

**REPORT TO THE
DEPARTMENTAL
COMMITTEE ON FINANCE
AND NATIONAL PLANNING
ON QUESTIONS RAISED BY
HON. ADAN DUALE, E.G.H,
MP.**

**FROM
THE CAPITAL MARKETS
AUTHORITY**

6TH JULY 2021

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1 EXECUTIVE SUMMARY

The Capital Markets Authority (CMA/the Authority) is established under Section 5 of the Capital Markets Act Cap 485A with the twin mandate of development and regulation of the capital markets in Kenya. CMA facilitates the raising of long-term capital for deployment to productive enterprises to support economic growth and transformation. It enables the recipients of capital (entrepreneurs) and the providers of capital (investors) to engage. In this process, CMA maintains an orderly, fair, efficient and transparent market for the purpose of protecting the investors.

Entities in different financial sectors are allowed to raise monies from the public but how that money is utilised determines which laws shall be applied to them. For instance, insurance companies pool monies from the public as governed by Insurance Act, SACCOs as governed by the SACCO Societies Act and banks under Banking Act. Capital Markets is involved when there is pooling of monies from the public for long-term investments in approved capital markets entities, products and services. There are some companies which have offered products which mimic capital markets products, and the Authority has taken action against these companies as detailed in the report.

In the case of Cytonn Investments Ltd, the Authority has held extensive engagements in order to have some of its business lines Regulated by the Authority. In the same breath, there are some of its products which are not Regulated, and after the company failed to bring them under regulation, they were forwarded to the Capital Markets Fraud Investigation Unit (CMFIU) for further action. CMFIU finalized its investigation and forwarded the matter to the Director of Public Prosecution. In the case of Imperial Bank Ltd, the Authority approved the raising of the funds, through a corporate bond, after the bank met the regulatory eligibility and disclosure requirements and obtained a no objection from the Central Bank of Kenya (CBK), its primary regulator. However, Imperial bank was put under receivership by CBK before the bond was listed. Upon inquiry, it was noted that there was potential governance malpractices and financial misreporting during the issuance of the bond. The Authority directed CBK and Kenya Deposit Insurance Corporation (KDIC) to refund the money to the bond holders and initiated enforcement proceedings against the directors of the bank, which are now subject of court proceedings.

In the case of Chase Bank Ltd, the Authority also approved the raising of the funds after they met all the eligibility and disclosure requirements and receipt of no objection from the CBK for the company to raise the funds. However, the Bank was put under receivership by CBK six months after being listed. Upon inquiry, it was noted that there was also potential governance malpractices and financial misreporting during the issuance of the bond. The

Authority initiated enforcement proceedings against the directors of the bank, which are currently underway.

. We have detailed the various enforcement actions we have taken in this report as well as attached previous Memoranda shared with the Parliamentary Committee on the same subject during our earlier summons.

Each crisis presents an opportunity and in the same spirit we have over time identified various parts of our Laws that needs improvement. The Authority initiated the process of overhauling the Capital Markets Act, amending the Public Offers and Disclosures Regulations and the Collective Investment Schemes Regulations, among others. These pieces of legislations shall be presented before Parliament at the appropriate time in accordance with the Statutory Instruments Act.



2 INTRODUCTION

In a statement dated 22nd June 2021, Hon. Aden Duale, EGH, MP Garissa Town Constituency having raised concern around innocent Kenyans continued loss of investments questioned the efficiency of Capital Markets Authority in regulating the markets in Kenya. He demanded a statement from the Chairperson of the Departmental Committee on Finance and National Planning on four (4) key questions he raised in the statement. The Capital Markets Authority (herein referred to as CMA/the Authority) received an invitation from the Committee to prepare a comprehensive report, responding to the questions raised and to appear before the Committee on 8th July 2021 to highlight the report.

The Authority would like to respond as follows:

Financial services are critical in any economy. They are economic services provided by the finance industry, which encompasses a broad range of businesses that manage financial assets including banks, microfinance houses, insurance companies, investment banking, stock brokerages, investment funds, sacco, co-operatives among others. In Kenya, five (5) sectors that depend on each other in one way or another have emerged, being:

- a) Banking Sector regulated by the Central Bank of Kenya (CBK)
- b) Capital Markets regulated by the Capital Markets Authority (CMA)
- c) Insurance Sector regulated by the Insurance Regulatory Authority (IRA)
- d) Pension Sector regulated by Retirement Benefits Authority (RBA)
- e) Deposit taking SACCO societies regulated by Sacco Societies Regulatory Authority (SASRA)

Unclaimed Financial Assets Authority (UFAA) has a statutory mandate to administer unclaimed financial assets.

Capital Markets is where one finds long term funds, channelling savings into productive and needy sectors of the economy. Capital markets can be divided into primary market (direct raising of funds) and secondary market (trading in securities used to raise funds). Naturally, those who have funds interface with those in need of the funds hence there is need for there to be fairness in the marketplace with the necessary disclosures available to all players simultaneously. Market intermediaries therefore play a critical role in financial markets.

