodity exchange.

(2) Each application for approval of a commodity contract shall include the following information –

- (a) size of the contract;
- (b) tick size;
- (c) duration of the contract;
- (d) mode of final settlement;
- (e) grade, weighting and quality of the underlying asset, where applicable;
- (f) position limits at the commodity broker and client levels;
- (g) the name and location of the warehouse for storage of the underlying asset, including the warehouse receipt in the case of agricultural commodities, if applicable;
- (h) a statutory declaration that the applicable underlying asset is free from any encumbrances including a warehouse operator's lien, in the case of agricultural commodities;
- (i) a warranty from the holder of a warehouse receipt that –
  - (i) the receipt is genuine,
  - (ii) he has a legal right to negotiate, transfer or assign the receipt,
  - (iii) he knows no fact which would impair the validity or worth of the receipt, and
  - (iv) he has the right to transfer the title to the goods.
- (j) any other information which the Authority may consider necessary.

(3) Upon receipt of an application under sub-regulation (2), the Authority may, if it is satisfied that the application fulfils the requirements under sub-regulation (3), approve the commodity contract for listing on a commodity exchange.

(4) Where, after the approval of the commodity contract, the Authority finds the application or operationalization of the approved commodity contract deficient in any material respect or that the commodity exchange has failed to comply with any of the prescribed conditions or requirements or that the continued listing of the commodity contract would not be in the public interest, the Authority may –

- (a) direct the relevant commodity exchange to correct the deficiency;
- (b) direct the relevant commodity exchange to comply with the prescribed condition or requirement within the specified time;
- (c) amend the specification of any commodity contract; or

(d) revoke the commodity contract.

(5) An application submitted under sub-regulation (2) shall not be refused and an approval of a commodity contract shall not be revoked unless the relevant commodity exchange has been given an opportunity to be heard by the Authority.

(6) The Authority may require an application for approval of a commodity contract to be accompanied by an expert opinion regarding any of the information contained in the contract.

Fixing of  
position and  
trading limits in  
contracts.

**41.** (1) In order to diminish, eliminate or prevent excessive speculation in any commodity under a commodity contract, a commodity exchange, with the approval of the Authority, may, by notice in writing, from time to time establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a commodity contract on or subject to rules of a commodity exchange.

(2) A commodity exchange, in deciding on whether a person has exceeded the limits shall consider the positions held and trading done by any persons, directly or indirectly, controlled by such a person shall be included with the positions held and trading done by that person.

(3) Such limits on positions and trading, described under shall apply to positions held by, and trading done by, two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

(4) No person shall, directly or indirectly –

(a) buy or sell, or agree to buy or sell, a commodity contract or any number of such contracts, on or subject to the rules of a commodity exchange which apply to the contract or contracts, in excess of the trading limits fixed for one business day, or other stated period set by a commodity exchange with the approval of the Authority; or

(b) hold or control a net buy or sell position under a commodity contract on or subject to the rules of a commodity exchange in excess of any position limit fixed by a commodity exchange with the approval of the Authority with respect to that commodity contract.

(5) Nothing in this Regulation shall preclude the Authority from fixing different trading or position limits for different contracts or delivery

months or for different days remaining until the last day of trading in a contract or different trading limits for the purposes of sub-regulation (4), or from exempting transaction under this Regulation.

Clearing and settlement through the clearing house.

**42.** All approved contracts transacted on a commodity exchange shall be cleared and settled by the clearing house of a commodity exchange, and whenever required, closed out in accordance with the rules of a commodity exchange or as directed by the Authority.

Application of Warehouse Receipt System Act to commodity contracts.

**43.** (1) In so far as the subject of a commodity contract is related to commodities, the Warehouse Receipt System Act shall apply to such a contract.

(2) The Authority or the commodity exchange may impose additional requirements on warehouses or warehouse operators where necessary to maintain market integrity and efficiency or in the protection of investor interests.

Standards of conduct.

**44.** The Capital Markets (Conduct of Business) (Market Intermediaries) Regulations and the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations shall apply to commodity brokers with necessary modifications as may be set out by the Authority.

Commodity broker not to use funds.

**45.** No commodity broker shall knowingly use money, securities, property, proceeds or funds received from, advanced to or held for any customer to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any client other than the client for whom such money, securities, property, proceeds or funds are held.

Statement of purchase and sale.

