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THE CAPITAL MARKETS ACT  
(Cap. 485A)

THE CAPITAL MARKETS (FUTURES EXCHANGES) (LICENSING REQUIREMENTS)  
REGULATIONS, 2013

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

IN EXERCISE of the powers conferred by section 12(1) of the Capital Markets Act, the Cabinet Secretary of the National Treasury makes the following Regulations:—

THE CAPITAL MARKETS (FUTURES EXCHANGES) (LICENSING REQUIREMENTS) REGULATIONS, 2013

PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Capital Markets Act;

“associate”, in relation to—

(a) an individual, means—

(i) a spouse, a son, an adopted son, a step-son, son-in-law, a daughter, an adopted daughter, a stepdaughter, daughter-in-law, a father, a step-father, father-in-law, a mother, a step-mother, mother-in-law, a brother, a step-brother, brother-in-law, a sister or a step-sister, sister-in-law, grand child or spouse of a grandchild, of that individual;

(ii) any company of which that individual is a director or secretary, has a controlling interest ;

(iii) any company in which that individual, or any of the persons mentioned in subparagraph (i), has control of twenty per cent or more of the voting power on appointments to the board of directors or entitlement to dividends in the company, whether such control is exercised individually or jointly;

(iv) any employee of that individual; or

(b) a company, means another company in which the first mentioned company has control of not less than twenty per cent of the voting power in that company;

“Authority” has the meaning assigned to it under the Act;

“board” means the board of directors of a licensed futures exchange;

“chief executive officer” means the chief executive officer of a futures exchange appointed in accordance with the articles of that futures exchange and approved by the Authority;

“clearing bank” means a bank, as defined under section 2 of the Banking Act, which is designated or appointed to provide banking and other facilities to the Futures Exchange, the Clearing House of the Exchange and brokers of the Exchange to facilitate segregated account maintenance, clearing and settlement functions;

“clearing house” means the clearing house of the futures exchange which refers to the settlement system managed and operated by that futures exchange whether as a department or its wholly-owned subsidiary and includes a place where and the system by which the claims and liabilities of futures brokers and their clients in respect of different futures contracts confirmed by the exchange are received, adjusted, settled and paid;

“demutualization” means the separation of ownership of an exchange from the right to trade on such exchange;

“demutualized exchange” means a futures exchange in which ownership and rights to trade are separate;

“futures broker” means a body corporate admitted to the futures exchange membership and duly licensed by the Authority to engage in the business of trading in futures contracts as an agent for investors in return for a commission and on its own account;

“futures contract” has the meaning assigned to it under section 2 of the Act;

“futures exchange” means a securities exchange which has been granted a license to list futures contracts by the Authority under the Act or approved for such purposes and in accordance with these Regulations;

“futures market” means a place at which, or a facility by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts, but does not include the office or facilities of a futures broker;

“futures member” means a person admitted to the membership of a futures exchange in accordance with these Regulations and the rules of that futures exchange but does not denote a shareholder or an equity holder of that futures exchange;

“investor protection fund” means a fund established by the board of a futures exchange in accordance with its rules and vested in a trust which is separate from the board of the futures exchange, with provisions for contributions by the futures brokers and the futures exchange which satisfy claims of clients against futures brokers;

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

“liquid networth” means the aggregate value of paid-up equity share capital plus free reserves (excluding statutory funds, benefit funds, and reserves created out of revaluation) reduced by the investments in businesses, whether related or unrelated, aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;

“margin” means a deposit or payment to create, vary or maintain a position in the futures contract, and includes mark-to-market, regular, and additional margins or such other margins, which may be specified by the futures exchange from time to time;

“netting” means the determination of net payment or delivery obligations by setting off or adjustment of obligations or claims arising out of buying and selling of futures contracts, discontinuation of business, dissolution, winding-up or insolvency or such other circumstances as may be specified in the rules of the futures exchange;

“novation” means the act of the futures exchange and its clearinghouse of becoming the legal counterparty to both parties of every trade;

“public” includes any member or section of the public but does not include any futures member of a futures exchange or clearing bank or their associates;

“public interest directors” means an independent director, representing the interest of investors in a futures market and who does not have any association with that futures market, either direct or indirect, which in the opinion of the Authority, is in conflict with the role of that director;

“prescribe” means prescribed by these Regulations;

“regulatory department” means a department of a licensed futures exchange which is entrusted with regulatory powers and duties and such other departments as may be specified by the Authority;

“record” means all documentary and electronic materials created, generated, sent, communicated, received, or stored, regardless of physical form or characteristics;

“risk management” means the method of assessing, measuring and controlling risk using appropriate methods including statistical techniques routinely used in other technical fields.