3 ABOUT CAPITAL MARKET AUTHORITY

3.1 Mandate

The Capital Markets Authority (CMA/the Authority) is established under Section 5 of the Capital Markets Act Cap 485A with the mandate of development and regulation of the capital markets and to facilitate the existence of a nationwide system of securities, commodities and derivatives market brokerage services so as to enable wider participation of the general public.

The statutory objectives of the Capital Markets Authority as stipulated in section 11 of 'The Capital Market Act' are as follows:

- a. the development of all aspects of the capital markets with particular emphasis on the removal of impediments to come to market, and the creation of incentives for longer term investments in productive enterprises;
- b. to facilitate the existence of a nationwide system of securities commodities market, derivatives market, and brokerage services to enable wider participation of the general public in the aforementioned markets;
- c. the creation, maintenance and regulation of a market in which securities can be issued and traded in an orderly, fair, and efficient manner, through the implementation of a system in which the market participants are self-regulatory to the maximum practicable extent;
- d. the protection of investor interests;
- e. the facilitation of a compensation fund to protect investors from financial loss arising from the failure of a licensed broker or dealer to meet their contractual obligations; and
- f. the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.

The Authority executes its regulatory mandate through licensing and approvals; supervision; and enforcement. In relation to licensing and approvals, once an application is received, the Authority reviews the completeness and accuracy of information submitted in support of the application to confirm whether the application is in compliance with the detailed requirements under the Capital Markets Act and Regulations. The review process also includes obtaining clarifications from third parties and other regulators (in the case of banks, the Central Bank of Kenya) as well as former employers and professional associations in cases where fit and proper assessments are required to be undertaken under the Capital Markets Act.

Where application requirements have not been met, the Authority writes to applicants highlighting the outstanding issues to be resolved or clarifications required to aid the

Authority in making an informed determination on the application. Notwithstanding compliance with the Capital Markets Act and requisite Regulations under which an application has been made, the Authority may take into account any additional factors prior to granting an approval to the application. The overall approvals process is guided by the turn-around times in the grant of approvals as evidenced in the Authority's Annual Performance Contracts with the Government of Kenya.

3.2 Strategic objectives

The Authority's 2018-2023 strategic objectives are (**Annexure 8** CMA Strategic plan):

- a) Ensure a robust, facilitative, and responsive policy and regulatory framework for capital market development and efficiency;
- b) Facilitate the development, diversification, and uptake of capital market products and services;
- c) Ensure sound market infrastructure, institutions, and operations;
- d) Leveraging technology to drive efficiency in the capital markets value chain;
- e) Ensuring optimal efficiency and effectiveness of the CMA; and
- f) Enhancing strategic influence to promote market conduct and market development.

3.3 Capital Raising Mechanics

CMA facilitates the raising of long-term capital for deployment to productive enterprises to support economic growth and transformation. It enables the recipients of capital (entrepreneurs) and the providers of capital (investors) to engage. In this process, CMA must maintain an orderly, fair, efficient and transparent market for the purpose of protecting the investors. Those seeking capital are required to meet eligibility and disclosure requirements which help investors make informed decisions. Investors are encouraged to seek independent investment advice prior to investing.

Capital raising can be done where the entrepreneur is an issuer, that is, if the entrepreneur is a body corporate, it issues its securities to investors for subscription. The investors become owners (where the security is in the form of shares) or lenders (where the security in the form of bonds) in the body corporate. The body corporate as an issuer can raise capital from the public or a section of the public. It can also raise capital privately. Any capital raising from the public, or a section of the public must be approved by the CMA. A body corporate is required to file an Information Notice with CMA when privately raising capital and submit a Return of its private capital raising to CMA, which facilitates an assessment.

Regulation 21 of the *Capital Markets (Public offers) (Listing)(Disclosures) Regulation, 2002*, issued under the Capital Markets Act, provides that an offer of securities shall be regarded as private offer and accordingly shall be deemed not to be an offer to the public in Kenya if, to the extent that the offer is made to persons in Kenya under any of the following conditions –

- a. The securities are offered to not more than one hundred persons;
- b. The securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- c. The securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- d. The securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- e. the securities are of a private company and are offered by that company to-
 - i. members or employees of the company;
 - ii. members of the families of any such members or employees; or
 - iii. the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer
- f. The minimum subscription for securities per applicant is not less than Kes. 100,000;
- g. The securities result from the conversion of convertible securities and a prospectus relating to the convertible securities was approved by the Authority and published in accordance with these regulations;
- h. The securities of a listed company are offered in connection with a take-over scheme approved by the Authority; or
- i. The securities are not freely transferable.

While public offers must be approved by CMA before issuance, private offers meeting the above criteria are not approved by CMA before issuance. Firms privately raising funds are required to file an information notice with the Authority (Section 30C).

Regulation 21 should be read together with Part IVA of the Act. Key sections under this Part provide as follows;

30A.(1) of the Act provides that:

1. For the purposes of this Act, a person is considered to offer securities if that person-
 - i. invites another person to enter into an agreement for, or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
 - ii. invites another person to make an offer under paragraph.
2. An offer of securities to the public (a "public offer") includes an offer to any section of the public in Kenya, however selected.
3. An offer shall not be considered as a public offer if-
 - a. The offer is not calculated to result, directly or indirectly, in the securities of the company being available to persons other than those receiving the offer; or

- b. otherwise being a private concern of the person receiving the offer and the person making the offer.