**46.** Every commodity broker who has acted as an agent in connection with a liquidating trade in a commodity contract shall promptly send to their client a statement of purchase and sale setting forth the –

- (a) dates of the initial transaction and liquidating trade;
- (b) commodity and quantity bought and sold;
- (c) commodity exchange upon which the contracts were traded;
- (d) delivery period;
- (e) prices on the initial transaction and on the liquidating trade;
- (f) gross profit or loss on the transactions;
- (g) commission; and
- (h) net profit or loss on the transactions.



Statement, terms and conditions to be furnished to prospective client.

**47.**(1) Every commodity broker shall furnish each prospective client prior to the opening of an account with a written statement in a form approved by the Authority which will –

- (a) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the client upon entering a contract;
- (b) advise the client to request and study the terms and conditions of the contract; and
- (c) furnish details concerning commissions and other charges levied by the commodity broker and the commodity exchange.

(2) Every commodity broker shall upon the request of a prospective client with a copy of all current terms and conditions of any contract the form of which shall have the prior approval of the Authority.

(3) Where there are unexpired or unexercised open commodity contract, outstanding in a client's account, the relevant commodity broker for that specific transaction shall promptly deliver to such a client, a written monthly statement, setting forth –

- (a) the opening cash balance for the month in the client's account;
- (b) all deposits, credits, withdrawals and debits to the client's account;
- (c) the cash balance in the client's account;
- (d) each unexpired and unexercised commodity contract;
- (e) the agreed price of each unexpired or unexercised commodity contract;
- (f) each open commodity contract; and
- (g) the price at which each open commodity contract was entered into.

Risk disclosure statements.

**48.** No commodity broker shall open a commodity contract account for a client unless the commodity broker furnishes the client with a separate written risk disclosure document which shall be in the form prescribed by a commodity exchange and receives from the client an acknowledgement signed and dated by the client that the client has received and understood the nature and contents of the risk disclosure document.

Segregation of clients' funds.

**49.** (1) A commodity broker shall maintain strict segregation between its own funds and each individual clients' funds without any commingling between –

- (a) its own funds and clients' funds; and
- (b) individual clients' funds.

(2) A commodity broker shall establish a client group account with the designated clearing house of the commodity exchange of which that commodity broker is a member.

(3) A commodity broker shall ensure that all security deposits and withdrawals on behalf of clients are only made through the client group account.

(4) A commodity broker shall only accept a security deposit or fees by way of –

- (a) a cheque;
- (b) a bank draft; or
- (c) online bank transfer or via mobile banking transfer from a client designated account.

(5) A commodity broker shall immediately deposit any security deposits in the client group account maintained by the commodity broker with the commodity exchange designated clearing house for onward transfer and credit to each individual clients' account at the clearing house of the commodity exchange.

(6) Money deposited by any member of a commodity exchange towards the security deposit shall be refundable, provided that such amount is in surplus and there is no actual or contingent liability or a claim from a clearing house to be discharged by such a member, and subject to such terms and conditions as may be specified by a commodity exchange from time to time.

(7) Any withdrawals requested by a client shall be processed by transferring funds from the individual clients' account maintained at the clearing house of the commodity exchange to the client group account maintained by the commodity broker at the designated clearing house of a commodity exchange.

(8) A withdrawal under sub-regulation (7) shall be settled either by a cheque drawn on the client group account of the commodity broker, by online bank transfer or by mobile banking transfer, to a designated client account, from the same account maintained at the designated clearing house of a commodity exchange.

(9) A commodity broker shall undertake and complete reconciliation on a daily basis between –

- (a) the client group account maintained at the designated clearing house of a commodity exchange;
- (b) the client group account at the clearing house of a commodity exchange; and

(c) individual clients' account maintained at the clearing house of a commodity exchange.

(10) A commodity broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(11) A commodity broker shall maintain a record of transactions with the relevant banks including client's deposits and withdrawals from the client group account maintained with the commodity exchange designated clearing house.

Residual  
financial  
interest.

**50.** (1) A commodity broker may be exempt from the provision in Regulation 50 where such a commodity broker has a residual financial interest in a customer's account and, from time to time, may advance, from the dealer's own funds, sufficient funds to prevent, any or all of a client's accounts for security deposit from becoming under-funded.

(2) Where a commodity broker has a residual financial interest in a client's account for security deposit or has advanced the commodity broker's own funds to prevent a client's account from becoming under-funded, the commodity broker may draw upon that account or any other accounts of the same client to the commodity broker's own order to the extent of the commodity broker's residual financial interest therein or to the extent of the actual advances made.

## **PART V – COMMODITY SETTLEMENT GUARANTEE FUND**

Establishment of  
the Fund.

