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STATUTORY INSTRUMENTS

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2004 No. 42.

THE CAPITAL MARKETS (FUND MANAGERS) REGULATIONS, 2004.

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STATUTORY INSTRUMENTS

2004 No. 42.

The Capital Markets (Fund Managers) Regulations, 2004.

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

IN EXERCISE of the powers conferred on the Capital Markets Authority by section 101 of the Capital Markets Authority Act, these Regulations are made this 13th day of May, 2004.

PART I—PRELIMINARY.

1. These Regulations may be cited as the Capital Markets (Fund Managers) Regulations, 2004.

2. These Regulations apply to fund managers licensed under the Capital Markets Authority Act and who are permitted by the Authority, as part of their business, under a contract or arrangement with a client to undertake on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of a portfolio of securities for the purpose of investment.

3. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Capital markets Authority Act, Cap 84;

“financial year” means the period of twelve months from January to December, unless otherwise approved by the Authority upon the application of the fund manager;

“fund manager” means an investment adviser licensed under the Act that is permitted by the Authority, as part of its business under a contract or arrangement with a client to undertake on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of a portfolio of securities for the purpose of investment;

“management of a portfolio for the purposes of investment” means—

(a) the buying, selling or otherwise dealing in securities on behalf of another person;

(b) an offer or an agreement regarding the buying, selling or dealing in securities on behalf of another person, irrespective of whether a fund manager is required to exercise its discretion; or

(c) the implementation on behalf of another person of a decision to buy, sell or deal in securities; but not performance of any function as a manager of a collective investment scheme licensed under the Collective Investment Schemes Act, 2002;

“portfolio of securities” includes—

- (a) securities listed on a stock exchange outside Uganda;
- (b) units in a collective investment scheme approved by the Authority;
- (c) units in a foreign collective investment scheme;
- (d) funds intended to be invested or which are in any way whether directly or indirectly invested in any of the financial instruments referred to in paragraphs (a), (b) and (c);
- (e) any other instruments that the Authority may prescribe from time to time as being securities;

“working capital” means the difference between the current assets and current liabilities of the fund manager, excluding clients’ accounts.

(2) Any word, term or expression used in these Regulations, and which has been defined in the Act, has the meaning assigned to it by the Act.

PART II—FINANCIAL REQUIREMENTS AND ACCOUNTING RECORDS.

4. (1) The level of shareholders’ funds (paid up share capital and reserves) of the fund manager shall not fall below one hundred and fifty million shillings at any time during the license period.

(2) The paid up share capital of a fund manager shall always be unimpaired and shall not be advanced to the directors or associates of the fund manager.

(3) The working capital of a fund manager shall not fall below twenty percent of the required minimum share capital or three times the average monthly operating costs, whichever is higher.

(4) Unsecured advances, loans and other financial facility to directors or associates of a fund manager shall be made out of shareholders’ funds that are in excess of the prescribed minimum shareholders’ funds: except that such loans shall not exceed ten percent of the shareholders’ funds at any time.

(5) The ratio of a fund manager’s bank overdraft to the paid-up capital shall not exceed twenty percent at any time.

5. (1) Every fund manager shall maintain and preserve for a period of seven years, the following records—

(a) journals, including cash receipts and disbursement records, and any other records or original entry forming the basis of entries in any ledger;

(b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts;

(c) a record or memorandum of each order given by a fund manager for the purchase or sale of securities, or any instruction received by a fund manager from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction; and the record shall—

(i) show the terms and conditions of the order, instruction, modification or cancellation;

(ii) identify the person connected with the fund manager who recommended the transaction to the client and the person who placed the order;

(iii) show the account for which the order was entered, the date of entry, and the broker by or through whom the order was executed, where appropriate; and

(iv) show orders entered pursuant to the exercise of a discretionary power on account of management of investment portfolios, in which case a record of details of the contract giving such power entered into with clients and constituents of the portfolio, transaction fees agreed with the client and the value of the portfolio shall be included;

(d) all cheque books, folios, bank statements, cancelled cheques and cash reconciliations of the fund manager;

(e) all bills, statements, or copies of such statements or copies, paid or unpaid relating to the business of the fund manager;