30B. An issuer or offeror may, where a public offer of securities is –

- a. restricted to sophisticated investors ; or
- b. directly communicated to a prescribed category and number of persons;

submit a short-form prospectus to the Authority for approval.

Section 30 (C) of the Act provides that an Issuer of Private offers is required to file an Information Notice to the Authority for noting.

In an effort to give clarity to the market on the above two sections and provide the details for both an Information Notice and Short Form Prospectus, the Authority in 2018 and in consultation with its stakeholders developed a guidance checklist for the preparation of Information Notice and Short Form Prospectus. Upon finalization of the checklists, the Authority via a Public Notice notified all market participants and required all issuers of private offers of securities and restricted public offers including privately issued commercial papers that it was mandatory to submit a Short form Prospectus and Information Notice as the case may be. The Public Notice together with the guidance checklists were disseminated to the stakeholders and was also published in the Authority Website www.cma.or.ke.

The second method of capital raising is where the entrepreneur is not an issuer but instead, pools funds from the investing public for the purposes of investments on their behalf. This can only be done by a licensed entity- a Fund Manager- which pools the funds from the investing public and aggregates them in a Collective Investment Scheme (CIS). The CIS must be approved and registered by CMA.

The Capital Markets industry in Kenya has over the last twenty years experienced robust growth as well as rapid changes in the range and sophistication of market products, services as well as technology. To provide a legal and regulatory framework that is supportive and effective the Authority undertook a review of the entire legal and regulatory framework to identify any gaps and weaknesses and to provide a framework for introduction of new products. The review of the framework was also meant to ensure compliance with the International Organization of Securities Commissions (IOSCO) core principles of securities regulation which aligns the Kenyan law with international standards hence facilitating investments by foreign investors into the country. The key recommendation was that a totally new Act be drafted to replace the current Capital Markets Act hence the drafting of the Securities Investments and Derivatives Bill, 2011(SID Bill).

However, and for reasons of prioritization of the Constitution of Kenya 2010, implementation-related legislation, the proposed SID Bill was not progressed. That

notwithstanding, interim amendments were made to the Capital Markets Act (Act No. 37 of 2011, Act No. 35 of 2012 and Act No. 48 of 2013) and the Central Depositories Act (Act No. 38 of 2011). The amendments included introduction of a fit and proper assessment criteria for key personnel in the licensed entities, enhanced the regulatory powers of the Authority, enhanced administrative and criminal penalties for regulatory breaches, brought into the regulatory scope of the Authority regulation of exchange traded derivatives products, introduced anchoring provisions for public offers and asset-based securities provisions, among other amendments. These amendments, although significantly improving on the regulatory framework, were not adequate.

The Authority remains persuaded that the enactment of the SID Bill will eliminate the grey areas and gaps, both perceived and actual, in the capital markets legal and regulatory framework and thus improve the capital markets ecosystem in Kenya especially facilitating enterprises seeking long-term capital and protection of investors.

The Authority is also in the process of overhauling several subsidiary legislations to take into account the developments that have happened since the enactment of these legislations as well as ensure compliance with the Statutory Instruments Act. These include the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 and Capital Markets (Collective Investments Schemes) Regulations, 2001.

3.4 Definitions

The Authority regulates securities market and capital market instruments.

“Securities” means;

- a. shares in the share capital of a company (“shares”);
- b. any instrument creating or acknowledging indebtedness which is issued or proposed to be issued (“debt securities”);
- c. loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of the Government, Central Bank, or public authority (“Government and public entities”);
- d. rights, options, or interests, whether described as units or otherwise, in, or in respect of such shares, debt securities and Government and public securities;
- e. any right, whether conferred by warrant or otherwise, to subscribe for shares or debt securities (“warrants”);
- f. any option to acquire or dispose of any other security;
- g. futures in respect of securities or other assets or property;
- h. securities and collective investment scheme products structured in conformity with Islamic principles for investments;

- i. units in a collective investment scheme, including shares in an investment company, or other similar entities whether established in Kenya or not;
- j. interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- k. the rights under any depositary receipt in respect of shares, debt securities and warrants ("depositary receipts");
- l. asset backed securities; and
- m. any other instrument prescribed by the Authority to be securities for the purposes of this Act, but does not include –
 - i. securities of a private company, other than asset backed securities;
 - ii. bills of exchange;
 - iii. promissory notes, other than asset backed securities;
 - iv. certificates of deposit issued by a bank; and
 - v. any other instrument prescribed by the Authority not to be securities for the purposes of this Act."

A capital market instrument means any long-term financial instrument whether in the form of debt or equity developed or traded on a securities exchange or directly between two or more parties for the purpose of raising funds for investment.