**51.** (1) For the purposes of Section 12(1) (i) and (j) of the Act, the commodity exchange shall establish a Fund to be known as the Commodity Settlement Guarantee Fund for the purpose of granting assistance to a member of a commodity exchange who fails to meet their clearing and settlement obligations to a commodity exchange arising out of transactions on a commodity exchange.

(2) The Fund shall be maintained by the commodities exchange.

(3) A commodity exchange, with the prior approval of the Authority, may prescribe from time to time, the rules, procedures, terms and conditions governing the Fund, which may specify the –

- (a) amount of deposit or contribution to be made by each member of the commodity exchange to the Fund;
- (b) terms, manner and mode of deposit or contribution;
- (c) conditions of repayment of deposit or withdrawal of contributions from the Fund;

- (d) charges for drawing from the Fund;
- (e) penalties applicable; and
- (f) disciplinary actions.

Composition of the Fund.

- 52.** (1) The Fund shall consist of –
- (a) contributions from a commodity exchange and its clearing house;
  - (b) contributions from clearing banks of a commodity exchange as may be determined by the board of a commodity exchange, with the approval of the Authority, from time to time;
  - (c) such sums of money as accrued from interest and profits from investing the assets of the Fund;
  - (d) such money recovered by or on behalf of a commodity exchange from entities whose failure to meet their obligations to investors results in payments from the Fund; and
  - (e) such sums of money as are received for purposes of the Fund from any other source approved by the Authority,

(2) Money accumulated in the Fund may be invested by the commodities exchange in such manner as set out in the rules of the Fund.

(3) A commodity exchange may specify the amount of additional contributions or deposit to be made by each of its members.

(4) A clearing house shall, in respect of settlement of transactions, guarantee financial settlement of such transactions to the extent it has acted as a legal counter party.

Form of contribution or deposit to the Fund.

- 53.** The Authority may, in its discretion, permit a member of a commodity exchange to contribute to or provide the deposit to be maintained with the Fund, in the form of cash or in such other form or method and subject to such terms and conditions, as may be specified by the Authority.

Management of the Fund.

- 54.** (1) The Fund may be used for such purposes prescribed by the Authority, which may include –
- (a) defraying the expenses of creation and maintenance of the Fund;
  - (b) temporary application of the Fund to meet shortfalls and deficiencies arising out of the clearing and settlement obligations of members of a commodity exchange in respect of and connected to transactions related to commodity contracts;
  - (c) meeting any loss or liability of a clearing house arising out of clearing and settlement operations;

- (d) repayment of the balance amount to a member pursuant to provisions in the commodity exchange rules regarding the repayment of deposits after meeting all obligations, when such a member ceases to be a member of a commodity exchange; and
- (e) any other purpose as may be specified by the Authority.

(2) The commodities exchange shall have full power and authority to pledge, re-pledge, hypothecate, transfer, create a security interest in, or assign any or all of the assets in the Fund, or any other instrument issued on behalf of a member of a commodity exchange in favour of the commodities exchange, towards deposit to the Fund.

Scheme of arrangements on default.

**55.** Where a member of a commodity exchange has failed to meet his clearing and settlement obligations or where a member of a commodity exchange has been declared a defaulter, a commodity exchange or a clearing house, may request the Authority to use the Fund and other monies of the concerned member to the extent necessary to fulfil his obligations in the following order –

- (a) any amount that may have been paid by the defaulting member in the form of a pre-trade deposit, but does not include a client's pre-trade deposit, or any other money deposited with or retained by a clearing house for the purpose of meeting the clearing and settlement obligations;
- (b) any amount that may have been deposited by the defaulting member towards additional deposit with the clearing house;
- (c) the proceeds, if any, recovered from auctioning or disposing of the member's membership rights vested in a commodity exchange, subject to deduction of the expenses relating or incidental to the auction or disposal, as the case may be;
- (d) the fines, penalties, interest or other income, if any, earned by investment or divestments of the Fund as may be decided by the Authority;
- (e) the security deposit made by all classes of members in proportion to their deposit to the Fund, or where the deposit is deficient, the deficit in the amount shall be deposited in the Fund;
- (f) the profits, if any, from returns on investments of the Fund; and
- (g) any other funds set aside by the commodities exchange.

Additional contributions or deposits.

**56.** (1) Where a pro-rata charge has been made against a member's actual contribution or deposit, and as a consequence, the member's remaining contribution or deposit towards the Fund falls below his required contribution or deposit, the member shall contribute or deposit towards the shortfall in the Fund within such time as the Authority may specify.