(f) originals of all written communication received from clients and copies of all written communication sent by the fund manager relating to—

(i) any recommendations made or proposed to be given;

(ii) any receipts, disbursement or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security; except that where a fund manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory services to more than ten persons, the fund manager

shall not be required to keep a record of the names and addresses of the persons to whom any such notice, circular or other advertisement was sent; and where such notice, circular or advertisement is distributed to persons named on any list, the fund manager shall retain a copy of the notice, circular or advertisement, record or memorandum describing the list and the source of the list;

(g) a list or other record of all accounts in relation to which the fund manager is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(h) all evidence of the granting of any discretionary authority by any client to the fund manager, or copies of such evidence;

(i) all written agreements or copies of such agreements entered into by the investment manager with any client or otherwise relating to the investment manager's business;

(j) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security that the fund manager circulates or distributes, directly or indirectly, to ten or more persons, and where such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for the recommendation, a memorandum from the fund manager indicating the reasons;

(k) all advertisements by the fund manager and all records, worksheets and calculations necessary to form the basis for performance data in such advertisements;

(l) a record of every transaction in a security in which the fund manager or any of the fund manager's employees acquire any direct or indirect beneficial ownership, stating the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the broker with or through whom the transaction was effected;

(m) a copy of each written statement, any amendment or revision of such statement given or sent to any client or prospective client of the fund manager and a record of the date that the statement was given or offered to be given; and

(n) such other records as may be determined by the Authority.

(2) The records specified in subregulation (1) shall be subject to inspection from time to time and without notice, by the Authority.

(3) Every fund manager shall preserve and maintain clients' records of securities or funds and, where required, produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority.

(4) Every fund manager shall segregate the securities of each client and mark the securities to identify the particular client having the beneficial interest in such securities.

6. (1) Every fund manager shall submit to the Authority—

(a) quarterly reports of the portfolio under its management within thirty days of the end of each calendar quarter;

(b) half yearly reports of the portfolio under its management within thirty days of the end of each half-year, including reports of its own financial performance;

(c) annual reports of the total value of the portfolio under its management including the number of clients; and

(d) audited annual financial statements for its operations including the information prescribed in the First Schedule to these Regulations.

(2) The financial statements submitted under this part, shall be accompanied by an auditor's report on the accounts addressed to the Authority and shall state whether—

(a) the annual financial statements of the fund manager have been prepared and audited in accordance with international financial reporting standards;

(b) the respective annual financial statements have been properly prepared in accordance with the Act and these Regulations;

(c) in the case of the balance sheet, a true and fair view of the financial affairs of the fund manager is provided as at the end of the financial year;

(d) in the case of the income and expenditure statements, a true and fair view of the income and expenditure for the financial year, of the fund manager is given;

(e) the fund manager has, throughout the financial year, kept proper accounting records in accordance with the requirements of the Act and these Regulations;

(f) the fund manager has, throughout the financial year, kept customers money properly segregated in accordance with the Act and these Regulations;

(g) the balance sheet and the income and expenditure statement are in agreement with the accounting records of the fund manager;

(h) the auditor has obtained all the information and explanations that, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit; and

(i) the fund manager has maintained throughout the financial year, systems adequate for the safekeeping of documents of title, or documents evidencing title, to securities of its customers in accordance with the Act, these Regulations and any guidelines that may be issued by the Authority from time to time.

(3) Notwithstanding the provisions of subregulation (1), the Authority may require such other form of financial statements as it may from time to time specify.

PART III—CONDUCT OF FUND MANAGEMENT BUSINESS.

