

=====

STATUTORY INSTRUMENTS

SUPPLEMENT No. 27

20th December, 1996

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 74 Volume LXXXIX dated 20th December, 1996.

Printed by UPPC, Entebbe, by order of the Government.

=====

**THE CAPITAL MARKETS (EXEMPT DEALERS)
REGULATIONS, 1996.**

ARRANGEMENT OF REGULATIONS.

Regulation.

PART I- PRELIMINARY.

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

PART II- ACCOUNTS AND AUDIT.

4. Accounting records.
5. Security documents in custody of exempt dealer.
6. Trust accounts.
7. Purpose for which moneys may be withdrawn.
8. Appointment of auditors.
9. Removal and resignation of auditors.
10. Fees and expenses of auditors.
11. Accounts.
12. Auditor to report to Authority in certain case s.
13. Defamation.
14. Orders restraining dealings in bank accounts.
15. Duty of banker to make full disclosure.
16. Further orders and directions.
17. Orders relating to payments of money.

STATUTORY INSTRUMENTS.

1996 No. 59.

The Capital Markets (Exempt Dealers) Regulations, 1996.

(Under section 102 of the Capital Markets Authority Statute, 1996, Statute No. 1 of 1996).

IN EXERCISE of the powers conferred on the Capital Markets Authority by the Capital Markets Authority Statute, 1996, these Regulations are made this 3rd day of December, 1996.

PART I- PRELIMINARY.

1. These Regulations may be cited as the Capital Markets (Exempt Dealers) Regulations, 1996.
2. These Regulations shall apply to an exempt dealer in relation to the business of dealing in securities carried on by the exempt dealer on behalf of any third party, whether in Uganda or elsewhere.
3. (1) In these Regulations, unless the context otherwise requires, "Statute" means the Capital Markets Authority Statute, 1996.

(2) In these Regulations, any term defined in the Statute shall have the meaning assigned to it in the Statute.

(3) In these Regulations a reference to a book, security, trust account or business in relation to an exempt dealer who carries on the business of dealing in securities in partnership, shall be read as a reference to such a book, security, trust account or business in relation to the partnership.

PART II- ACCOUNTS AND AUDIT.

4. (1) An exempt dealer shall-
 - (a) keep such accounting records as will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him or her;
 - (b) keep his or her accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
 - (c) keep his or her accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by him or her to be conveniently and properly audited.
- (2) An exempt dealer who contravenes sub-regulation (1) commits an offence and is

liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding one year or both.

(3) An exempt dealer shall be taken not to have complied with sub-regulation (1) in relation to records unless those records-

(a) are kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;

(b) are kept in sufficient detail to show particulars of-

(i) all moneys received or paid by the exempt dealer, including moneys paid to, or disbursed from a trust account;

(ii) all purchases and sales of securities made by the exempt dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;

(iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the exempt dealer;

(iv) all the assets and liabilities, including contingent liabilities of the exempt dealer;

(v) all securities that are the property of the exempt dealer, showing by whom the securities, or the documents of title to the securities are held and, where they are held by some other person, whether or not they are held as security against loans or advances;

(vi) all securities that are not the property of the exempt dealer and for which the exempt dealer or any nominee controlled by the exempt dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances;

(vii) all arbitrage transactions entered into by the exempt dealer; and

(viii) all underwriting transactions entered into by the exempt dealer;

(c) are kept in sufficient detail to show separately particulars of every transaction by the exempt dealer;

(d) specify the day on which or the period during which each transaction by the exempt dealer took place; and

(e) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the exempt dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(4) Without prejudice to sub-regulation (3), an exempt dealer shall keep records in

sufficient detail to show separately, particulars of transactions by the exempt dealer with, or for the account of(

a) clients of the exempt dealer, excluding, where the exempt dealer carries on business in partnership, the partners of the firm;

(b) the exempt dealer himself or herself, or, where the exempt dealer carries on business in partnership, the partners of the firm;

(c) other brokers or dealers carrying on business in Uganda;

(d) brokers or dealers outside Uganda; and

(e) employees of the exempt dealer.

(5) An entry in the accounting and other records of an exempt dealer required to be kept in accordance with this section shall be taken to have been made by, or with the authority of the exempt dealer.

(6) Where a record required by this regulation to be kept is not kept in writing in the English language, the exempt dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(7) Notwithstanding any other provision of this regulation, an exempt dealer shall not be taken to have failed to keep a record referred to in sub-regulation (1) by reason only that the record is kept as a part of, or in conjunction with, the record relating to any business other than dealing in securities that is carried on by him or her.