(2) Where any member, who is required to contribute or deposit to the Fund, fails to do so, the commodities exchange may charge such rate of interest on the shortfall, as it may determine, in addition to any administrative action, including imposing fines and penalties against the member.

## **PART VI - RECORD KEEPING, ACCOUNTS, AUDITS AND INSPECTIONS**

Production of records.

**57.** (1) A commodity exchange, clearing house or commodity broker shall –

- (a) produce any books, accounts and records kept by it in connection with, or for the purposes of, its business, or in respect of any trading in commodity contracts;
- (b) collect and furnish any returns; and
- (c) provide any information relating to its business, or any trading in commodity contracts, or any other specified information, as the Authority may require.

(2) The Authority, may, on production of any books, accounts or records take copies of or extracts from them.

Records of transactions on a commodity market or clearing house.

**58.**(1) A commodity exchange, commodity broker and a clearing house shall keep such records as are necessary for the proper recording of each transaction on the exchange, commodity broker or clearing house and shall supply to any client of any member of such an exchange, broker or clearing house, upon production of a written confirmation of any transaction with such member, particulars of the approximate time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation.

(2) The Authority may, at any time, require a commodity exchange, commodity broker or a clearing house of a commodity exchange to deliver to it reports of transactions on the commodity exchange, commodity broker or clearing house of a commodity exchange.

Information to be provided by market participants.

**59.** (1) Upon a determination by the Authority that information concerning accounts may be relevant to determine whether manipulation, corner, squeeze or other market disorders exist in any commodity exchange, the Authority may, by notice in writing, require such information as it thinks necessary from any person, including a member of a clearing house or a commodity broker or any client in the commodity market, and the person concerned shall provide the required information within such time as may be specified by the Authority.

(2) Where the Authority has reason to believe that any person has failed

to give the information required in the notice, it may without prejudice to any other penalty that may be imposed, inform a commodity exchange or a clearing house which shall, in the event, prohibit the execution of, or acceptance for orders of, trades on the exchange or a clearing house in the months or expiration dates specified in the notice unless such trades offset open contracts of that person.

Accounts and  
audit.

**60.** (1) A commodity exchange, clearing house and commodity broker shall keep proper books of accounts and records of income and expenditure, assets and liabilities and all other transactions of the commodity exchange.

(2) A commodity exchange, clearing house and commodity brokers shall, within four months after the end of each financial year, prepare a statement of accounts of the commodity exchange, clearing house and commodity brokers for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) A commodity exchange and commodity broker shall appoint a qualified auditor or auditors, to audit the books of accounts or to investigate any affairs of a commodity exchange or broker.

(4) A commodity exchange, clearing house and commodity brokers shall submit the statement of accounts prepared under sub-regulation (2) to their auditors for audit.

(5) The auditors shall prepare a report on the accounts and submit the report to the commodity exchange, clearing house and commodity brokers.

(6) A commodity exchange, clearing house and commodity brokers shall, immediately upon receipt of the auditor's report referred to under sub-regulation (4), send a copy of the report and a copy of the statement of accounts to the Authority.

(7) The auditors' report shall include –

- (a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of a commodity exchange, clearing house or commodity broker; and
- (b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of a commodity exchange, clearing house or commodity broker and their financial affairs at the end of that financial year.

(8) Every commodity exchange, clearing house and commodity broker, and any employee or agent of a commodity exchange, clearing house and commodity broker, shall on demand by an audit firm –

- (a) allow the auditor reasonable access to the premises occupied by a commodity broker or by any other person acting on behalf of a commodity broker;
- (b) extend reasonable facilities to the auditor;
- (c) provide any information required by an auditor; and
- (d) produce for inspection any documents, books, vouchers and other records or copies of any documents, books, vouchers and other records,

that the audit firm may consider necessary for the performance of its duties.

(9) An auditor shall, during an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor, associate or employee of a commodity exchange, commodity broker or clearing house, under audit or investigation.

(10) A member, director, partner, proprietor, associate or employee of a commodity exchange, broker or clearing house under audit or investigation shall give the auditor all assistance in connection with the audit or investigation.

Authority may  
appoint an  
auditor.

**61.** The Authority may, where the Authority is satisfied that it is in the public interest to do so, appoint an auditor, in writing, at the expense of a commodity exchange, clearing house or commodity broker, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange, clearing house or commodity broker.

Annual report.

**62.** (1) A commodity exchange, clearing house or commodity broker shall, within four months after the end of their respective financial year, submit to the Authority an annual report.