7. (1) No fund manager shall—

(a) recommend to a client to whom investment, supervisory, management or consulting services are provided, the purchase or sale of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the fund manager after reasonable examination of the client's financial records;

(b) place an order to purchase or sell a security for the account of a client without written authority to do so;

(c) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client;

(d) exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client;

(e) induce trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

(f) misrepresent to any client, or prospective client, its qualifications or misrepresent the nature of the advisory services being offered or fees to be charged for such service, or omit to state a material fact necessary to make the statements regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(g) provide a report or recommendation to any client prepared by someone other than the fund manager without disclosing that fact;

(h) fail to disclose to clients in writing before any advice is rendered, any material conflict of interest relating to the fund manager or any of the fund manager's employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including—

(i) compensation arrangements connected with advisory services to clients that are in addition to compensation from those clients for such services;
or

(ii) charging a client an advisory fee for rendering advice where a commission for executing securities transactions pursuant to such advice will be received by the fund manager or his or her employees;

(i) guarantee a client that a specific result will be achieved arising from the advice that will be rendered, except in the case of fixed income securities;

(j) publish, circulate or distribute any advertisement, which does not comply with the Act;

(k) disclose the identity, affairs or investment of any client to any third party unless required by any written law, a court order or the authority to do so, or unless consented to by the client;

(l) enter into, extend or renew any fund management contract unless the contract contains the information set out in the Second Schedule to these Regulations and discloses in substance, the services to be provided, the term or duration of the contract, the advisory fee, the formula for computing the fee, the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the fund manager and that no assignment of the contract shall be made by the fund manager without the consent of the other party to the contract;

(m) fail to register all securities marketed and offered to clients by the fund manager or otherwise inform the client that the securities offered to them have not been approved by the Authority.

(2) Any information provided by fund managers to clients through newsletters and advertisements shall be factual and accurate.

(3) No fund manager shall loan money to a client unless the client is an affiliate of the fund manager.

(4) A fund manager may not contract or engage any advisory or management services on behalf of an investment portfolio without prior written approval of the client concerned; and fund manager shall remain liable for—

(a) any act or omission of the sub-contracted fund manager;

(b) the fees and expenses of any such person, which expenses shall not be payable out of the fund of the portfolio investments; and

(c) any expenses incurred by any such person, which if incurred by the fund manager, would have been payable out of the fund of the investment portfolio.

(5) When accepting an order from a client, the fund manager shall inform the client of all constituent parts of the relevant service agreement prior to executing the order, and shall cause the client to give the fund manager a written declaration to confirm the order.

(6) The fund manager shall be fair and equitable in the event of any conflict of interest that may arise in the course of the fund manager's duties.

8. (1) A fund manager that manages funds, over which its client has not appointed a custodian, shall appoint a custodian approved by the Authority for the assets of the fund.

(2) A custodian of an investment portfolio may, in relation to a fund manager, be a holding company or a subsidiary company within the meaning of those terms as defined in the Companies Act, Cap 110, or be an entity deemed by the Authority to be otherwise under the control of substantially the same persons or consist substantially of the same shareholders; except that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may direct a fund manager to revoke the appointment of a custodian if the custodian at any time after its appointment ceases to carry out its functions honestly, efficiently or fairly.

9. (1) A custodian shall render custodial services to the investment portfolio managed by the fund manager in accordance with a written service agreement between the custodian and the fund manager; and the custodial services shall include—

(a) taking into its custody or under its control all the property of the clients of the fund manager and holding the property in trust for the clients in accordance with the provisions of the written service agreement; except that cash and registerable assets shall be registered in the name of or to the order of the clients by the custodian;

(b) receiving and keeping in safe custody, title documents, securities and cash amounts of the investment portfolio;

(c) opening an account in the name of each client for the exclusive benefit of the relevant investment portfolio;

(d) transferring, exchanging or delivering in the required form and manner, securities held by the custodian upon receipt of proper instructions from the fund manager;

(e) requiring from the fund manager, such information as the custodian deems necessary for the performance of its functions as a custodian;

(f) promptly delivering to the fund manager or to such other persons as the fund manager may authorise, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the fund account, all public information, financial reports and investor communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian and the fund manager;

(g) exercising subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the fund manager;

(h) exercising the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling obligations in the agreement;

(i) where title to investments are recorded electronically, ensuring that entitlements of the clients of the fund manager are separately identified in the records of entitlement maintained by the custodian.

(2) A custodian shall, in executing its duties under subregulation (1), exercise the degree of care expected of a prudent professional custodian for hire.