“settlement guarantee fund” means a fund established and maintained by a futures exchange in accordance with its rules, to strengthen the financial integrity of settlement by the futures exchange and used in a manner specified by the rules of the futures exchange; and

“trading in futures contracts” means making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract.

## PART II—OBLIGATION TO SEEK A LICENSE AND LICENSING OF A FUTURES EXCHANGE

Obligation to obtain a license.

3. A person shall not establish, run, conduct, organize or assist in establishing, running, conducting or organizing a futures exchange unless that person has obtained a license from the Authority in accordance with the Act and these Regulations:

Provided that a securities exchange, which has been licensed under the Act at the commencement of these Regulations and is desirous of running a futures market, shall apply to the Authority for an additional license for listing futures contracts under these Regulations and all the provisions of these Regulations shall also apply to such securities exchange.

#### Application for licensing

4. (1) Subject to compliance with the provisions of the Act and these Regulations, a person who intends to establish a futures exchange shall submit an application for licensing to the Authority in Form 1 as set out in the First Schedule.

(2) An application under paragraph (1) shall be accompanied by-

(a) copies of memorandum and articles of association, and rules governing the operations of the exchange, which—

(i) is in a form satisfactory to the Authority; and

(ii) restricts the applicant to the business of operating a futures market and services incidental thereto;

(b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;

(c) the prescribed licensing fees set out in the Second Schedule;

(d) satisfactory bank references;

(e) business feasibility plan appraised by an entity with a proven track record and expertise in futures or derivatives market development, establishment or management; and

(f) such additional documents as the Authority may require.

Consideration for grant of license.

5. An applicant seeking a license under regulation 4 shall—

(a) be company limited by shares;

(b) be demutualized;

(c) have a minimum authorized, issued and paid up equity share capital of one billion shillings;

(d) satisfy requirements relating to ownership and governance structure specified in these Regulations;

(e) have its directors and shareholders who hold or intend to hold shares as fit and proper persons as described under section 24A of the Act;

- (f) satisfy the minimum liquid net-worth requirements specified in these Regulations;
- (g) have a minimum of one hundred million shillings in the settlement guarantee fund before commencement of trading;
- (h) satisfy requisite capability including its financial capacity, functional expertise and infrastructure;
- (i) have in its employment, sufficient number of persons with adequate professional and other relevant competence and experience; and
- (j) comply with any other conditions as may be specified by the Authority.

#### Rules of the Exchange

6. (1) An applicant seeking an approval to operate a futures exchange shall establish and adopt futures exchange rules.

(2) The rules adopted under paragraph (1) shall contain provisions on—

- (a) clear demarcation of roles and responsibilities of the board, chief executive officer and the board statutory committees;
- (b) powers of the chief executive officer including in emergency situations;
- (c) granting of trading rights and non-transferable memberships of the futures exchange;
- (d) general obligations of the futures brokers who are its futures members;
- (e) specifications of the minimum parameters to be disclosed in respect of futures contracts to be listed with prior approval of the Authority;
- (f) clearing and settlement of all trades in futures contracts by the clearing house of the futures exchange;
- (g) performance of novation, netting and guarantee settlement of trades;
- (h) complete segregation of business accounts of brokers from that of their clients and between different clients;
- (i) trading including validation of orders on the futures exchange;
- (j) suspension of trading of any futures contract for the protection of investors or for the conduct of orderly and fair trading;