3.5 Violation & Actions

Sections 11(3)(cc) and 25A of the Capital Markets Act provides that the Authority may (administratively) impose sanctions or levy financial penalties for the breach of any provisions of the Act, the regulations, rules, guidelines, notices or directions made hereunder, or the rules of procedure of a securities exchange, by a licensed or approved person, issuer, employee or a director of a licensed or approved person, employee or director of an issuer including-

- (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed, provided that the financial penalties shall be recoverable summarily by the Authority as civil debts;
- (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
- (iii) publishing findings of malfeasance by any person;
- (iv) suspending or cancelling the listing of any securities or exchange-traded derivative contracts, or the trading of any securities or exchange-traded derivative contracts, for the protection of investors;

Further, section 34A provides for the criminal offences and penalties where a person commits an offence where on conviction the person shall be liable -

- (a) on a first offence, in the case of –

- (i) an individual, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years and pay two times the amount of any gain made or loss avoided as a result of the contravention; or
 - (ii) a company, to a fine not exceeding ten million shillings and pay two times the amount of any gain made or loss avoided as a result of the contravention;
- (b) on any subsequent offence, in the case of-
- (i) an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years and pay three times the amount of any gain made or loss avoided as a result of the contravention; or
 - (ii) a company, to a fine not exceeding thirty million shillings and pay three times the amount of any gain made or loss avoided as a result of the contravention;

4 QUESTIONS RAISED BY HON. ADAN DUALE E.G.H, MP AND CMA'S RESPONSES

4.1 What is the total number of all the unregulated capital markets products in the country and the number of investors in the said products?

The regulated entities and products are published on the Authority's website and the Kenya Gazette. Most unregulated products are operated in obscurity and therefore it is impossible for CMA to maintain a record of such. However, the Authority has taken action against some operators of unregulated products which resemble securities or capital market instruments that have been reported by the public or identified by the Authority through its market intelligence. (Annexure 1 & 2 list of cases of unregulated products and entities which the Authority has taken either criminal or administrative actions.)

The total number of individual investors that have lodged complaints with the Authority in the different unregulated products that have been investigated is approximately 500 with a sum total of over KES. 1 billion The Authority continuously reminds the investors of their responsibility to carry out due diligence pertaining the background of any offer and the licensing status of any entity before making any investments (Annexure 3 cautionary statements to date)

In addition, CMA hosts a whistle blower portal available on its website that enables members of the public to anonymously report any suspicious activity within the market.

4.2 What is the role of the CMA in the proliferations of illegal investment funds in the capital markets in Kenya?

The Authority neither condones nor facilitates unregulated entities and products. In curbing the proliferation of unregulated entities and products in Kenya the Authority has adopted the following approach;

Once determined to be unregulated the Authority engages the concerned entity with the aim of bringing them to regulated space. In some cases, some firms operate without knowing that they are in violation of the law. If the product cannot fit into the existing regulated framework but has the potential of deepening and broadening the capital market it can be admitted into the regulatory sandbox or granted a no objection subject to compliance with the risk management framework and investor protection mechanism.

For entities that fail to co-operate or collaborate, the Authority proceeds to take any of the following actions;

- a) Issuance of cease and desist orders
- b) Caution the public on the unregulated entity and/or product through public notices.
- c) File a criminal complaint and forward the matter to Capital Markets Fraud Investigation Unit (CMFIU) (A department of the Directorate of Criminal Investigations attached to the Authority) for criminal investigation and prosecution.
- d) Collaboration with other regulatory agencies to manage the risk introduced by the unregulated entity.

In addition, CMA carries out regular and continuous investor education and public awareness programmes.

The Authority has investigated such unregulated cases as shown in **Annexure 1**

4.3 What is the effectiveness and efficiency of the CMA in regulating the capital markets in Kenya?

Promoting the Integrity and Growth of the Capital Markets

CMA, as a regulator, has built a reputation of efficiently and effectively discharging its objectives as required in the Capital Markets Act.

The Authority has endeavoured to be innovative and flexible within the boundaries of the law to ensure that issuers of securities are facilitated to raise capital in Kenya and to have emerging products within the perimeter of regulation. Consequently, the Authority has been recognized as the most innovative capital markets regulator in Africa five times in a row

(2014-2019). It also through this works that the Authority has been recognized through key appointments to board of the International Organizations of Securities Commissions (IOSCO).

Regionally, the Authority has been in the forefront in the establishment and development of Capital Markets within Sub-Saharan Africa region. The Authority has provided support to the upcoming regional markets through trainings and facilitation for their benchmarking programmes.

Also, the Authority was recognized for its outstanding contribution to Capital Markets Stability Africa 2018 for its ongoing initiatives to support and facilitate capital markets stability on the continent. The award from the London-headquartered Capital Finance International (CFI) was comes in recognition of the Authority's engagement with industry stakeholders on key capital market stability initiatives to improve market transparency and accountability through strengthened governance, regulatory reporting & robust market infrastructure oversight.