(2) The annual report submitted under sub-regulation (1) shall include

- (a) a description of the activities undertaken in that financial year;
- (b) the resources, including financial, technological and human resources, that were available and used, to ensure compliance with obligations and, in particular, for a commodity exchange,



the obligation to ensure that the commodity market operates in a fair, efficient and transparent manner;

- (c) an analysis of the extent to which activities undertaken, and resources used have resulted in full compliance with all obligations under these Regulations and the rules of the commodity exchange;
- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify, in writing.

The right of the Authority to inspect.

**63.** The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a commodity exchange, commodity broker or clearing house where there is need to –

- (a) establish that the books of accounts and other records are being maintained in the manner required;
- (b) ensure the provisions of the Act are being complied with;
- (c) investigate into the complaints received from investors, other commodity brokers or any other person on any matter having a bearing on the activities of the commodity exchange, commodity broker or clearing house; and
- (d) investigate on its own motion, in the interest of the commodity market or the interest of investors, into the affairs of a commodity exchange, commodity broker or clearing house.

Procedure for inspection.

**64.** (1) The Authority shall, before undertaking an inspection, give the relevant commodity exchange, commodity broker or clearing house a reasonable notice the intention to undertake an inspection.

(2) The Authority may direct, in writing, that an inspection of a commodity exchange, commodity broker or clearing house be carried out without notice to the commodity exchange, commodity broker or clearing house, if the Authority is satisfied that it is in the interest of the commodity market or investors in the commodity market that no such notice should be given.

(3) The inspecting officers appointed for the purpose of an inspection, shall have the power to undertake the inspection as directed by the Authority and that commodity broker is bound to discharge its statutory obligation.

Obligations of a commodity

**65.**(1) An inspecting officer may require a shareholder, director, officer or an employee of a commodity exchange, commodity broker or clearing house under inspection to produce such books, accounts and other documents in

broker in respect of inspections.

his custody or control and furnish the inspecting officer with the statements and information relating to the transactions in a commodity exchange within such time as the inspecting officer may require.

(2) A commodity exchange, commodity broker or clearing house shall -

- (a) allow the inspecting officer reasonable access to its premises;
- (b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in its possession;
- (c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, during inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a commodity exchange, commodity broker or clearing house under inspection.

(4) A director, an officer or an employee of the commodity exchange. Commodity broker or clearing house under investigation shall give to the inspecting officer all assistance in connection with the inspection as it may reasonably be expected to give.

Action on inspection report.

**66.** The Authority may, after considering an inspection report, take such action as provided for under the Act.

## **PART VII – OFFENCES**

Wash trading and market rigging transactions.

**67.**(1) A person who does anything or cause anything to be done or engage in any course of conduct, if his purpose or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, calculated to create a false or misleading appearance –

- (a) of active trading in any commodity contract on a commodity exchange or market; or
- (b) with respect to the commodity exchange for, or the price of, any commodity contract traded on a commodity exchange,

without incurring market risk or changing a commodity broker's market position commits an offence.

(2) A person who does anything, cause anything to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any commodity contract, or with respect to a commodity exchange for, or the price of, any commodity contracted traded on a commodity exchange, if –

- (a) he knows that doing that thing, causing that thing to be done or engaging in the course of conduct, as the case may be, will create, that false or misleading appearance; or
- (b) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance,

commits an offence.

Dissemination of information about false trading.

**68.** A person who circulates, disseminates, authorises, or is concerned in, the circulation or dissemination of, any statement or information to the effect that the price of trading in any class of commodity contracts will, or is likely to, rise or fall because of the market operations of one or more persons, which to his knowledge are conducted in contravention of Regulation 74 commits an offence.

Bucketing.

**69.** A person who knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the commodity contract in accordance with the rules and practices of a commodity exchange commits an offence.

Manipulation of price and cornering.

**70.** A person who directly or indirectly –

- (a) manipulates, or attempts to manipulate, the price, of a commodity contract that may be dealt in on a commodity exchange;
- (b) misrepresents the quality or quantity of a commodity that is the subject of a commodity contract; or
- (c) corners, or attempts to corner, any commodity which is the subject of any commodity contract,

commits an offence.

Employment of fraudulent or deceptive devices, etc.

**71.** A person who directly or indirectly, in connection with any transaction with any other person involving trading in a commodity contract –

- (a) employs any device, scheme or artifice to defraud that other person;
- (b) engages in any act, practice or course of business which operates as a fraud or deception, of that other person; or
- (c) makes any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in light of the circumstances under which they were made not misleading,

commits an offence.

Fraudulently  
inducing trading.