- (k) investigation into trading practices and financial transactions of futures brokers and their clients;
- (l) clearing house and designated clearing banks of the futures exchange;
- (m) margining regime, daily marking to market of all open positions and variation margin call to futures brokers and their clients;
- (n) methodology for determining the daily and final settlement prices;
- (o) deliveries through the clearing house and obligations of the brokers;
- (p) closing out of futures contracts in case of non-compliance with the rules of the futures exchange;
- (q) mandatory maintenance of a settlement guarantee fund including provisions for pay-in, pay-out and topping-up;
- (r) mandatory maintenance of an investor protection fund including provisions for pay-in, pay-out and topping-up;
- (s) declaration of an event of default and disposal of defaulter's assets under lien or pledge;
- (t) arbitration of disputes and provision for appeal to the Authority by futures brokers and investors; and
- (u) any other provisions specified by the Authority.

Trading system.

7. (1) A proposed futures exchange shall deploy a trading system which shall be approved by the Authority before such system is implemented.

(2) The trading system deployed under paragraph (1) shall—

- (a) have an integrated trading, clearing and settlement systems;
- (b) have an online screen-based trading system for providing direct market access up to the client level via the internet;
- (c) have necessary arrangements to establish connectivity with brokers and their clients;
- (d) have the necessary infrastructure to ensure timely clearing and settlement of trades;
- (e) have an adequate risk management mechanism including a pre-trade check performed by the trading system;



- (f) be capable of providing real time risk management and market surveillance tools for monitoring of trading activities of all brokers and their clients on a real time basis;
- (g) provide brokers and their clients a facility for accessing both the daily transactions and financial reports including ledgers;
- (h) have facility to disseminate information about trades, quantities and quotes in real time to at least one information vending network which is accessible to investors in Kenya and internationally;
- (i) have adequate systems' capacity supported by a business continuity plan including a disaster recovery site;
- (j) be established and maintained in a way as to ensure that it
- (k) have any other features and functionalities specified by the Authority.

#### Grant of provisional approval

8. (1) The Authority may, if the Authority is satisfied that the applicant has demonstrated that it is capable of complying with the requirements under regulations 4, 5, 6 and 7, grant the applicant a provisional license to operate a futures exchange.

(2) The provisional license granted under paragraph (1) shall be valid for a period of six months:

Provided that the Authority may, upon sufficient cause shown by the applicant, extend the validity of the provisional license for a further period not exceeding three months.

#### Power to make inquiries and call for information.

9. The Authority may, before and after granting a provisional license to an applicant for a futures exchange license, make inquiries and require such further information or document to be furnished, as the Authority considers necessary.

#### Grant of license.

10. (1) The Authority may, after the expiry of the period for which the provisional license had been granted under regulation (8) and if the Authority is satisfied that the applicant has complied with regulations 4, 5, 6, 7 and any other relevant requirements under the Act, these Regulations and any other regulations, rules, guidelines or notices issued under the Act, grant a license to the applicant to operate a futures exchange.

(2) A licensed futures exchange shall comply with such other conditions the Authority may impose, from time to time, including conditions with regard to—

(a) the nature of futures contracts to be dealt with by that futures exchange; and

(b) approval by the Authority of all futures contracts to be listed by that futures exchange.

Period of license.

11. A license granted under regulation 10 shall remain valid unless suspended or revoked by the Authority in accordance with the Act and these Regulations.

Regulatory fee.

12. A licensed futures exchange shall pay a regulatory fee as set out in the Second Schedule to these Regulations or as may be imposed by the Authority from time to time.

Revocation of license.

13. (1) The Authority may, by notice in writing, revoke a futures exchange license granted under these Regulations for non-compliance with the Act or these Regulations and with effect from the date specified in the notice if the futures exchange—

- (a) ceases to comply with the eligibility conditions specified under Regulations 5, 6 and 7;
- (b) ceases to operate a futures market that it has been licensed to operate under regulation 10;
- (c) is being wound up;
- (d) fails to comply with any requirement of the Act;
- (e) fails to comply with a direction of the Authority;
- (f) fails to provide the Authority with information required by the Authority;
- (g) provides false or misleading information;
- (h) is operating in a manner detrimental to the public interest; or
- (i) requests the Authority to do so. (2) For the purposes of subsection (1), a futures exchange shall be deemed to have ceased to operate its futures market if the futures exchange has ceased to operate its futures market for more than thirty days unless the futures exchange has obtained prior written approval of the Authority to do so.

