

LEGAL NOTICE NO.....

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

THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

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THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

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

PART I - PRELIMINARY

Citation. **1.** These Regulations may be cited as the Capital Markets (Commodity Markets) Regulations, 2020.

Interpretation. **2.** In these Regulations, unless the context otherwise requires –

Cap.485A “Act” means the Capital Markets Act;

“Authority” means the Capital Markets Authority;

“board” means the board of directors of a commodity exchange or a commodity broker;

“bucketing” means directly or indirectly taking the opposite side of a client’s order into a commodity broker’s own account or into an account in which a commodity broker has an interest, without open and competitive execution of the order on the trading platform of a commodity exchange;

“clearing house” means an entity, approved by the Authority, recognized as a clearing institution on behalf of a commodity exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the commodity exchange;

“client” means a person on whose account a commodity broker carries on trading in any spot commodity contract, but does not include directors, key personnel, representatives and related companies of the commodity broker;

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

“commodity broker” means a company cleared by the exchange and

licenced by the Authority to carry on the business of purchase or sale of commodities contracts as an agent for investors or on its own account;

“commodity exchange” means an exchange licenced by the Authority to undertake spot commodity trading, and includes any clearing or settlement or transfer services connected with the transaction;

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

“Investor Compensation Fund” means the Investor Compensation Fund established under section 18 of the Capital Markets Act.

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

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

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

“settlement bank” means a bank as defined under section 2 of the Banking Act, approved by the Authority to facilitate the maintenance of a segregated account and settlement of transactions executed on a commodity exchange;

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

“spot commodity contract” means delivery verses payment contract traded on a commodity exchange for settlement within five working days from the date of the transaction at the exchange;

“trading system” includes any system or platform provided by a commodity exchange, which makes available to the members of the

commodity exchange, and disseminates information regarding trades effected, volumes and such other notifications as may be placed thereon by a commodity exchange;

Act No. 8 of 2019 “warehouse receipt” has the meaning assigned to it under the Warehouse Receipt System Act;

Act No. 8 of 2019 “warehouse receipt system” has the meaning assigned to it under the Warehouse Receipt System Act;

Act No. 8 of 2019 “warehouse operator” has the meaning assigned to it under the Warehouse Receipt System Act;

PART II – LICENSING OF COMMODITY EXCHANGES

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

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

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

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

Considerations in granting a license.

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

Rules of the commodity exchange.

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

(2) The rules adopted shall contain provisions on –

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;
- (b) the code of conduct and ethics for directors and key personnel;
- (c) the powers of the chief executive officer including in emergency situations;
- (d) the granting of membership to the commodity exchange including the procedures for admission as a member of a commodity exchange and requirements for membership inclusive of fees;
- (e) powers to levy fees and impose penalties for breach of its rules;
- (f) the granting of trading rights and non-transferable memberships of the commodity exchange;
- (g) requirements and management of margin deposit by commodity brokers so as to provide reasonable assurance that all obligations arising out of the commodity contracts trading will be met;
- (h) general obligations of the trading participants who are members of the commodity exchange, including requirements on minimum net worth, maintenance of accounting records and compliance to the Laws of Kenya and the rules of the commodity exchange;
- (i) the termination of membership to a commodity exchange;
- (j) specifications on the minimum parameters to be disclosed in respect of spot commodity contracts to be listed, with prior approval from the Authority;
- (k) procedures for fixing of position limits and trading limits;
- (l) the clearing and settlement of all trades in spot commodity contracts by the appointed clearing house, whether the clearing house is a department of the commodities exchange or its subsidiary or is independent;
- (m) the performance of novation, netting and guarantee settlement of trades;
- (n) complete segregation of business accounts of trading participants from that of their clients and between different clients;
- (o) trading including validation of order on the commodity

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

commodity market with due regard to the interests and protection of the public; and
(gg) any other provisions specified by the Authority or the commodities exchange.

Grant of a license.

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

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

(3) A commodity exchange shall pay an application fee and an annual regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

Suspension, restriction or revocation of a license.

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

Obligations of a commodity exchange.