**72.** A person who directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a commodity contract or class of commodity contracts, makes or publishes –

- (a) any statement which is, at the time and considering the circumstances in which it is made, false, misleading or deceptive with respect to any material fact and which he knows, or has reasonable grounds for believing, is false, misleading or deceptive; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing is rendered false, misleading or deceptive by reason of the omission of that fact.

commits an offence.

Penalty.

**73.** A person who commits an offence under this Regulations shall be liable to-

- (a) penalty as specified under section 34A of the Act; and
- (b) damages for any loss occasioned.

Dated the.....,2019.

**HENRY ROTICH,**  
**Cabinet Secretary for the National Treasury.**

**FIRST SCHEDULE**

**FORM A**

**(r. 4(1))**

**THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2019  
APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A  
COMMODITY EXCHANGE**

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

1. Name of the Company..... Limited
2. Registered office.....
3. Date of incorporation.....
4. Address.....
5. E-mail.....
6. Location, address and telephone number of principal office.....
7. Location, address and telephone number of branch offices.....
8. Details of capital structure:
  - (a) Nominal/authorized capital (Kshs.).....
  - (b) Number of shares.....
  - (c) Paid-up capital (Kshs.).....
9. Shareholders (please attach list)

| Name | Address and telephone number | Number of shares held |
|------|------------------------------|-----------------------|
|      |                              |                       |

10. (a) Directors (please attach a list)

| Name | Identity card/Passport number | Date of appointment | Date of Birth | Permanent address and telephone number | Academic or professional qualification | Number of shares held in the company |
|------|-------------------------------|---------------------|---------------|--|--|--------------------------------------|
|      |                               |                     |               |  |  |                                      |

(b) Secretary

Name.....  
Address.....  
Institute of Certified Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

| Name | Identity card or Passport number. | Date of appointment | Date of birth. | Permanent address and telephone number | Academic and professional qualifications | Number of shares held in the company. |
|------|-----------------------------------|---------------------|----------------|--|--|---------------------------------------|
|------|-----------------------------------|---------------------|----------------|--|--|---------------------------------------|

11. Particulars of other directorship (s) of the directors and secretary.....  
.....  
.....

12. Particulars of shares held by the directors and secretary in other companies.....  
.....  
.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If “Yes”, give details.....  
.....  
.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No  
If Yes, give details.....  
.....  
.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details.....  
.....  
.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details.....

.....  
.....  
.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details.....

.....  
.....  
.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a “yes” answer to question 15? Yes/No. If “yes” give details.....

.....  
.....  
.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodity exchange? Yes/No. If “yes” give details..

.....  
.....  
.....

(2) have any of the above persons been-

(a) refused admission as a commodity member of any securities organization? Yes/No. if Yes, give details.....

.....  
.....  
.....

(b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details.....

.....  
.....  
.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details.....

.....  
.....  
.....

18. Business references:

| Name | Address | Telephone number(s) | Occupation |
|------|---------|---------------------|------------|
|      |         |                     |            |

19. Profile of the chief executive officer and key personnel in the applicant company

.....  
.....  
.....

20. List of office facilities of the applicant.....

.....  
.....  
.....  
.....  
.....

21. Any other additional information considered relevant to this applicant.....

.....  
.....  
.....

We.....(Director)..... (Director)  
and.....(Secretary) declare that all the information given  
in this application and in the attached documents is true and correct.

Dated this.....day of.....20....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).



**FIRST SCHEDULE**

**FORM B**

*(r. 27(1))*

**APPLICATION FORM FOR LICENCE AS COMMODITY BROKER**

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

**THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2019**

**APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A COMMODITY  
BROKER**

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Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

*Information provided should be as at the date of the application or renewal.*

1. Name of company ..... Limited
2. Registered office .....
3. Date of incorporation .....
4. Address .....
5. E-mail .....
6. Location, address and telephone number of principal office.....
7. Location, address and telephone number of branch offices .....
8. Details of capital structure:
  - (a) Nominal capital (Kshs.) .....
  - (b) Number of shares .....
  - (c) Paid-up capital (Kshs.) .....

9. Shareholders (please attach a list)

| Name | Address & telephone number | Number of shares Held |
|------|----------------------------|-----------------------|
|------|----------------------------|-----------------------|

10(a) Directors (please attach a list)

| Name | Identity Card/ Passport number | Date of Appointment | Date of birth | Permanent address & telephone number | Academic Or Professional qualification | Number of shares held in the company |
|------|--------------------------------|---------------------|---------------|--------------------------------------|--|--------------------------------------|
|------|--------------------------------|---------------------|---------------|--------------------------------------|--|--------------------------------------|

(b) Secretary

Name.....