(3) The Authority may, by notice served under paragraph (1), allow the futures exchange to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Authority may specify in the notice for the purpose of—

- (a) closing down the operations of the futures exchange; or
- (b) protecting the interests of the public.

(4) The Authority shall not, except where responding to a request under paragraph (1) (i), revoke a futures exchange license without giving the futures exchange an opportunity to be heard.

(5) The Authority shall, where the Authority revokes the license of a futures exchange, cause to be published a notice of that revocation in at least two newspapers of nationwide circulation in Kenya.

Effect of revocation.

14. A revocation of license under regulation 13 shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into on the futures market operated by the futures exchange where the agreement, transaction or arrangement was entered into before the revocation of the license; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

### PART III—NETWORTH AND OWNERSHIP OF A FUTURES EXCHANGE

Networth

15. (1) A futures exchange shall have and maintain, at all times, liquid networth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of business of that futures exchange to ensure that there is no significant risk that liabilities may not be met as they fall due.

(2) The minimum liquid networth capital requirement for a futures exchange shall be -

(a) an amount equal to one half of the estimated gross operating costs of the futures exchange for the next twelve-month period; or

(b) such other liquid networth amount as may be prescribed by the Authority.

(3) A licensed futures exchange shall have systems and controls to enable the futures exchange to determine and monitor whether its liquid networth is sufficient for the purposes of paragraph (1) and the minimum liquid networth requirement for the purposes of paragraph (2).

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

General conditions.

16. (1) Save as otherwise provided for in these Regulations, the shareholding or voting rights of any person in a licensed futures exchange shall, at all times, not exceed the limits specified in this Part.

(2) The shareholding as specified in this Part shall include any instrument owned or controlled, directly or indirectly, which provides for entitlement to equity or rights over equity at any future date.

#### Shareholding in a licensed future exchange

17. (1) At least fifteen percent of the paid up equity share capital of a licensed futures exchange shall be held by a Kenyan entity.

(2) An individual or corporate person shall not—

(a) control or be beneficially entitled directly or indirectly, to more than twenty five per cent of the issued share capital or voting rights of a futures exchange;

(b) be entitled to appoint more than twenty-five per cent of the Board of Directors; or

(c) be entitled to receive more than twenty-five percent of the aggregate dividends to be paid in any given financial year.

(3) Where an applicant under paragraph (2) is an individual who does not meet the requirements of this regulation, that individual shall comply with the requirements of this regulation within five years from the date of issue of a license to operate a futures exchange.

(4) Paragraph (2) of this regulation shall not apply where the ownership structure of a corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five percent of its shares, votes, directorship appointments or dividend.

#### Eligibility for acquiring or holding shares

18. (1) A person shall not, directly or indirectly, acquire or hold five per cent or more of the equity shares of a licensed futures exchange unless that person has been certified by the Authority as fit and proper.

(2) A person who, directly or indirectly, either individually or together with persons acting in concert, plans to acquire equity shares such that the shareholding of that person exceeds five percent of the paid up equity share capital of a licensed futures exchange, shall seek approval of the Authority at least within fifteen days prior to the proposed date of acquisition.

(3) A person who holds more than five percent of the paid up equity share capital in a licensed futures exchange, shall file a declaration within fifteen days from the end of every financial year to the licensed futures exchange, as the case may be, that that person complies with the fit and proper criteria provided in the Act.

(4) A person who—

(a) holds five per cent or more of the equity shares of a licensed futures exchange; and

(b) the Authority has determined that that person does not fulfill the fit and proper criteria as set out under the Act, shall-

(i) cease to exercise all his voting rights immediately upon the licensed futures exchange being notified by the Authority, in writing, that the shareholder does not fulfill the fit and proper criteria as set under the Act; and

(ii) reduce the holding of equity shares to less than five per cent of the share capital of the licensed futures exchange within twelve months, or such longer period as the Authority may determine.