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

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

(3) A commodity exchange shall –
(a) regulate the operations, standards of practice and business conduct of its members, their employees, representatives and associates, in accordance with the exchange's rules;
(b) keep such records as are necessary for the proper recording of each transaction in the commodity exchange;

- (c) preserve confidentiality of all information in its possession concerning its members and their clients, except such information as may be disclosed by the commodity exchange when required to do so, in writing, by its clearing house, the Authority, an order of a Court of law in Kenya and the provisions of any Law of Kenya.;
- (d) publish its rules, fees and charges;
- (e) identify and manage conflicts of interest;
- (f) ensure that only licenced warehouses and warehouse operators are used in connection with trading in a commodity market; and
- (g) provide a robust mechanism for clearing and settlement.

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

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

Board of the commodities exchange.

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

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

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

Conditions for appointment of directors and key personnel.

11.(1) The Authority shall approve the names of the proposed directors and key personnel where such directors and key personnel have met the fit and proper requirements as prescribed under section 24A of the Act.

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

exchange, for one further term.

Appointment of a chief executive officer.

12.(1) A commodity exchange shall determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

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

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

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

(4) A commodity exchange may change its chief executive officer upon prior written notice to the Authority.

(5) The Authority may recommend to the board of the commodity exchange the termination of the appointment of a chief executive officer of a commodity exchange if the Authority considers the chief executive officer has not met the fit and proper requirements as set out in Section 24A of the Act.

Committees of the board and audit committee.

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

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

Audit committee and internal audit function

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

- (a) at least one third of its members are independent directors;
- (b) the chairperson of the audit committee is an independent director;
- (c) at least one of the members of the audit committee holds professional qualification in audit or accounting.

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

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

Advisory
committee.

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

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

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

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

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

Risk management
committee.

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

(2) The risk management committee shall –

(a) report to the board;

(b) formulate a detailed risk management policy which shall be approved by the board;

(c) monitor the implementation of the risk management policy;

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

(e) perform any other responsibilities as may be assigned by the board.

(3) The head of risk management function shall –

(a) be responsible for implementation of the risk management

policy; and

(b) report to the risk management committee and to the chief executive officer of the commodity exchange.

Appointment of a compliance officer.

17. The board of a commodity exchange shall appoint a compliance officer in accordance with regulation 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

Disclosure and corporate governance norms.

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

Net worth requirements.

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

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

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

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

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

Penalties levied by a commodity exchange.

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

Self-regulatory organisation.

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

- (a) a procedure and appropriate system of exercising self-regulation over its commodity market members;

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

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

- (a) the rules of the commodity exchange, and any amendments thereto, approved by the Authority; and
- (b) laws, regulations and guidelines relating to spot commodity contracts issued by the Authority.

Categories of membership.

- 22.** A commodity exchange shall have members, comprising of –
- (a) commodity brokers;
 - (b) warehouse operators;
 - (c) settlement banks; and
 - (d) any other category of membership as may be approved by the Authority.

PART III - COMMODITY CLEARING HOUSE AND COMMODITY BROKERS

Establishment of a clearing house

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

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

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

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

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

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

Duties of a clearing house.

24. (1) A clearing house shall ensure that -

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

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

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

(3) A clearing house shall-

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

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

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

(5) A clearing house shall provide and maintain at all times, -

- (a) adequate and properly equipped premises;
- (b) competent personnel;
- (c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,
- (d) security arrangements; and
- (e) technical support for the conduct of its business.

Licensing of commodity brokers.

25. A person shall not carry on or purport to carry on business as a commodity broker unless the person–

- (a) is licenced as a commodity broker by the Authority; and
- (b) conducts its business in accordance with the rules and practices of a commodity exchange on which the trading takes place.

Application for a license.

26. (1) A person who intends to carry on the business of a commodity broker shall apply for a license to operate as such to the Authority in Form B as set out in the First Schedule.

(2) The application shall be accompanied by –

- (a) the prescribed fees as set out in the Second Schedule;
- (b) the relevant application form and documents in support of the information and declarations; and
- (c) a letter from a commodity exchange stating that the application meets all the relevant requirements of that commodity exchange and that the commodity exchange will admit the applicant if licensed by the Authority.

Consideration for grant of license.

27.(1) An applicant seeking a license to operate as a commodity broker shall be required to –

- (a) be a company limited by shares;
- (b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, spot commodity contracts, derivatives contracts or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by a commodity exchange and approved by the Authority from time to time.

