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S T A T U T O R Y I N S T R U M E N T S

2014 No. 95.

**THE CAPITAL MARKETS (REGIONAL FIXED INCOME SECURITIES)
REGULATIONS, 2014.**

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1. Title.
2. Application.
3. Interpretation.

PART II—LEGAL REQUIREMENTS

4. The legal status of the issuer.
5. Listing.
6. Regional fixed income securities.
7. Capital requirement.
8. Issue amount.
9. Lodging of prospectus.
10. Jurisdiction.
11. Fees.

PART III—FINANCES

12. Financial statement.
13. Proforma financial statement.
14. Raising capital by issuer without a track record.

Regulation

15. Profits.
16. Ratio analysis.
17. Guarantee and credit enhancement.
18. Credit ratings.

PART IV—COMPLIANCE

19. Compliance.
20. Appointment of professional parties.
21. Application of funds outside jurisdiction where funds are raised.
22. Denomination of offer.
23. Continuous disclosure.

PART V—MISCELLANEOUS

24. Penalties.
25. Additional offers.
26. Dispute resolution.

SCHEDULES

SCHEDULE ONE

PROCEDURE FOR APPROVING PROSPECTUS FOR ISSUE OF
REGIONAL FIXED INCOME SECURITIES.

SCHEDULE TWO

TIME TABLE FOR APPROVING PROSPECTUS FOR ISSUE OF
REGIONAL FIXED INCOME SECURITIES.

S T A T U T O R Y I N S T R U M E N T S

2014 No. 95.

The Capital Markets (Regional Fixed Income Securities) Regulations, 2014.

(Under section 101 of the Capital Markets Authority Act, Cap 84).

IN EXERCISE of the powers conferred upon the Capital Markets Authority by section 101 of the Capital Markets Authority Act, the Regulations are made this 11th day of December, 2013.

PART I—PRELIMINARY.

1. Title.

These Regulations may be cited as the Capital Markets (Regional Fixed Income Securities) Regulations, 2014.

2. Application.

These Regulations apply to all offers of fixed income securities to the public or a section of the public in Uganda and the East African Community (EAC) region, including issues by public bodies.

3. Interpretation.

In these Regulations, unless the context otherwise requires—

“Authority” means the Capital Markets Authority established under section 4 of the Capital Markets Authority Act;

“issuer” refers to a company or other body corporate or a government that makes an offering of securities;

“Minister” means the Minister responsible for finance;

“professional investor” means a person whose ordinary business or regular activity involves the buying and selling of securities, as a principal, and includes an underwriter, a bank, and an insurance company, a fund manager, a broker, broker’s

representative, a dealer, dealer's representative, an investment adviser or investment adviser's representative acting as principal, subject to any exception that may be prescribed by the Authority;

“prospectus” means a prospectus, notice, circular, advertisement, or other invitation, offering to the public securities for subscription or purchase and includes—

- (a) a prospectus relating to an offer of debt securities to the public; or
- (b) a prospectus in respect of any other offer of securities to the public.

“working hours” means between 8.00a.m and 5.00p.m on a working day.

PART II—LEGAL REQUIREMENTS

4. The legal status of issuer.

(1) The issuer shall be an entity incorporated or registered as a foreign entity in each jurisdiction where the offer is to be made.

(2) Where the issuer is not a company, it shall be duly established under a written law of a particular jurisdiction or recognized under an international treaty.

5. Listing.

(1) A regional fixed income securities offer shall be listed before it is offered to the public or a section of the public.

(2) Sub regulation (1) shall not apply to an offer targeted at a professional investor, but the offer targeted at the professional investor may be traded on a regulated over the counter (OTC) platform.

(3) Where an issuer does not meet the requirements for listing, the issuer may be approved to issue its securities to professional investors and the securities may be approved for trade on regulated over the counter (OTC) markets.

6. Regional fixed income securities.

(1) An offer of fixed income securities approved for issue in more than one jurisdiction in the EAC region shall be considered a regional fixed income securities offer.