(3) A custodian discharging contractual duties of a fund manager shall not contract agents to discharge those functions except where a portion of the investment portfolio is invested in offshore investments, in which case the custodian may engage the services of an overseas sub-custodian approved by the fund manager with notification of the appointment to the Authority.

(4) The agreement referred to in subregulation (1) between the custodian and the fund manager shall provide for the computation of the fee in respect of custodial services and such provision shall be disclosed to the clients by the fund manager in the annual report.

10. (1) A custodian shall not retire voluntarily except upon the appointment of a successor approved by the Authority.

(2) Where a custodian desires to retire or ceases to be approved as a custodian by the Authority, the fund manager may, with the approval of the Authority, appoint another eligible person to be a custodian in its place.

11. (1) A custodian may be removed by the fund manager by notice in writing addressed to the custodian where -

(a) the custodian goes into liquidation, other than a voluntary liquidation, for the purpose of reconstruction or amalgamation or where a statutory manager or a receiver is appointed over any of its assets;

(b) the custodian ceases to carry on the business of a custodian;

(c) the custodian fails or neglects, after reasonable notice from the fund manager, to carry out or satisfy any duty imposed on the custodian in accordance with the service agreement; or

(d) the directors of the fund manager, by resolution, duly resolve that such notice be given, and the fund manager with the approval of the Authority appoints as custodian some other approved custodian.

(2) On receipt by the custodian of the notice referred to in subregulation (1), the service agreement between the fund manager and the custodian shall be deemed to have been terminated.

(3) Upon the termination of a service agreement under subregulation (2), or from the date of a winding up order issued by a court against a custodian, the custodian shall hand over all assets, documents and funds including funds from bank accounts of the fund manager held by the custodian, to the custodian appointed in writing by the fund manager and approved by the Authority within thirty days from the date of such termination.

(4) The custodian shall submit to the Authority an audit report indicating the assets and liabilities and an inventory of the investment portfolio, securities and title documents of the assets which have been handed over, transferred and delivered to the newly appointed custodian within twenty days from the termination of the service agreement in accordance with subregulation (2).

SCHEDULES.

FIRST SCHEDULE

CONTENTS OF FINANCIAL STATEMENTS TO BE SUBMITTED BY FUND MANAGERS

Regulation 6(1) (d)

1. The following information shall be disclosed in the income statement where applicable—

- (a) income, including—
 - (i) commissions;
 - (ii) consultancy income;
 - (iii) dealing income;
 - (iv) advisory income, including restructuring, and corporate finance;
 - (v) asset management fees;
 - (vi) underwriting fees;
 - (vii) income from other services; and
 - (viii) finance income;
- (b) expenditure, including—
 - (i) directors' emoluments;
 - (ii) staff costs;
 - (iii) rent and maintenance;
 - (iv) depreciation;
 - (v) audit fees;
 - (vi) administrative expenses; and
 - (vii) finance expenses.

2. The following shall be disclosed in the balance sheet—

- (a) property, plant and equipment;
- (b) motor vehicles;
- (c) investments;
- (d) deposits and prepayments;
- (e) share capital;
- (f) revenue reserves;
- (g) directors' loans;
- (h) shareholders' loans; and
- (i) amounts due to clients.

SECOND SCHEDULE.

FORM OF INVESTMENT MANAGEMENT CONTRACT

Regulation 7(1) (I)

Basic Information to be contained in every fund management contract.

1. Every fund management contract entered into between a fund manager and a customer shall contain information about each of the following—

- (a) that the fund manager is regulated in its fund management business by the Capital Markets Authority;
- (b) the nature of services that the fund manager proposes to provide;
- (c) in respect of any remuneration payable to the fund manager—
 - (i) the basis of the calculation;
 - (ii) how it is to be paid and collected;
 - (iii) how frequently it is to be paid; and
 - (iv) whether or not any fees, commissions or remunerations are receivable by the fund manager (or to its knowledge by its associate) in connection with any transaction effected by the fund manager with or for the customer;
- (d) when and how the contract is to enter into force;
- (e) with respect to services under the contract the arrangement for—
 - (i) the giving of instructions to the fund manager;
 - (ii) acknowledging those instructions;
- (f) the arrangements for accounting to the customer for any transactions affected on his or her behalf;
- (g) how the contract may be terminated including a statement that—
 - (i) the termination will be without prejudice to the completion of transactions already initiated; and
 - (ii) the customer may terminate contract by written notice to the fund manager, which may take effect immediately upon receipt or upon the expiry of a stated minimum period;
 - (iii) the fund manager has a right to terminate the contract upon the giving of a period of notice, and stating the minimum period, if any, of the notice;