#### Disclosure of shareholding.

19. (1) Without prejudice to the provisions of the Act and these Regulations, a licensed futures exchange shall disclose to the Authority, in the format specified by the Authority, the shareholding pattern of the futures exchange on a quarterly basis within fifteen days from the end of each quarter.

(2) The disclosure under paragraph (1) shall include—

(a) the names of the ten largest shareholders and the number and percentage of shares held by each of them;

(b) the names of the shareholders falling under regulations 17 and 18 who acquires shares in that quarter.

(3) A licensed futures exchange shall monitor and ensure compliance with this Part, at all times.

#### Record keeping.

20. A licensed futures exchange shall, in addition to the requirements under any other laws in force, maintain and preserve all the books, registers, and minutes of the board meetings, other documents and records for a period of not less than seven years.

### PART IV—GOVERNANCE OF FUTURES EXCHANGE

#### Composition of the board.

21. (1) The board of a licensed futures exchange shall comprise of—

(a) shareholder directors;

(b) at least one third public interest directors; and

(c) chief executive officer of the futures exchange.

(2) A futures broker who is a futures member of a futures exchange or an associate or an agent of that futures broker shall not be a member of the board of any licensed futures exchange.

(3) At least one public interest director shall be present in the meetings of the board to constitute the quorum.

Conditions of appointment of directors.

22. (1) A futures exchange shall submit to the Authority the names of proposed directors for appointment to the Board of the futures exchange thirty days prior to their appointment and reappointment for approval by the Authority.

(2) A public interest director appointed under paragraph (1) shall serve for a fixed term of three years and shall be eligible for reappointment for one further term of three years.

Appointment of chief executive officer.

23. (1) A licensed futures exchange shall not change its chief executive except with the prior confirmation, in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions that may be imposed by the Authority.

(2) A licensed futures exchange shall, subject to the guidelines issued by 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.

(3) The tenure under any contract for the chief executive officer of a licensed futures exchange shall not be less than three years and shall not exceed five years:

Provided that the tenure of office of the chief executive of a licensed futures exchange may be renewed for one further term.

(4) The chief executive officer of a licensed futures exchange shall not—

(a) be a shareholder or an associate of a shareholder of any licensed futures exchange; or

(b) be a shareholder or an associate of a futures broker:

Provided that the chief executive officer of a licensed futures exchange may be appointed on the board, but not as chief executive officer of a subsidiary of a licensed futures exchange.

(5) The board of a licensed futures exchange may, with the prior approval of the Authority, remove or terminate the appointment of the chief executive officer of the futures exchange—

(a) if the chief executive officer fails to comply with the articles of association of the futures exchange; or

(b) to give effect to the directions, guidelines and other orders issued by the Authority, under the Act or these Regulations.

(6) The Authority may on its own motion, remove or terminate the appointment of a chief executive officer of a licensed futures exchange if the Authority considers it fit in the public interest:

Provided that the Authority shall not remove or terminate the services of a chief executive officer without giving that chief executive officer a reasonable opportunity of being heard.

Code of conduct for directors and key personnel.

24. (1) Every director of a licensed futures exchange shall abide by the Code of Conduct as set out in Part A of the Third Schedule.

(2) Every director and key personnel of a licensed futures exchange shall abide by the Code of Ethics as set out in Part B of the Third Schedule.

(3) Every director and key personnel of a licensed futures exchange and its clearing house shall be fit and proper persons as prescribed under section 24A of the Act.

(4) The Authority may, if a director of a futures exchange fails to abide by these Regulations, the Code of Conduct or Code of Ethics or in case of any conflict of interest, either upon a reference from the licensed futures exchange or on its own motion, take appropriate action including removing or terminating the appointment of any director, after providing that director a reasonable opportunity of being heard.

Compensation and tenure of key personnel.

25. (1) A licensed futures exchange shall establish a compensation committee comprising of a majority of public interest directors.

(2) The compensation committee established a under paragraph (1) shall—

(a) be chaired by a public interest director; and

(b) establish a compensation policy of all employees of the futures exchange.