(2) The regulations and rules governing the issue, offer and listing of fixed income securities shall apply to the regional fixed income securities in sub regulation (1) to the extent that they do not conflict with the provisions of these Regulations.

7. Capital requirement.

(1) The minimum paid-up share capital shall be the local currency equivalent of USD 850,000 and the net assets shall be the local currency equivalent of USD 1,700,000.

(2) The requirement in sub regulation (1) shall not apply to a sovereign borrower, quasi-sovereign borrower or treaty organisation.

8. Issue amount.

The minimum amount of regional fixed income securities issue shall be USD 850,000.

9. Lodging of prospectus

(1) The issuer shall choose a primary jurisdiction to lodge a prospectus for a regional fixed income securities offer with the regulator.

(2) The issuer shall subsequently submit the prospectus referred to in sub regulation (1) to the regulators of other jurisdictions in which it proposes to raise capital for the approval.

(3) The prospectus lodged under these Regulations shall contain the following statement on its front page—

“As a matter of policy, the approving regulator assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus. Approval of the issue or listing is not to be taken as an indication of the merits of the issuer or of the securities.”

(4) The procedure for approving a prospectus for the issue of the regional fixed income securities is provided for in Schedule one to these Regulations.

(5) A timetable for approving a prospectus for issue of the regional income securities is provided for in Schedule two to the Regulations.

(6) The issuer shall comply with the relevant regulations, rules or guidelines regulating the issue of securities to the public in any jurisdiction in which the issue has been made.

10. Jurisdiction.

(1) The issuer shall choose a primary jurisdiction to lodge a prospectus with the regulator.

(2) The issuer shall subsequently submit the prospectus referred to in sub regulation (1) to the regulators of other jurisdictions in which it proposes to raise capital for the approval.

11. Fees.

(1) Each regulator approving the issue shall receive 0.1 percent of the evaluation fee determined by the primary regulator in relation to the issue.

(2) The evaluation fee shall be a maximum of USD 250,000 and a minimum of USD 50,000.

(3) The evaluation fee shall be paid at the time of application to the primary regulator.

(4) The primary regulator shall transfer to other regulators their respective share of the evaluation fee paid under this regulation.

(5) Where the prospectus is rejected, the issuer shall forfeit 25 percent of the evaluation fee paid under this regulation.

PART III—FINANCES

12. Financial statement.

(1) When an issuer has a track record, the issuer shall submit to the regulator the following financial statements complying with the International Reporting Standards (IFRS) for the three years preceding the offer—

- (a) audited accounts not more than six months old at the time of the offer; or
- (b) where the audited accounts are more than six months old, they shall be supported by management accounts.

(2) The management accounts shall be prepared within three months after the date of the offer.

13. Proforma financial statement.

(1) An issuer shall provide proforma financial statement that shall cover a period of not less than three years from the date of issue.

(2) Where the fixed income security has a shorter maturity period of less than three years, the proforma financial statement shall cover a period of the life of the fixed income security.

14. Raising capital by issuer without a track record.

(1) An issuer without a track record may raise capital through special purpose vehicles.

(2) An issuer without a track record may be eligible for approval to make offers to professional investors but not unrestricted offers to the public.

(3) An issuer without a track record shall disclose performance projections, risk factors, mitigation measures and availability of finances to assess any projections made.

5. Profits.

(1) An issuer shall submit to the regulator a report of profits at least two of the previous three years preceding the offer.

(2) Where there is a decline in profits, the regulatory authority may, grant a waiver if the decline is considered fundamental for the operation of the issuer.

16. Ratio analysis.

The financial ratios applicable to national offers shall not apply to regional offers.

17. Guarantee and credit enhancement.

(1) An issuer may seek a guarantee or credit enhancement.

(2) The guarantor shall be a commercial bank, duly licensed non-banking financial institution, or a recognised international financial institution with a valid credit rating.

(3) A letter of no objection shall be provided by the primary regulator of the guarantor other than an international financial institution.

18. Credit ratings.

(1) An issuer of regional fixed income securities shall maintain a valid credit rating while the issue remains in force.