To mention but a few, the following indicators further demonstrate the effectiveness of the Authority: -

- a) In the just announced results of the 2019/2020 Performance Contracting cycle, out of 227 state corporations, the Authority was ranked no.9 with a score of 2.5996 (Very Good) an outstanding performance ever by the Authority. Our parent ministry, the National Treasury and Planning can confirm that the Authority has always complied with all its directives or guidance issued from time to time.
- b) The Authority has maintained consistent performance and service delivery which was greatly noted and recognized by both the Public Service Commission and the Directorate of National Cohesion and Values at the Executive office of the President; in the Public Service commission reporting for the 2017,2018 ranked number 1 out of the 250 state corporations with 67.4% and 79.5% respectively and position 7 in 2020 with 69%.
- c) The Authority has put in place a complaints handling and dispute resolution mechanisms and a whistleblower portal to encourage receipt of information from the members of the public on malpractices in the market and misconduct of market intermediaries. It is worth mentioning that the Authority has scored 100% in the last 3 years as measured by the Commission on Administration of Justice under the wider Performance Contract framework. The Authority recently concluded drafting of the Whistleblower Regulations which provides for compensation of whistleblowers to further encourage the reporting of malpractices.
- d) CMA developed the Code of Corporate Governance for Issuers of Securities to the Public and also Corporate Governance Regulations for Market Intermediaries. These subsidiary

legislations are further supplemented by the gazettelement of the Stewardship Code for Institutional Investors, 2017. The Stewardship Code was aimed at instilling responsibility in institutional investors to ensure that they understand the significance of their positions in growing investments within the capital markets by using their investment size to engage companies on their corporate governance as well as protecting assets placed under their custody for management.

- e) In an effort to enhance public awareness and investor protection, the Authority has continuously implemented initiatives including, infusion of capital market matters and investor protection in popular local TV programmes, conducted vernacular radio companies targeting various counties, developed infographics and edutainment material which are shared on social media platforms, leveraged technology to host Facebook conferences and webinars, undertaken county initiatives through Huduma Centres, organized open day, shows and exhibitions, publication of brochures, Capital Markets Handbook and partnered with various Government agencies, professional and learning institutions to jointly undertake initiatives that enhance investor protection and capital markets awareness. In the last two years the Authority has undertaken over 100 fora and reached all the 47 counties either face to face or through radio and edutainment activities.
- f) The retail assets under management have been growing steadily since 2018 from Kes. 57 billion to Kes. 111 billion as at March 2021. The pension, insurance and wealth management funds are now standing at Kes. 1.2 trillion as at March 2021.
- g) The market capitalization as at March 2021 stood at Kes. 2.4 trillion from Kes. 105 billion in 2000.
- h) In terms of investor holdings as of March 2021, data from the Central Depository and Settlement Corporation illustrates that there are a total of 1,569,506 investors holding 10,718,926,405 shares in the equities market at the NSE. Of these, 533,093 are female investors while 1,036,413 are male investors.
- i) In 2019, the Authority operationalized the Regulatory Sandbox to test innovative products that were not provided in the legal framework. The Regulatory sandbox allows for the testing of the products on a limited scale and the Authority can assess the risk and regulatory areas and determine the conditions on which the product can be exited from the sandbox. Through the sandbox, the Authority is able to come up with evidence-based policies and regulations. The Regulatory Sandbox has promoted innovation by admitting 9 firms to test various innovative fintech products and solutions prior to deployment in

the mass market. Three firms have successfully exited the Sandbox deploying the debt-based and USSD-based CIS, respectively to the mass market.

- j) The Authority has put in place a surveillance system that offers real time surveillance on the market through which the Authority has been able to detect market malpractices such as the KenolKobil insider trading on October 18, 2018. The Authority also conducts both onsite and offsite inspections of all market intermediaries to ensure compliance with the laws. In addition, the Authority has also put in place Risk-Based Supervision which ensures that resources are utilized effectively with enhanced supervision being placed on firms considered high risk. The Authority has also enhanced the monitoring of corporate governance of issuers of securities and has established a fully-fledged unit to deal with corporate governance of issuers of securities to ensure that investors funds are being managed prudently.

Under the stewardship of the Authority the Capital Markets Industry has witnessed significant developments over the years. Worth noting are the following developments in the capital markets:

- i. Launch of a new Central Depository System and an upgrade of the Automated Trading System in 2019;
- ii. Launch of the NSE NEXT Derivatives market in 2019;
- iii. Launch of the Regulatory Sandbox to promote Fintech and Innovation in 2019;
- iv. Operationalization of the Green Bond Framework and subsequent listing of the 1st Green Bond at the Nairobi Securities Exchange (NSE) and London Stock Exchange (LSE), admission of NSE into the World Federation of Exchanges in 2018;
- v. CMA was recognized globally five times in a row as the Most Innovative Regulator of the African Capital Markets, (2015-2019);
- vi. The Authority formally recognized NSE as a Self-Regulatory Organization in 2015;
- vii. The Nairobi Securities Exchange was added as a constituent of the auspicious FTSE Mondo Vision Exchanges Index in 2014; and
- viii. Demutualization of the NSE in 2014, and dematerialization of share certificates at the Central Depository and Settlement Corporation in 2014.