(3) The compensation policy under paragraph (2) (b) shall be approved by the Authority.

(4) The compensation given to the key personnel shall be disclosed in the annual report of the licensed futures exchange.

(5) The tenure of key personnel, other than a director, shall be for a fixed period, or as may be determined by the futures exchange compensation committee.

Segregation of regulatory departments.

26. A licensed futures exchange shall segregate its regulatory departments from other departments in a manner as set out in Part C of the Third Schedule.

Oversight committees.

27. (1) A licensed futures exchange shall establish independent oversight committees of the board.

(2) The independent oversight committees established under paragraph (1) shall—

- (a) be chaired by a public interest director; and
- (b) address the conflicts of interest in respect of—
  - (i) the regulation of futures brokers who are futures members of that futures exchange;
  - (ii) futures contracts' design; and
  - (iii) trading and surveillance functions.

(3) A head of department handling the matters referred to in paragraph (2) (b) shall report directly to the respective committee and to the chief executive officer.

(4) Any action of a licensed futures exchange against a head of a regulatory department specified under paragraph (2) (b) shall be subject to an appeal to the respective committee, within such period as the board may determine.

#### Advisory Committee.

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

(2) The advisory committee established under paragraph (1) shall comprise of the futures brokers who are futures members of a licensed futures exchange.

(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 with a maximum gap of three months between two meetings.

(5) The recommendations of the advisory committee shall be placed in the ensuing meeting of the board of the futures exchange for consideration and appropriate decision of the board, and such recommendations along with the decision of the board on the same, shall be disclosed on the website of the futures exchange.

(6) A futures member of a licensed futures exchange shall not be a member of any other committee of a licensed futures exchange.

#### Risk management committee.

29. (1) A licensed futures exchange shall establish a risk management committee comprising of directors and independent external experts.

(2) The risk management committee established under paragraph



(1) 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; and
- (d) keep the Authority and the board informed on the implementation of policy and any deviation.

(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 futures exchange.

Appointment of compliance officer.

30. (1) A licensed futures exchange shall appoint a compliance officer.

(2) A compliance officer appointed under paragraph (1) shall be responsible for—

- (a) monitoring compliance by the futures exchange with its articles of association, rules, these Regulations, the Act, any guidelines or directions issued thereunder; and
- (b) the redress of investors' grievances.

(3) The compliance officer shall, immediately and independently, report to the Authority any non compliance of any provision stated in paragraph (2).

Transfer of penalties

31. (1) A licensed futures exchange may impose penalties for breach of its rules under these Regulations.

(2) All penalties imposed under paragraph (1) shall be credited to the investor protection fund established by the futures exchange.

Disclosure and corporate governance norms.

32. A licensed futures exchange shall comply with the disclosure requirements and corporate governance norms applicable to listed companies where no specific provisions have been made under these Regulations.

PART V—DUTIES OF A FUTURES EXCHANGE

Duties of futures exchange.

33. (1) A licensed futures exchange shall ensure—

(a) a fair, efficient and transparent market in futures contracts that are traded on its futures market; and

(b) that risks associated with the business and operations of that futures exchange are managed prudently.

(2) A futures exchange shall, in discharging its duty under paragraph (1)—

(a) act in the interest of the public; and

(b) ensure that the interest of the public prevails where it conflicts with the interest of the futures exchange, futures brokers who are its futures members, shareholders or the management.

(3) A futures exchange shall operate its facilities in accordance with the rules made and approved by the Authority.

(4) A futures exchange shall regulate the operations, standards of practice and business conduct of futures brokers who are its futures members and representatives or other employees of those futures brokers in accordance with the rules, policies, procedures and practices of the futures exchange.

(5) A futures exchange shall formulate and implement appropriate procedures for ensuring that the futures brokers who are its futures members and representatives or other employees of those futures brokers comply with the rules of the futures exchange.

(6) A futures exchange shall preserve confidentiality with regard to all information in its possession concerning futures brokers who are its futures members and their clients, except that such information may be disclosed by the futures exchange when required in writing to do so by the Authority or if the futures exchange is ordered to do so by a court of law.