(2) Where an issuer has no track record or where the debt is to be funded by specific project revenue, the credit rating shall be in respect of the project or performance projection.

(3) A credit rating agency with publicly available code of conduct guiding its rating practices and which is in compliance with the International Organization for Securities Commissions (IOSCO) Code of Conduct and fundamentals for Credit Rating Agencies (CRA) shall be eligible to provide credit rating reports.

(4) The Credit Rating Agency which complies with the International Organization for Securities Commissions (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies (CRA) shall be required to register in any EAC Regional Jurisdiction.

(5) A prospectus for regional offers of fixed income securities shall include a cautionary statement stating that—

“A credit rating is not a requirement to apply for the securities on offer, or an assurance of performance of the offer or, and that an investor should exercise due diligence and use the rating as only one of the considerations in making their investment decision.”

PART IV—COMPLIANCE

19. Compliance.

An issuer of regional fixed income securities shall comply with the regional requirements relating to trading, clearing and settlement of issue.

20. Appointment of professional parties.

(1) An issuer of regional fixed income securities shall appoint the following professional parties—

- (a) a transaction arranger, placing agent or sponsoring stockbroker who shall be a corporate body licensed by at least one EAC Partner State Regulator and has affiliates in all regional jurisdictions where security may be issued.
- (b) an accountant who is a member of the accountant’s professional body who shall be a firm registered in any EAC Country with affiliates in all EAC Partner States;
- (c) a legal adviser who is a member of the lawyers professional body and shall be a firm registered in any EAC Country with affiliates in all EAC Partner states; and
- (d) a paying and receiving bank which shall be a bank licensed in the EAC Partner States where funds are being raised.

(2) The issuer shall determine the number of receiving banks.

21. Application of funds outside jurisdiction where funds are raised.

An issuer may raise funds in any jurisdiction in the EAC region without restriction on the jurisdiction where proceeds are to be used subject to disclosure of that fact in the information memorandum, and subject to obtaining the necessary exemptions on exchange controls where applicable.

22. Denomination of offer.

The issuer shall determine the currency or currencies for the issue.

23. Continuous disclosure.

(1) An issuer of a regional fixed income security shall continuously disclose information applicable to offers of fixed income securities in all jurisdictions in which it has raised capital from the public or a section of the public.

(2) Where the regional fixed income security is listed on one or more securities exchange or is traded on a regulated market within the EAC region, it shall comply with a continuous disclosure obligation imposed by that securities exchange or market.

(3) The issuer shall be obliged to avail to investors in each jurisdiction in which the issuer has raised capital, all relevant information for proper appraisal of the financial position of the issuer in an effective and timely manner.

(4) The matters subject to continuous disclosure shall include—

- (a) updates on rating reports;
- (b) interim financial reporting;
- (c) audited financial reports; and
- (d) any other relevant information as maybe required by the regulator from time to time.

(5) A regulator shall enforce continuous disclosure obligation by an issuer of regional fixed income securities applicable to the regulator jurisdiction where the offer is made.

PART V—MISCELLANEOUS

24. Penalties.

An issuer who fails to comply with the continuous disclosure obligation including failure to provide any required information to an investor simultaneously shall be liable for breach of the continuous disclosure obligation in a jurisdiction in which the omission occurs and the applicable penalty shall apply.

25. Additional offers.

(1) Notwithstanding that an issuer has made a regional fixed income security offer, the issuer may at any point raise additional amount in any one jurisdiction in accordance with a further pricing supplement updating the disclosure in the regional prospectus.

(2) In an area where a green shoe option is available, the green shoe shall be made to all jurisdictions where the offer has been made available.

26. Dispute resolution.

(1) The law in force in the jurisdiction where a cause of action arises shall apply in case of a dispute between an investor and an intermediary or between an issuer and an intermediary.

(2) The prospectus shall specify the applicable law and mode of dispute resolution where a dispute involves the issuer and an investor.