The Authority is implementing the Capital Market Master Plan (ten-year) and its Strategic Plan (2018-2023) together with its stakeholders which is targeted towards rolling out market development and regulatory advancement initiatives. This initiative will support Kenya towards achieving the Morgan Stanley Capital Index (MSCI) emerging market status and also

position itself towards becoming an investment destination of choice for issuers and investors regionally and globally and indeed a gateway to Africa for the world.

Additionally, in the wake of the COVID 19 pandemic, the CMA together with industry stakeholders have rolled out a 5-point strategic plan themed recovery strategy to ensure economic recovery by restoring financial markets growth through innovative and responsive regulation.

- k) Through investigation and enforcement processes the Authority has recovered over a Kes. 1 billion from 2015 to date and disqualified fifteen (15) directors and senior managers from holding office of regulated and approved entities.

4.3.1 Regulatory challenges on Unregulated entities and products

Securities regulatory enforcement brings with it an inherent risk of criticism such as;

- (i) Persons targeted for investigation or prosecution can be expected to complain that the regulator is overreaching or otherwise being unfair in some respect.
- (ii) Investors who have incurred losses are expected to criticize the regulator for failing to regulate the market properly in the first place and then failing to intervene in a timely way.
- (iii) Conversely, investors sometimes will blame their losses, at least for a time, on the regulator's intervention. For example, unsophisticated victims of a fraudulent investment scheme who are unwilling or unable to recognize they have been duped may fault the regulator for halting the promotion instead. **(Annexure 1&2 Inter Web Case)**

Criticisms of this nature are expected as normal occurrence of the regulator simply going about its task of enforcing securities legislation. However, on occasions a routine complaint or criticism may grow into a sustained public controversy. This can happen when investor losses are particularly severe, or a when target for enforcement action makes extra-ordinary complaints about the regulator's competence or integrity. In these kinds of circumstances, the regulator's enforcement credibility depends on its ability to confirm that it has:

- a) Diligently exercised its powers with a view to achieving intelligible objectives in a fair and reasonable manner;
- b) Acted independently in exercising judgment expertly, professionally, and without regard to external pressure or any improper considerations.

Being able to meet these expectations requires the regulator to refer to a record that shows that the decisions and actions it has taken are consistent with its statutory mandate.

4.4 What is the total number of firms penalized by the CMA in the last five years and remedial and action which was taken for investors who lost their funds?:-

The Authority has taken enforcement action against over sixty individuals and entities and these actions are published in the Authority's annual reports (**Annexure 4**: list of enforcement actions taken).

The Authority's enforcement philosophy requires intervention and response to any contravention of the Capital Markets legal and regulatory framework. The level or nature of the Authority's response/intervention will be informed by the deemed seriousness of the contravention.

The CMA's effective and proportionate use of its investigation and enforcement approaches plays an important role in its vision to credibly deter misconduct and thereby to foster investor confidence and maintain orderly, fair, and efficient capital markets.

Several principles underlie CMA's approach to investigation and enforcement:

- a) Dependent to a significant extent on the regulated community:
 - (i) Responding openly and cooperatively to requests from the CMA; and
 - (ii) Maintaining an open and cooperative relationship between the CMA and those it regulates i.e. proactive and unsolicited provision of information by regulated persons.
- b) Conducted in a manner that is transparent, proportionate and responsive to the issue;
- c) Focused on changing behaviour and to deter future non-compliance by others, to remove wrong-doers from the capital markets or impose restrictions on their licenses to bring them into compliance, and to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.

As a risk-based regulator with limited and finite resources, the CMA prioritizes its resources to focus on priority areas for its supervisory objectives whenever it deploys any of its regulatory tools. Therefore, where a person has failed to comply with the requirements of relevant laws or rules, it is encouraged to address this without further need for formal disciplinary or other enforcement action. However, in circumstances where the CMA decides to pursue a disciplinary process in respect of the contravention of the requirements, proportionate and dissuasive use of investigation and enforcement powers will play an important role in supporting the CMA's pursuit of its regulatory objectives.

CMA encourages a regular, on-going open dialogue between supervisory, investigation and enforcement functions so that there is a greater likelihood of issues being addressed early without the need for a formal investigation and enforcement approach. Conversely, having a holistic overview of an authorized entity will also provide greater insight into whether a matter, given all the background knowledge and circumstances known about the authorized entity among the different regulatory areas within the Regulator, is sufficiently serious to merit being referred to investigation and enforcement.

Taking cognizance that publicity of enforcement actions can be an effective way of raising awareness of regulatory standards and promoting deterrence, by demonstrating that there are tangible consequences for those engaging, or contemplating engaging, in misconduct, enforcement determinations (where applicable) shall be published. The scope of details for publication shall depend on the impact of the publication. In some instances, for example on settled cases, the publication will be subject to disclosure restrictions detailed in the settlement agreement between the Authority and the person/ entity that has agreed to settle the enforcement matter.

5 CMA INTERVENTION ON CITED CASES (CYTONN, CHASE, IMPERIAL, NAKUMATT)

As part of its investor protection mandate, the Authority carries out investigations, enforcement, and compliance initiatives. Hon. Duale had also mentioned the following cases which the Authority would like to provide information in relation thereto as follows.