(7) A futures exchange shall immediately notify the Authority if the futures exchange becomes aware—

(a) that any futures broker who is a futures member of the futures exchange is unable to comply with any rules of the futures exchange or of any financial resources requirements; or

(b) of a financial irregularity or other matter which, in the opinion of the futures exchange, may indicate that the financial standing or integrity of a futures broker, who is its futures member, is in question, or that a futures broker, who is its futures member, may not be able to meet its legal obligations.

Facilities to be maintained by a futures exchange.

34. A futures exchange shall at all times provide and maintain—

- (a) adequate and properly equipped premises;
- (b) competent personnel who are appropriately trained for the duties they perform and in the requirements of all applicable legislation; and
- (c) automated trading system which meet the requirements under regulation 7 and pre-approved by the Authority for the conduct of its business.

Futures exchange to assist Authority.

35. (1) A licensed futures exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority.

(2) Any assistance provided under paragraph (1) may include-

- (a) furnishing of such returns and the provision of such books and other information relating to the business of the futures exchange;
- (b) information in respect of trading in futures contracts; or
- (c) any other specified information as the Authority may require for the proper administration of its functions under the Act.

## PART VI—SELF-REGULATORY ORGANIZATION

Self- regulation.

36. A futures exchange shall have—

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

Futures exchange to oversee its members.

37. A futures exchange shall, as a condition for a license to operate a futures market, implement a system of self- regulation with respect to futures brokers, who are its futures members, and shall ensure the day to day management of trading, clearing settlement, delivery and all other activities of futures brokers, who are its futures members, are in accordance with—

- (a) the rules of the futures exchange approved by the Authority; and

(b) laws, regulations and guidelines relating to futures contracts issued by the Authority.

## PART VII—ACCOUNTS AND AUDIT

### Accounts and audit.

38. (1) A licensed futures exchange shall keep proper books of accounts and records of income and expenditure, assets and liabilities and all other transactions of the futures exchange.

(2) A licensed futures exchange shall, as soon as practicable after the end of each financial year, prepare a statement of accounts of the futures exchange for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) A licensed futures exchange shall submit the statement of accounts prepared under paragraph (2) to its auditors for audit.

(4) The Auditors shall prepare a report on the accounts and send the report to the futures exchange.

(5) A licensed futures exchange shall, immediately upon receipt of auditor's report under paragraph (4), send a copy of the report and a copy of the statement of accounts to the Authority.

(6) 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 the futures exchange; 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 the futures exchange financial affairs at the end of that financial year.

(7) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records and are entitled to require from the employees of the futures exchange such information and explanations as they consider necessary for the performance of their duties as the auditors.

The Authority may appoint an auditor.

39. The Authority may, where the Authority is satisfied that it is in the public interest to do so, appoint, in writing, an auditor, at the expense of the licensed futures exchange, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the futures exchange.

### Annual report.

40. (1) A licensed futures exchange shall, within four months after the end of its financial year, submit to the Authority an annual report.

(2) The annual report submitted under paragraph (1) shall include—

- (a) a description of the activities undertaken by the futures exchange in that financial year;
- (b) the resources including financial, technological and human resources that the futures exchange had available, and used, in order to ensure compliance with its obligations and, in particular, the obligation of the futures exchange to ensure that the futures market operates in a fair, efficient and transparent manner;
- (c) an analysis of the extent to which the futures exchange considers that the activities undertaken, and resources used have resulted in full compliance with all of the obligations of the futures exchange under these Regulations and the rules of the futures exchange;
- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify.

FIRST SCHEDULE

Form 1  
(r. 4(1))

APPLICATION FOR A LICENSE TO CONDUCT THE BUSINESS OF A FUTURES EXCHANGE

Application is made for a futures exchange license under the Act and the following are made in respect thereof:

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 or renewal.

- 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 (KSh.).....

(b) Number of shares.....

(c) Paid-up capital (KSh.).....

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/Passport number	Date of appointment	Date of Birth	Permanent address and 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 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.....

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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.....

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.....  
.....

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, futures exchange or commodities exchange?

Yes/No. If “yes” give details.