(8) Where accounting or other records are kept by an exempt dealer at a place outside Uganda, the exempt dealer shall cause to be sent and kept at a registered place of business such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

5. (1) Where an exempt dealer receives for safe custody documents that are securities or are documents of title to securities of or in the custody of any person, in this sub regulation referred to as "client", and for which the exempt dealer or a nominee controlled by the exempt dealer is accountable, the exempt dealer shall-

(a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued or made available, and the client does not make a request as mentioned in paragraph (b) or (c), cause the documents to be so registered;

(b) if the client requests that the documents be registered by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the exempt dealer, cause them to be so registered; or

(c) if the client requests that the documents be deposited in safe custody with the broker or dealers' bankers, cause them to be so deposited.

(2) An exempt dealer shall not deposit as security for a loan or advance documents that are securities or are documents of title to securities of a client and for which the exempt dealer or a nominee controlled by the exempt dealer is accountable, unless an amount is owed to the exempt dealer by the client in connection with a transaction entered into on behalf of the client and the exempt dealer-

(a) gives a written notice to the client identifying the documents and stating that he or she intends to deposit them as security for a loan or advance made to the exempt dealer; and

(b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the exempt dealer on the day of the deposit by the client in connection with a transaction entered into on his or her behalf by the exempt dealer.

(3) Where-

(a) an exempt dealer has given a notice to a person as mentioned in sub-regulation (2) and has deposited the documents referred to in the notice as security for a loan or advance; and

(b) the person pays the amount owed by him or her to the exempt dealer, the exempt dealer shall withdraw the documents from deposits as soon as practicable after he or she receives the amount owed to him or her.

(4) Where an exempt dealer deposits, as security for a loan or advance made to him or her, documents that are securities or are documents of title to securities of another person, and for which the exempt dealer or a nominee controlled by the exempt dealer is accountable, the exempt dealer shall, at the expiration of six months after the date on which the documents are deposited, and at the expiration of each subsequent period of six months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

(5) An exempt dealer who contravenes sub-regulation (4) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment not exceeding twelve months or both.

6. (1) An exempt dealer shall open and maintain with a bank in Uganda an account designated as a trust account.

(2) An exempt dealer shall pay into the trust account all moneys held by him or her in trust for a client not later than the next day on which the bank is open for business following the day on which the moneys are received by the exempt dealer.

(3) Notwithstanding sub-regulation (1), where moneys that are required by this regulation to be paid into a trust account are received by an exempt dealer in a place

outside Uganda the exempt dealer may pay those moneys into a trust account maintained by the exempt dealer in that place.

(4) For the purposes of sub-regulation (2), all moneys received by an exempt dealer from a client other than the following shall be taken to be held in trust for that client(

a) moneys received in respect of brokerage and other proper charges; or

(b) moneys received in payment or part payment for securities delivered to the exempt dealer before the moneys are received.

(5) Sub-regulation (2) does not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer, received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) Sub-regulation (5) does not except from the provisions of sub-regulation (2), a cheque, bank draft, money order or postal order in which the payee is the broker, or a partner of the exempt dealer or the firm in which the exempt dealer is a partner.

(7) A person who contravenes any provision of this regulation commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding one year or both.

7. (1) An exempt dealer who withdraws moneys from a trust account except for the purposes of-

(a) making a payment to a person entitled to the moneys or in accordance with the written direction of a person entitled to the moneys;

(b) defraying brokerage and other proper charges;

(c) paying to the exempt dealer moneys to which he or she is entitled, being moneys that were paid in a trust account but were not required to be so paid; or

(d) making a payment that is otherwise authorised by law, commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding one year or both.

(2) Except as otherwise provided in these Regulations, moneys held in a trust account are not available for payment of the debts of an exempt dealer or liable to be paid or taken in execution under the order or process of a court.

(3) Nothing in these Regulations takes away or affects a lawful claim or lien that a person has against or on any moneys held in a trust account or any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(4) An exempt dealer does not commit an offence under sub-regulation (1) where he or she withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid, but has not been refused payment by the banker on whom it is drawn.

(5) Where an exempt dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the exempt dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust.

(6) Where an exempt dealer fails to comply with sub regulation (5) he or she commits an offence and is liable on conviction, to a fine not exceeding four million shillings or imprisonment not exceeding one year or both.

(7) Notwithstanding anything in this regulation, a person convicted of an offence under this regulation shall, in addition to any penalty imposed on him or her for the offence, be liable to refund any moneys lost by reason of the act constituting the offence.

8. (1) Within one month after an exempt dealer commences the business of dealing in securities, he or she shall appoint an auditor to audit his or her accounts.