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

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

Furnishing of
information and
clarifications

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

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

Grant of license.

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

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

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

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

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

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

Annual regulatory fee.

30. A commodity broker shall pay an annual regulatory fee as set out in the Second Schedule.

Suspension, restriction or revocation

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

Commodity broker to clear its liabilities.

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

Continuing obligations

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

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

PART IV – TRADING AND CONDUCT OF BUSINESS

Trading system and platform.

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

(2) The trading system deployed shall –

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

Transactions on a commodity exchange.

35. Transactions to be conducted in a commodity exchange shall include dealings in spot commodity contracts.

Approval of spot commodity contract specifications.

36. (1) The commodity exchange shall submit spot commodity contract specification to the Authority for approval prior to becoming eligible for listing on a commodity exchange.

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

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

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

(4) An application for approval of a spot commodity contract specification shall not be refused and an approval of a spot commodity contract shall not be revoked unless the relevant commodity exchange has been given an

opportunity to be heard by the Authority.

Fixing of position and trading limits in contracts.

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

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

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

Clearing and settlement through the clearing house.

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

Application of Warehouse Receipt System Act.

39. (1) The Warehouse Receipt System Act shall apply to the warehouse receipt of a commodity that is the subject of a spot commodity contract.

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

Standards of conduct.

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

Commodity broker
not to use funds.

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

Statement of
purchase and sale.

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

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

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

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

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

(2) Every commodity broker shall upon request by a prospective client avail copies of all current terms and conditions of any spot commodities contract.

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

- (a) the opening cash balance for the month in the client's account;
- (b) all deposits, credits, withdrawals and debits to the client's account;
- (c) the cash balance in the client's account;
- (d) each unexpired and unexercised spot commodity contract;

- (e) the agreed price of each unexpired or unexercised spot commodity contract;
- (f) each open spot commodity contract; and
- (g) the price at which each open spot commodity contract was entered into.

Risk disclosure statements.

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

Segregation of clients' funds.

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

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

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

- (a) the client group account maintained at the designated clearing house of a commodity exchange;
- (b) the client group account at the clearing house of a commodity exchange; and
- (c) individual clients' account maintained at the clearing house of a commodity exchange.

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

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

PART V – COMMODITY SETTLEMENT GUARANTEE FUND

Establishment of the Fund.

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

(2) The settlement guarantee fund shall be maintained by the commodities exchange.

(3) Subject to the approval of the Authority, a commodity exchange shall prescribe rules, procedures, terms and conditions governing the settlement guarantee fund, which may specify the –

- (a) amount of deposit or contribution to be made by each member of the commodity exchange to the settlement guarantee fund;
- (b) terms, manner and mode of deposit or contribution;
- (c) conditions of repayment of deposit or withdrawal of contributions from the settlement guarantee fund;
- (d) charges for drawing from the settlement guarantee fund;
- (e) penalties applicable; and
- (f) disciplinary actions.

Composition of the Fund.

47. (1) The settlement guarantee fund shall consist of –

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

(2) Money accumulated in the settlement guarantee fund may be invested by the commodities exchange in such manner as set out in the

rules of the settlement guarantee fund.

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

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

Form of contribution or deposit to the Fund.

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

Management of the Fund.

49. The settlement guarantee fund may be used for such purposes prescribed by the commodity exchange, which may include –

- (a) defraying the expenses of creation and maintenance of the settlement guarantee fund;
- (b) temporary application of the settlement guarantee fund to meet shortfalls and deficiencies arising out of the clearing and settlement obligations of members of a commodity exchange in respect of and connected to transactions related to spot commodity contracts;
- (c) meeting any loss or liability of a clearing house arising out of clearing and settlement operations;
- (d) repayment of the balance amount to a member pursuant to provisions in the commodity exchange rules regarding the repayment of deposits after meeting all obligations, when such a member ceases to be a member of a commodity exchange; and
- (e) any other purpose as may be specified by the commodity exchange.

Scheme arrangements of default.