Address .....

Institute of Certified Secretaries of Kenya Registration No. ....

(c) Chief executive and other key personnel

| Name | Identity Card/ Passport number | Date of Appointment | Date of birth | Permanent address & telephone number | Academic Or Professional qualification | Number of shares held in the company |
|------|--------------------------------|---------------------|---------------|--------------------------------------|--|--------------------------------------|
|      |                                |                     |               |                                      |  |                                      |

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....  
14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.  
.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.  
.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.  
.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.  
.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,', give details.  
.....

17(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities, derivatives or commodity exchange? Yes/ No.

If 'yes', give details.  
.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details  
.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details  
.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No. If 'yes', give details.

.....

18. Business references:

| Name | Address | Telephone number (s) | Occupation |
|------|---------|----------------------|------------|
|------|---------|----------------------|------------|

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

| Name | Post | Qualifications | Experience |
|------|------|----------------|------------|
|------|------|----------------|------------|

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We .....(Director), ..... (Director) and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this ..... day of ..... 20 .....

Signed:

..... ) Director

.....) Director

.....) Secretary

**Note:**

Please attach the documents and details referred to in regulation 4(2).

**SECOND SCHEDULE**

**THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2019**

**LICENSING AND ANNUAL FEES FOR COMMODITY EXCHANGE AND  
COMMODITY BROKERS (r. 4(1) (d); 7(4)); 31**

| <b>Licensee</b>    | <b>Application fee (Kshs)</b> | <b>Licensing fee (initial and annual in Kshs)</b> |
|--------------------|-------------------------------|---|
| Commodity exchange | 2,500                         | 2,500,000   |
| Commodity broker   | 2,500                         | 50,000  |

## THIRD SCHEDULE

### PART A

(r. 13). 22(3))

## CODE OF CONDUCT FOR THE DIRECTORS OF THE COMMODITIES EXCHANGE

### 1. Meetings and minutes

Every director of the licensed commodity exchange shall—

- (a) not participate in discussions on any subject matter in which any conflict of interest exists or arises, whether pecuniary or otherwise, and in such cases the same shall be disclosed and recorded in the minutes of the meeting;
- (b) not encourage the circulation of agenda papers during the meeting, unless circumstances so require;
- (c) offer their comments on the draft minutes and ensure that the same are incorporated in the final minutes;
- (d) insist on the minutes of the previous meeting being placed for approval in subsequent meeting;
- (e) endeavour to have the date of next meeting fixed at each board meeting in consultation with other members of the board;
- (f) endeavour to ensure that in case all the items of the agenda of a meeting were not covered for want of time, the next meeting is held within fifteen days for considering the remaining items.

### 2. Code of Conduct for the public interest directors.

- (a) In addition to the conditions stated in Paragraph (i) above, independent directors of the licensed commodity exchange shall, endeavour to attend all the board meetings and they shall be liable to vacate office if they remain absent for three consecutive meetings of the board or do not attend seventy five percent of the total meetings of the board in a calendar year.
- (b) Independent directors shall meet separately, at least once in six months to exchange views on critical issues.

### 3. Strategic planning.

Every director of the licensed commodity exchange shall—

- (a) participate in the formulation and execution of strategies in the best interest of the licensed commodity exchange and contribute towards pro-active decision making at the board level;
- (b) give benefit of their experience and expertise to the licensed commodity exchange and aid in strategic planning and execution of decisions.

#### **4. Regulatory compliances.**

Every director of the licensed commodity exchange shall—

- (a) endeavour to ensure that the licensed commodity exchange abides by all the provisions of the Act and regulations framed thereunder and the circulars, directions issued by the Authority from time to time;
- (b) endeavour compliance at all levels so that the regulatory system does not suffer any breaches;
- (c) endeavour to ensure that the licensed commodity exchange takes steps commensurate to honour the time limit stipulated by Authority for corrective action;
- (d) not support any decision in the meeting of the board which may adversely affect the interest of investors and shall report forthwith any such decision to the Authority.

#### **5. General responsibility.**

Every director of the licensed commodity exchange shall—

- (a) place priority for redressing investor grievances and encouraging fair trade practice so that the licensed commodity exchange becomes an engine for the growth of the commodity market;
- (b) endeavour to analyse and administer the licensed commodity exchange issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- (c) submit the necessary disclosures/statement of dealings in commodity contracts as required by the licensed commodity exchange from time to time as per their rules or articles of association;
- (d) unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in the discharge of their duty and no such information shall be used for personal gains;

- (e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties to inspire public confidence and shall not engage in acts discreditable to their responsibilities;
- (f) perform their duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official duties;
- (g) perform their duties with a positive attitude and constructively support open communication, creativity, dedication, and compassion;
- (h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the licensed commodity exchange.