5.1 Imperial Bank Ltd

Imperial Bank Limited (IBL or Bank) decided to support its growth plans by raising funds through a corporate bond programme to support the bank's funding base strategy and thereby increase the loans and advances and government securities portfolio, as well as enhance the bank's capital adequacy ratios in line with international Basel II requirements and CBK Prudential Guidelines. Funds received were also to be used as working capital on an ad hoc basis for the expansion and growth of the business and thereby support the Bank's medium-term strategy.

Having received a no objection from CBK and met all disclosure and regulatory requirements, the Authority approved the bond issuance. However, before the bond was listed, CBK put the bank under receivership. Upon inquiry it was noted that there was potential governance malpractices and financial misreporting

CMA directed KDIC and CBK to refund the bondholders since the money had not been utilised Imperial Bank at the time of receivership. This directive remains unfulfilled to date. CMA also initiated enforcement proceedings against the directors of imperial bank. The enforcement proceedings are currently subject of court proceedings.

We have attached **Annexure 6** report on Imperial Bank Limited forwarded to Departmental Committee on Finance Planning and Trade of the National Assembly in July 2016.

5.2 Chase Bank Kenya Limited

On February 6, 2015, the Authority received an application from Chase Bank Ltd (Chase Bank) for approval of corporate bond (MTN) Kes Ten (10) billion, which was approved on 22nd April 2015. The Application was approved after Chase Bank having met all the regulatory requirements and receipt of a no objection for its primary regulator, CBK.

The purpose of the MTN proceeds as disclosed in clause 8.3 of the published Information Memorandum (IM) were:

- a. Expansion of the branch network;
- b. Strengthening capital base to support growth;
- c. Investment into IT and product development initiatives; and
- d. Supporting onward lending activities

The MTN was to be issued in tranches and in the first tranche Kes. 3 billion was offered with a provision for Kes. 2 billion green shoe option. A total of Kes 4.8 billion was raised.

The investors to the MTN relied on the published Information Memorandum (IM) and trusted Chase Bank to have fully disclosed information about the financial state of the bank. The MTN was listed on the Nairobi Securities Exchange (NSE) on June 22, 2015.

On April 7, 2016, the CBK appointed KDIC as the receiver for CBKL following allegations of CBKL experiencing liquidity difficulties and the stepping aside of two of its directors.

Subsequently, pursuant to Section 11 (3) (cc) (iv) of the Capital Markets Act, the Authority directed NSE to suspend trading activity in the MTN on 8th April 2016.

The Authority has initiated administrative enforcement proceedings against former board members of the bank. The delayed enforcement proceedings resulted from a request by CBK to hold enforcement to allow for restructuring of Chase Bank.

We have attached annexure 6 report on Chase Bank Kenya Limited forwarded to Departmental Committee on Finance Planning and Trade of the National Assembly in July 2016.

5.3 Nakumatt Holdings Ltd

Nakumatt Holdings Ltd (Nakumatt) was a private company and not regulated by the Authority. It operated its supermarket business just like any other supermarket did in the country. In the course of its operations, the company issued privately arranged commercial paper (CP) programmes. The Authority does not regulate privately placed commercial papers hence this was an agreement between the company and those who invested in the CP program.

Annexure 7 is a memorandum of submissions by the Authority to the senate committee on inquiry to the fall of major supermarkets in Kenya.

5.4 CMA's Engagement with Cytonn Group

Prior to 2016, CMA noted that some licensed capital market intermediaries and Cytonn Investments Limited were offering 'a cash management product' that would pool funds from the public for a guaranteed return. The Authority together with Joint Committee of the Financial Sector Regulators deliberated on the matter and concluded that the product would fall within the jurisdiction of the Central Bank of Kenya. As a result, CMA stopped its licensees under its mandate from offering this product vide a **Circular No. 8/2016 (Annexure 5)**. The circular directed all licensed intermediaries to cease and desist from offering and engaging in unregulated activities outside the perimeter of regulated products under the Capital Markets Act. As a result of the said directive, the licensed entities by the Authority ceased offering the cash management product.

5.4.1 Investigation into the affairs of Cytonn

Following the Authority's directive to the market not to offer cash management services, a further investigation was conducted on Cytonn Investments Limited (Cytonn Investments) by the Authority. It was found out that Cytonn, then not licensed by CMA, was still offering these products. The investigations established that the company was collecting funds from the public and carrying out what resembled fund management and Collective Investment Schemes (CIS) through their cash management solutions. The Authority having engaged with the firm, issued a Notice to Show Cause (NTSC) on why the firm was carrying out capital market related business without obtaining a licence. In its response to the NTSC Cytonn objected on legal technicality, however on subsequent engagements, Cytonn intimated its willingness to be licensed to operate in the capital markets under the existing Regulations.

5.4.2 Joint Committee of the Financial Sector Regulators

A joint committee made of technical persons from Capital Markets Authority (CMA), Central Bank of Kenya (CBK), Insurance Regulatory Authority (IRA) and the Retirement Benefits

Authority (RBA) was constituted to discuss the operations of Cytonn. Through the committee discussions, it was agreed that since Cytonn was raising funds from the public and investing in capital market related products, CMA should take lead in the process of enforcing the cease-and-desist directive from CBK.