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

- (a) any amount that may have been paid by the defaulting member in the form of a pre-trade deposit, but does not include a client's

pre-trade deposit, or any other money deposited with or retained by a clearing house for the purpose of meeting the clearing and settlement obligations;

- (b) any amount that may have been deposited by the defaulting member towards additional deposit with the clearing house;
- (c) the proceeds, if any, recovered from auctioning or disposing of the member's membership rights vested in a commodity exchange, subject to deduction of the expenses relating or incidental to the auction or disposal, as the case may be;
- (d) the fines, penalties, interest or other income, if any, earned by investment or divestments of the settlement guarantee fund as may be decided by the Authority;
- (e) the contribution made by all classes of members in proportion to their deposit to the settlement guarantee fund, or where the deposit is deficient, the deficit in the amount shall be deposited in the settlement guarantee fund;
- (f) the profits, if any, from returns on investments of the settlement guarantee fund; and
- (g) any other funds set aside by the commodities exchange.

Additional contributions or deposits.

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

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

PART VI - RECORD KEEPING, ACCOUNTS, AUDITS AND INSPECTIONS

Production of records.

52. (1) A commodity exchange, clearing house or commodity broker shall

- (a) produce any books, accounts and records kept by it in connection with, or for the purposes of, its business, or in respect of any trading in spot commodity contracts;
- (b) collect and furnish any returns; and

(c) provide any information relating to its business, or any trading in spot commodity contracts, or any other specified information, as the Authority may require.

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

Records of transactions on a commodity market or clearing house.

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

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

Information to be provided by market participants.

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

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

Accounts and audit.

55. (1) A commodity exchange, clearing house and commodity broker shall keep proper books of accounts and records of income and

expenditure, assets and liabilities and all other transactions of the commodity exchange.

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

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

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

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

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

(7) The auditors' report shall include –

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

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

- (a) allow the auditor reasonable access to the premises occupied by

a commodity broker or by any other person acting on behalf of a commodity broker;

- (b) extend reasonable facilities to the auditor;
- (c) provide any information required by an auditor; and
- (d) produce for inspection any documents, books, vouchers and other records or copies of any documents, books, vouchers and other records, that the audit firm may consider necessary for the performance of its duties.

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

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

Authority may
appoint an auditor.

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

Annual report.

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

- (2) The annual report submitted under sub-regulation (1) shall include-
 - (a) a description of the activities undertaken in that financial year;
 - (b) the resources, including financial, technological and human resources, that were available and used, to ensure compliance with obligations and, in particular, for a commodity exchange, the obligation to ensure that the commodity market operates in a fair, efficient and transparent manner;
 - (c) an analysis of the extent to which activities undertaken, and resources used have resulted in full compliance with all obligations under these Regulations and the rules of the commodity exchange;

- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify, in writing.

The right of the Authority to inspect.

- 58.** The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a commodity exchange, commodity broker or clearing house where there is need to –
- (a) establish that the books of accounts and other records are being maintained in the manner required;
 - (b) ensure the provisions of the Act are being complied with;
 - (c) investigate into the complaints received from investors, other commodity brokers or any other person on any matter having a bearing on the activities of the commodity exchange, commodity broker or clearing house; and
 - (d) investigate on its own motion, in the interest of the commodity market or the interest of investors, into the affairs of a commodity exchange, commodity broker or clearing house.

Procedure for inspection.

- 59.** (1) The Authority shall, before undertaking an inspection, give the relevant commodity exchange, commodity broker or clearing house a reasonable notice on the intention to undertake an inspection.
- (2) The Authority may direct, in writing, that an inspection of a commodity exchange, commodity broker or clearing house be carried out without notice to the commodity exchange, commodity broker or clearing house, if the Authority is satisfied that it is in the interest of the commodity market or investors in the commodity market that no such notice should be given.
- (3) The inspecting officers appointed for the purpose of an inspection, shall have the power to undertake the inspection as directed by the Authority and that commodity broker is bound to discharge its statutory obligation.

Obligations of a commodity broker in respect of inspections.

- 60.**(1) An inspecting officer may require a shareholder, director, officer or an employee of a commodity exchange, commodity broker or clearing house under inspection to produce such books, accounts and other documents in his custody or control and furnish the inspecting officer with the statements and information relating to the transactions in a

commodity exchange within such time as the inspecting officer may require.

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

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

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

Action on inspection report.