SCHEDULES

SCHEDULE ONE

Regulation 9(4)

PROCEDURE FOR APPROVING PROSPECTUS FOR ISSUE OF REGIONAL FIXED INCOME SECURITIES

1. The issuer shall submit for approval a prospectus accompanied by an evaluation fee to all east African securities industry regulators indicating the jurisdiction that it desires to be the primary regulator.
2. Where an application has been lodged that is incomplete and unmeritorious *ab initio* as a Regional fixed income securities, the primary regulator shall have the discretion to reject the application in whole and inform the other regulators of the decision and reasons for the rejection.
3. Where the application is rejected under paragraph 2, and the issuer wishes to proceed with the issue, the issuer shall lodge a fresh application in each jurisdiction and pay application costs for the issue.
4. Each regulator shall apply the eligibility and disclosure requirements for issue of regional fixed income securities for purposes of assessing the application.
5. Where a regulator seeks to interpret the applicability of any provision of the eligibility and disclosure requirements, it shall officially communicate to all other regulators to determine the interpretation of the provision and the majority opinion shall prevail.
6. Where a regulator has communicated to other regulators in accordance with paragraph 5, the regulators consulted shall respond within five working days of the receipt of communication and a final position shall be communicated to the issuer within ten working days and copied to each regulator.
7. Each regulator shall submit comments on the prospectus to the primary regulator to consolidate and communicate to the issuer.
8. Where the primary regulator proposes to exclude certain matters to be communicated to the issuer, it shall communicate its decision to the other regulators and they shall respond to the decision within five working days.
9. On completion of review of the prospectus, the primary regulator shall submit the report for consideration and approval by its relevant authority in accordance with the applicable procedures for approval of an offer to the public or a section of the public, and the submission shall be made within five working days following the receipt of the complying

document from the issuer.

10. Where the issue is approved, the primary regulator shall write a letter to all other regulators communicating the approval and confirming that the issue complies with the regional requirements.
11. Where the primary regulator grants approval for the issue, it shall provide a copy of the letter of approval and details of any conditions imposed on the approval to all the other regulators and the approval shall not be communicated to the issuer before circulation and determination by the other regulators.
12. After receipt of a copy of the approval letter from the primary regulator, each regulator in receipt of the prospectus shall submit the prospectus together with the primary regulator's approval to the respective authorities for consideration and determination, not later than five working days following the receipt of the primary regulators decision.
13. Where the issue is not approved, the primary regulator shall provide a copy of the report stating reasons for the decision to all other regulators for their consideration and the primary regulator shall specify where the approval has been withheld for reasons other than those in the criteria set out for the regional issue.
14. Where a rejection occurs for reasons other than failure to comply with the regional issue guidelines, the other regulators shall reserve full statutory discretion to approve or reject the application placed before it notwithstanding any approval or rejection by the primary regulator.
15. For the purposes of coordination, an approving regulator shall engage with any listing exchange in its jurisdiction to ensure compliance by the issuer with any reporting and disclosure obligations issued by the regulator and the securities exchange.
16. Where the issuer has raised capital in a particular jurisdiction, the relevant regulator shall be responsible for the supervision of that issuer in respect of that issue.
17. Where an imbalance in information disclosure occurs, the regulators shall coordinate any action with relevant securities exchanges or trading platforms on which the securities in question are traded to mitigate the negative impacts of such information asymmetry on investors.
18. Any changes or interpretations made to these Regulations or the Approval Procedure shall be published by all the jurisdictions.

SCHEDULE TWO

TIMETABLE FOR APPROVING PROSPECTUS FOR ISSUE OF REGIONAL FIXED INCOME SECURITIES.

Regulation 9 (5)

- T: Compiling application lodged with all Regulators
- T+10: All comments from regulators lodged with primary regulator
- T+15: All areas for consultation for interpretation resolved
- T+20: All issues communicated to issuer.
- Y (date issuer reverts with complying documents) +10: primary regulator board determination (primary board may approve with conditions) and issues letter of comfort.
- Y+15: All other regulator's board determination (Decisions may be conditioned indicating matters to be addressed).
- Y+17: Communication of Regulators decision to issuer "day" means a business day.

GRACE JETHRO KAVUMA,
Chairperson, Capital Markets Authority.