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

..... (2) have any of the above persons been—

(a) refused admission as a futures 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 stock 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

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.....  
.....

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

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.....

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:

1. The following shall be submitted with the application for a license: (a) memorandum and articles of association;

(b) certificate of incorporation;

(c) feasibility plan complying with regulation 4 (2)(e) of these regulations;

(d) rules of the proposed futures exchange containing provisions in compliance with the matters detailed under regulation 3 of these regulations;

(e) details of the proposed trading system complying with the requirements of regulation 7 of these Regulations;

(f) statements of the unaudited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in case of application of license);

(g) a declaration by directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of application-

(i) the business of the company has, in their opinion, been satisfactorily maintained;

(ii) they have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;

(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;

(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;

(h) a declaration by persons authorized as prescribed to accompany the application form; and

(i) application fee.

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## SECOND SCHEDULE

(rr. 4(2) (c), 12)

### LICENSING AND ANNUAL FEES FOR FUTURES EXCHANGES

Application fees.....	KSh. 2,500.00
Licensing fees.....	KSh. 2,500,000.00
Annual regulatory fees.....	KSh. 2,500,000.00

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## THIRD SCHEDULE (rr. 24, 26)

### PART A (r. 24(1))

Code of conduct for the directors on the board

## 1. Meetings and minutes.

Every director of the licensed futures 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) endeavor to have the date of next meeting fixed at each board meeting in consultation with other members of the board;
- (f) endeavor 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, public interest directors of the licensed futures exchange shall, endeavor 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) Public interest directors shall meet separately, at least once in six months to exchange views on critical issues.

## 3. Strategic planning.

Every director of the licensed futures exchange shall—

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

## 4. Regulatory compliances.

Every director of the licensed futures exchange shall—

- (a) endeavor to ensure that the licensed futures 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) endeavor compliance at all levels so that the regulatory system does not suffer any breaches;
- (c) endeavor to ensure that the licensed futures 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 futures exchange shall—

- (a) place priority for redressing investor grievances and encouraging fair trade practice so that the licensed futures exchange becomes an engine for the growth of the futures market;
- (b) endeavour to analyze and administer the licensed futures exchange issues with professional competence, fairness, impartiality, efficiency and effectiveness;
- (c) submit the necessary disclosures/statement of dealings in futures contracts as required by the licensed futures 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 in order 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 futures exchange.

PART–B (r. 24(2))

## Code of Ethics for directors and key personnel of Futures Exchange

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

### 1. Objectives and underlying principles.

The Code of Ethics for directors and key personnel of the licensed futures 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 futures exchange and the investors;
- (b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ licensed futures exchange;
- (c) Exercising due diligence in the performance of duties; and
- (d) Avoidance of conflict of interest between self-interest of directors/ key management personnel and interests of licensed futures exchange and investors.

### 2. Ethics committee.

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

### 3. General standards.

- (a) Directors and key personnel shall endeavor 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 honor 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 members of the licensed futures exchange;
- (d) Directors and key personnel shall not use their position to give/get favors to/from the executive or administrative staff of the futures exchange, technology or service providers and vendors of the licensed futures exchange;
- (e) Directors and key personnel shall not commit any act which will put the reputation of the licensed futures exchange, in jeopardy; and

(f) Directors, committee members and key personnel of the licensed futures exchange, should comply with all rules and regulations applicable to the futures market.

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

Key personnel of the licensed futures exchange shall disclose on a periodic basis as determined by the laws, regulations, guidelines, rules relating to the futures markets (which could be monthly), all their dealings in futures 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 futures 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 in the day to day functioning of the futures exchange or clearing corporation.

(a) The chairperson and directors shall not interfere in the day to day functioning of the licensed futures 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 futures 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 futures 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 futures exchange commit themselves to the task of enhancing the fairness and integrity of the system in letter and spirit.

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PART—C (r. 26)

Measures to ensure segregation of regulatory departments

In order to ensure the segregation of regulatory departments, every licensed futures exchange shall adopt a "Chinese Wall" policy which separates the regulatory departments of the licensed futures 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

Made on the 18th June, 2013.

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