(iv) the fund manager has a right to terminate the contract after an agreed period of time, or upon the happening of specified event;

(h) that upon termination—

(i) the manner in which transactions already in progress are to be dealt with;

(ii) a statement that no additional payment will be required to be made to the fund manager in respect of the termination; except that the fund manager may charge the customer with respect to periodic fees accrued and due, any additional expenses incurred by the fund manager on termination of the contract and any losses directly incurred in settling or concluding outstanding obligations;

(i) guidance on the procedure to be followed in the event that a customer wishes to complain to the fund manager; including a statement that the customer has a right to complain directly to the Authority;

(j) the customer's rights to compensation in the event that a fund manager is unable to meet any of its liabilities to the customer, or a reference to the availability of a statement describing those rights;

(k) the customer's investment objectives;

(l) any restrictions that may be applicable, where relevant, on—

(i) the types of investments in which the customer wishes to invest;

(ii) the markets on which the customer wishes transactions to be effected; or

(iii) a statement that there are no such restrictions;

(m) the manner in which advice is to be given;

(n) a warning in respect of any service relating to investments—

(i) that are not readily realisable;

(ii) for which there is no recognised market; and

(iii) which it may be difficult to deal in; or

(iv) in respect of which it may be difficult to obtain reliable information about their value or the extent of the risk associated with such investments.

(o) where any of the services or investments to be entered into by the customer is in a currency other than the currency of the customer's assets, a warning that a movement of exchange rates may have a separate effect, unfavorable as well as favorable, on the gain or loss otherwise experienced by the customer;

(p) a statement that the fund manager will disclose to the customer any transactions in which it has an interest or in respect of which there may be a conflict of interest in acting for the customer and the nature of that relationship or interest;

(q) where the fund manager is to manage a portfolio—

- (i) the initial value of the portfolio;
- (ii) the initial composition of the managed portfolio; and
- (iii) the period of account for which statements are to be provided in accordance with these Regulations.

Additional information to be contained in every fund management contract that confers discretionary powers on the fund manager (discretionary contract).

2. Every discretionary contract must in addition to the relevant provisions stated in paragraph 1, contain information on each of the following—

- (a) the restrictions, if any, on—
 - (i) the amount of any one investment; and
 - (ii) the proportion of a portfolio which any one investment or any particular kind of investment may constitute;
- (b) whether—
 - (i) the fund manager may for a portfolio acquire or dispose of units in a collective investment scheme either operated or advised by the fund manager or an associate of the fund manager; and
 - (ii) the portfolio may include securities of which an issue or offer for their sale was underwritten, managed or arranged by the fund manager or an associate of the fund manager during the preceding twelve months;
- (c) the frequency of any periodic statements of the contents and valuation of a portfolio (which in any case should not be less than once every twelve months), and whether those statements will include some measure of performance of the portfolio, and if so, what the basis of that measure will be;
- (d) the basis on which the assets comprised in the portfolio is to be valued;
- (e) whether the fund manager may commit the customer to supplement the funds in the portfolio, including borrowing on its behalf, provided such borrowing does not contravene regulation 4 (3) and—
 - (i) the circumstances in which the fund manager may do so;
 - (ii) whether there are any limits on the extent to which the fund manager may do so and if so, what those limits are; and
 - (iii) any circumstances in which those limits may be exceeded;
- (f) whether the fund manager may commit the customer to any obligation to underwrite any issue or offer for sale of securities, and if it may do so—

(i) whether there are any restrictions on the categories of securities which may be so underwritten, and if so, what those restrictions are; and

(ii) whether there are any financial limits on the extent of such underwriting, and if so, what those limits are.

LEO KIBIRANGO,
Chairman, Capital Markets Authority.