(2) A person shall not consent to be appointed as auditor of an exempt dealer, act as an auditor of an exempt dealer or prepare a report required to be prepared under these Regulations by an auditor of an exempt dealer-

(a) if, in the case of an individual he or she-

(i) is not a qualified company auditor;

(ii) is indebted to the exempt dealer for an amount exceeding one hundred thousand shillings;

(iii) is a partner or employee of the exempt dealer; or

(b) in the case of a company, unless-

(i) at least one member is ordinarily resident in Uganda;

(ii) all the members ordinarily resident in Uganda are qualified company auditors;

(iii) no member is indebted in an amount exceeding one hundred thousand shillings;

(iv) no member is a partner or employee of the exempt dealer.

(3) The appointment of a company or a firm as auditor of an exempt dealer shall be taken to be the appointment of all persons who are members of the firm or company, whether resident in Uganda or not, at the date of the appointment.

(4) Where a company or firm contravenes this regulation, each member of the company or firm commits an offence.

(5) A person shall not, if he or she has been appointed auditor of an exempt dealer wilfully disqualify himself or herself or itself while the appointment continues, from acting as auditor of the exempt dealer.

(6) An auditor of an exempt dealer shall, unless he or she ceases to qualify as an auditor under sub-regulation (2), hold office until he or she dies, is removed or resigns from office in accordance with regulation 9.

(7) Within fourteen days after a vacancy occurs in the office of an auditor of an exempt dealer, if there is no surviving or continuing auditor of the exempt dealer, the exempt dealer shall appoint another auditor to fill the vacancy.

(8) While a vacancy in the office of an auditor continues, the surviving or continuing auditor, if any, may act.

(9) An exempt dealer shall not appoint a person as his or her auditor unless that person has, before the appointment, consented by notice in writing given to the exempt dealer, to act as auditor and has not withdrawn the consent by notice in writing given to the exempt dealer.

(10) A report or notice made or given by a firm or company appointed as auditor of an exempt dealer for the purposes of these Regulations shall be signed in the name of the firm or company and be signed by a member of the firm or company who is a qualified company auditor.

(11) Where a person is appointed as an auditor under sub-regulation (1), not being an appointment made by virtue of sub-regulation (8), the exempt dealer shall, within fourteen days after the appointment, lodge with the Authority a notice in writing stating that the exempt dealer has made the appointment and specifying the name of the person or firm.

(12) The provisions of these Regulations relating to auditors shall apply in addition to the provisions applicable to auditors under the Companies Act.

9. (1) An exempt dealer may, with the consent of the Authority, remove his or her auditor from office.

(2) An auditor of an exempt dealer may, by notice in writing given to the exempt dealer, resign as auditor of the exempt dealer if-

(a) he or she has, by notice in writing given to the Authority, applied for consent to resign and has, at or about the same time as he or she gave notice to the Authority, notified the

exempt dealer in writing of the application to the Authority; and

(b) he or she has received the consent of the Authority.

(3) The Authority shall, as soon as practicable after receiving a notice from an auditor under sub-regulation (2), notify the auditor and the exempt dealer whether it consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the Authority under sub-regulation

(2) or in answer to an inquiry by the Authority relating to the reasons for the application-

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 38 of the Statute; and

(b) may not be made the ground of a prosecution other than a prosecution for an offence under section 38 of the Statute, or for an action or suit against the auditor, and a certificate of the Authority that the statement was made in the application or in answer to an inquiry by the Authority is conclusive evidence that the statement was so made.

(5) Subject to sub-regulation (6) and to any order of a court under sub-regulation (8), the resignation of an auditor takes effect-

(a) on the date, if any, specified for the purpose in the notice of resignation; or

(b) on the date on which the Authority consents to the resignation; or

(c) on the date, if any, fixed by the Authority for the purpose, whichever last occurs.

(6) Where, on the retirement or withdrawal from a firm or company of a member, the body will no longer be capable, by reason of sub-paragraph (i) of paragraph (b) of sub-regulation

(2) of regulation 8 of acting as auditor of an exempt dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the exempt dealer, be taken to be the auditor of the exempt dealer until he or she obtains the consent of the Authority to his or her retirement or withdrawal.

(7) Within fourteen days after the receipt of a notice of resignation from an auditor of an exempt dealer or, where an auditor of an exempt dealer is removed from office, within fourteen days after the removal, the exempt dealer shall lodge a notice of the resignation or removal in the prescribed form with the Authority.

(8) A person aggrieved by the refusal of consent by the Authority to the removal or resignation of an auditor of an exempt dealer may, within thirty days after the date of

refusal, appeal to the court against the refusal; and the court may confirm or reverse the refusal and may make such further order in the matter as it considers proper.