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

PART VII – OFFENCES

Market offences

- 62.**(1) A person who-
- (a) directly or indirectly purchases or sells spot commodity contracts to cause a false appearance of active trading or cause the creation of misleading information regarding the condition of the market or price of any spot commodity contract;
 - (b) issues an order for the purchase or sale of a spot commodity contract, whose execution would involve no change in ownership or without incurring a market risk or change in the commodity broker's position;
 - (c) circulates, disseminates, authorises the circulation or dissemination of any untruthful or misleading statements or information to the effect that the price of trading in any class of spot commodity contracts will, or is likely to, rise or fall because

of the market operations of one or more persons, with the purpose of benefitting from the fluctuations so created on the commodity exchange or off the commodity exchange;

- (d) knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a spot commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the spot commodity contract in accordance with the rules and practices of a commodity;

commits and offence.

Bucketing.

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

Manipulation of price and cornering.

64. A person who directly or indirectly –

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

commits an offence.

Employment of fraudulent or deceptive devices, etc.

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

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

commits an offence.

Fraudulently
inducing trading.

- 66.** A person who directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a spot commodity contract or class of spot commodity contracts, makes or publishes –
- (a) any statement which is, at the time and considering the circumstances in which it is made, false, misleading or deceptive with respect to any material fact and which he knows, or has reasonable grounds for believing, is false, misleading or deceptive; or
 - (b) any statement which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing is rendered false, misleading or deceptive by reason of the omission of that fact;

commits an offence.

Insider trading

- 67.** (1) A board member, employee, member or agent of a commodity exchange who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any spot commodity contract for which such information has not been made public, and disseminates such information with intent to assist another person, directly or indirectly to participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

(2) Any person who acquires information as described under sub-regulation (1) from a board member, employee, member or agent of a commodity exchange and uses such information to directly or indirectly participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

Penalty

- 68.** A person who commits an offence under these Regulations shall be liable to-
- (a) penalty as specified under section of the Act; and
 - (b) damages for any loss occasioned.

PART VIII - GENERAL PROVISIONS

Investor
compensation fund

- 69.** (1) The Investor Compensation Fund established under the Capital Markets Act, shall apply to the commodities market with the necessary modifications.

(2) A commodity broker shall remit to the Investor Compensation Fund fees payable to the investor compensation fund for every spot commodity contract within fifteen days following a transaction.

Transition

70. An entity carrying on the business of a commodity exchange prior the commencement of these regulations shall comply with these regulations within such period as the Authority may, by notice in the Gazette, specify.

Dated the.....2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

FIRST SCHEDULE

FORM A (r. 4(1))

**THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020
APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A
COMMODITY EXCHANGE**

Note-

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

Information provided should be as at the date of application

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

Name	Address and telephone number	Number of shares held

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

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

(b) Secretary

Name.....

Address.....

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

(c) Chief Executive Officers and other key personnel

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

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

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

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

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

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

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

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

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

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

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

(2) have any of the above persons been-

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

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

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

.....

18. Business references:

Name	Address	Telephone number(s)	Occupation

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

.....

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

.....

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

.....

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

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

Signed:

.....) Director
) Director
) Secretary

Note:

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

FIRST SCHEDULE

FORM B

(r. 26(1))

APPLICATION FORM FOR LICENSE AS COMMODITY BROKER

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

THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

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

Note-

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

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

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

9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held
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10(a) Directors (please attach a list)

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

(b) Secretary

Name.....

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

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

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

.....

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

.....

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

.....

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

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

If Yes, give details.

.....

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

.....

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

.....

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

.....

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

.....

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

If 'yes', give details.

.....

(2) Have any of the above persons been -

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

.....

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

.....

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

.....

18. Business references:

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

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

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

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

21. List the office facilities of the applicant

.....

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

.....

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

.....

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

Dated this day of 20

Signed:

.....) Director
.....) Director
.....) Secretary

Note:

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

SECOND SCHEDULE

THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

**LICENSING AND ANNUAL FEES FOR COMMODITY EXCHANGE AND
COMMODITY BROKERS (r. 4(1) (d); 26(2)(a))**

Licensee	Application fee (Kshs) Non-refundable	Annual Regulatory fee (Kshs)
Commodity exchange	10,000	2,500,000
Commodity broker	10,000	50,000