## **PART – B**

*(r. 17)*

### **CODE OF ETHICS FOR DIRECTORS AND KEY PERSONNEL OF A COMMODITY EXCHANGE**

The ‘Code of Ethics’ for directors and key personnel of the licensed commodity exchange, is aimed at improving the professional and ethical standards in the functioning of licensed commodity exchange thereby creating better investor confidence in the integrity of the commodity market.

#### **1. Objectives and underlying principles.**

The Code of Ethics for directors and key personnel of the licensed commodity exchange seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key personnel, towards establishing a fair and transparent marketplace. The Code of Ethics is based on the following fundamental principles:

- (a) Fairness and transparency in dealing with matters relating to the commodity exchange and the investors;
- (b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ licensed commodity exchange;
- (c) Exercising due diligence in the performance of duties; and  
Avoidance of conflict of interest between self-interest of directors/ key management personnel and interests of licensed commodity exchange and investors.

#### **2. Ethics committee.**

For overseeing implementation of this Code, an ethics committee shall be constituted by every licensed commodity exchange under the respective board.



### **3. General standards.**

- (a) Directors and key personnel shall endeavour to promote greater awareness and understanding of ethical responsibilities;
- (b) Directors and key personnel, in the conduct of their business shall observe high standards of commercial honour and just and equitable principles of trade;
- (c) The conduct of directors and key personnel in business life should be exemplary which will set a standard for other commodity members of the licensed commodity exchange;
- (d) Directors and key personnel shall not use their position to give/get favours to/from the executive or administrative staff of the commodity exchange, technology or service providers and vendors of the licensed commodity exchange;
- (e) Directors and key personnel shall not commit any act which will put the reputation of the licensed commodity exchange, in jeopardy; and
- (f) Directors, committee members and key personnel of the licensed commodity exchange, should comply with all rules and regulations applicable to the commodity market.

### **4. Disclosure of dealings in Commodity Contracts by key personnel of the Commodity Exchange.**

Key personnel of the licensed commodity exchange shall disclose on a periodic basis as determined by the laws, regulations, guidelines, rules relating to the commodity markets (which could be monthly), all their dealings in commodity contracts, directly or indirectly, to the board/ ethics committee/ Compliance Officer.

### **5. Avoidance of conflict of interest.**

- (a) No director of the board or member of any committee of the licensed commodity exchange participate in any decision making/adjudication in respect of any person /matter in which he is in any way, directly or indirectly, concerned or interested.
- (b) Whether there is any conflict of interest or not in a matter, should be decided by the board.

### **6. Role of the Chairperson and directors**

- (a) The chairperson and directors shall not interfere in the day to day functioning of the licensed commodity exchange and shall limit their role to decision making on policy issues and to issues as the board may decide;

- (b) The chairperson and directors shall abstain from influencing the employees of the licensed commodity exchange in conducting their day to day activities; and
- (c) The chairperson and directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the board.

#### **7. Access to information.**

- (a) Directors shall call for information only as part of specific committees or as may be authorized by the board.
- (b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.
- (c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/ gain.
- (d) Any information relating to the business/operations of the licensed commodity exchange, which may come to the knowledge of directors/ key personnel during performance of their duties shall be held in strict confidence, shall not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

#### **8. Misuse of position.**

Directors/ committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

#### **9. Ethics committee to lay down procedures.**

- (a) The ethics committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code.
- (b) The compliance officer shall execute the requirements laid down by the ethics committee.

While the objective of this Code is to enhance the level of market integrity and investor confidence, it is emphasized that a written code of ethics may not completely guarantee adherence to high ethical standards. This can be accomplished only if directors and key personnel of the licensed commodity exchange commit themselves to the task of enhancing the fairness and integrity of the system in letter and spirit.

**MEASURES TO ENSURE SEGREGATION OF REGULATORY DEPARTMENTS**

To ensure the segregation of regulatory departments, every licensed commodity exchange shall adopt a "Chinese Wall" policy which separates the regulatory departments of the licensed commodity exchange from the other departments. The employees in the regulatory departments shall not communicate any information concerning regulatory activity to any one in other departments. The employees in regulatory areas may be physically segregated from employees in other departments including with respect to access controls. In exceptional circumstances employees from other departments may be given confidential information on "need to know" basis, under intimation to the compliance officer

DRAFT