10. The reasonable fees and expenses of an auditor of an exempt dealer shall be payable by the exempt dealer.

11. (1) An exempt dealer shall, in respect of each financial year other than a financial year that ended before the date of commencement of the Statute or ended on or after that date but before the date on which the exempt dealer commenced to carry on the business of dealing in securities as an exempt dealer, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles, if any, and containing such information and matter as are prescribed, and lodge them with the Authority before the prescribed day for the financial year together with an auditor's report containing the prescribed information and matters.

(2) The Authority may, on application made by an exempt dealer and his or her auditor before the expiration of the period of two months or, as the case requires, the period of three months referred to in the definition of "prescribed day" in subregulation (4) or if that period has been extended in accordance with an approval previously given under this sub-regulation, before the expiration of the extended period; approve an extension or further extension of the period, and the approval may be given subject to such conditions if any, as the Authority may impose.

(3) Where an approval under sub-regulation (2) in relation to an exempt dealer is given subject to conditions, the exempt dealer shall comply with those conditions.

(4) In this regulation-

"financial year", in relation to an exempt dealer, which is a company, means the financial year of the company within the meaning of the Companies Act;

"prescribed day", in relation to a financial year of an exempt dealer, which is a company, means the day that is three months after the end of that financial year, or where time is approved under subregulation (2), the day on which the extended time expires.

12. (1) Where an auditor, in the performance of his or her duties as auditor of an exempt dealer, becomes aware of a prescribed matter, he or she shall, within seven days after becoming aware of the matter, lodge with the Authority a written report on the matter and send a copy of the report to the exempt dealer.

(2) In this regulation-

"prescribed matter" means a matter that, in the opinion of the auditor-

(a) has adversely affected, is adversely affecting or may adversely affect the ability of the exempt dealer to meet his or her obligations as an exempt dealer; or

(b) constitutes or may constitute a contravention of regulation 4, 5, 6 or 7 or any other provision of these Regulations.

13. (1) An auditor is not, in the absence of malice on his or her part, liable to an action for defamation in respect of a statement, whether oral or written, made or issued by him or her in the course of his or her duties as an auditor.

(2) A person is not, in the absence of malice on his or her part, liable to an action for defamation in respect of the publication of a document prepared by an auditor in the course of his or her duties as an auditor and required by or under these Regulations to be lodged with the Authority, whether or not the document has been lodged.

(3) Nothing in this regulation limits or affects any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

14. Where the Authority shows to the satisfaction of the court-

(a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Uganda, of a person or kept by a person who is or has been an exempt dealer;

(b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been an exempt dealer, in paying, applying or accounting for trust moneys as required by the Statute or these Regulations or other regulations made under the Statute;

(c) that a person who is or has been an exempt dealer has not paid moneys into a trust account as provided by regulation 6 or into an account as provided by that regulation; or

(d) where a business of dealing in securities is carried on, was carried on or was last carried on, as the case may be, by a natural person otherwise than in partnership-

(i) that the person is incapable, by reason of physical or mental infirmity, of managing his or her affairs;

(ii) that the person has ceased to carry on a business of dealing in securities; or

(iii) that the person has died, the court may make an order restraining dealing in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the court may impose.

15. Where an order made under regulation 14 is directed to a banker, the banker shall-

(a) disclose to the Authority every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and

(b) permit the Authority to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person.

16. Where an order is made under regulation 14, the court may, on the application of the Authority or of a person affected by the order, make further orders-

- (a) dealing with such ancillary matters as the court considers necessary or desirable;
- (b) directing that all or any of the money in an account affected by an order so made be paid by the bank to the Authority, on such terms and conditions as the court considers fit;
- (c) discharging or varying the order.

17. (1) An order made under regulation 16 may include directives to the person to whom the moneys are repaid directing that the person-

- (a) pays the money into a separate trust account;
- (b) prepares a scheme for distributing the moneys to persons who claim, during a period of six months after the Authority or the person receives the moneys, to be entitled to the moneys and satisfy the Authority or that other person that they are so entitled; or
- (c) where the moneys received are insufficient to pay all proved claims, may, apportion the moneys among the claimants in proportion to their proved claims and show in the scheme how the moneys are so apportioned.

(2) Where a person prepares a scheme for distribution of moneys under sub-regulation (1), he or she shall apply to the court for approval of the scheme and for directions in respect of it.

(3) The court may give such direction as to the moneys held in a separate trust account under sub-regulation (1), as to the persons to whom and in what amounts the whole or any portion of those moneys shall be paid, and as to the payment of the balance of the moneys, if any, remaining in the account, as the court considers fit.

LEO KIBIRANGO,
Chairman, Capital Markets Authority.