Following several engagements between CMA and Cytonn on this matter, and to ensure the activities of Cytonn were brought into the regulatory ambit of the Authority, the following was agreed upon;

- i. Application for a Fund Manager licence
- ii. Application for consent and registration of a Collective Investment Scheme
- iii. Application for registration of a Development Real Estate Investment Trust (D REIT)

The aim was to have those clients with appetite for money market instruments and other products regulated by the Authority transition into capital markets regulated products.

5.4.3 Registration of the Cytonn Asset Managers Limited (CAML)

With the Authority's guidance, Cytonn Investments sought a licence through its subsidiary, *Cytonn Asset Managers Limited (CAML)*. Cytonn Asset Managers Limited applied for licensing with an aim to offer five key products namely; Unit Trust Funds, Pension Fund Portfolio Management, Real Estate Finance, Real Estate Investments and Private Equity.

Like any other licence application, several engagements were held between CAML and the Authority to have the entity come into full compliance with the requirements of a fund manager. The major issues that were discussed with the firm were as follows:

- (i) An update on the various civil and criminal court cases and any pending complaints before professional associations touching on some of the shareholders of Cytonn Investments Management Limited and Cytonn Asset Managers Limited
- (ii) Details of the proposed directors and key personnel of the applicant.

It is worth noting that the Authority undertakes fitness and probity checks on all directors and key personnel to ascertain their fitness to participate in the capital markets. As such, and due to the pending cases for the key principals of Cytonn Investments before the court and other professional bodies, the key personnel to operate CAML were different from the key principals of Cytonn Investments i.e Edwin Dande, Patricia Wanjama and Elizabeth Nkukuu.

After these issues were considered and addressed, Cytonn Asset Managers Limited (Cytonn Asset Managers) was finally granted a fund manager license on March 22, 2018.

5.4.4 Acquisition of Seriani Asset Managers Limited

Upon licensing of CAML as a fund manager, it acquired the entire shareholding of Seriani

Asset Managers Limited (Seriani), a licensed fund manager vide a Share Purchase Agreement dated May 3, 2018. Seriani operated the Seriani Money Market Fund, Seriani Balanced Fund and the Seriani Equity Fund. The Authority approved the acquisition vide a letter dated June 26, 2018 and the names of the funds changed to Cytonn Money Market Fund, Cytonn Equity Fund and Cytonn Balanced Fund.

Following the above approval, Cytonn committed to stop onboarding the 1 month clients within 3 months from the date thereof. This aimed at transferring such clients to the Money Market Fund acquired from Seriani.

Subsequently and through several engagements with Cytonn, the Authority has been able to facilitate and register several funds under Cytonn Asset Managers Ltd (CAML), the licensed Fund Manager.

The Authority facilitated and registered the following funds under CAML;

- i. Cytonn Africa Financial Services Fund
- ii. Cytonn High Yield Fund
- iii. Cytonn Money Market USD Fund

5.4.5 Unregulated Business

Via various correspondences, specifically the letter dated June 6, 2018, the Authority directed Cytonn Investments to stop offering the cash management solution effective June 12, 2018. However, Cytonn responded (via letter dated June 11, 2018) and indicated its difficulties in stopping the cash management solution product. The Authority had also directed Cytonn Investments to change the name of the cash management solution. Following discussions and engagements with Cytonn, they later changed the name from Cash Management to Cytonn High Yield Solutions (CHYS).

In the same letter, the Authority directed the close out of the product progressively after Cytonn demonstrated to the Authority the repercussions of an abrupt closure of the product. Specifically, Cytonn indicated that if they stopped onboarding new clients:

- a) They would not be able to complete the presold units that are still under development - that implies defaulting on the clients.
- b) They would not be able to fund the unsold units, for which the contractor already has a contract, and they need to be completed since they are intermixed with the presold units.
- c) If the development stalls, buyers would immediately stop paying for their presold units while this is the money that they use to service debt obligations and development expenses.
- d) If buyers stop paying the presold units and stop buying new units because of a stalled

project, they would not be able to service interest on existing liabilities or meet redemptions.

- e) They would be in default of all the main contractor and sub-contractor contracts.
- f) The existing investors would panic, it's akin to being told that your bank is no longer taking new money, existing bank depositors would quickly react to find out what are the issues.
- g) They would have to immediately lay off all laborer's at the various projects.
- h) The scenario above would be duplicated in all their projects. This called for the orderly fashion in which the matter of closure of Cytonn High Yield Solutions needed to be resolved so as to continue delivery to the various stake holders.

Cytonn also proposed to close the entire Cytonn High Yield Solution by directing investors to the then proposed Cytonn High Yield Fund (subject to approval by the Authority).

5.4.6 Registration of the Cytonn High Yield Fund (CHYF)

Via letter dated July 16, 2018, Cytonn Asset Managers Limited submitted an application for the consent to register the Cytonn High Yield Fund. The Collective Investment Scheme regulations provide for a two-tier process for approval of a unit trust. The first stage culminates with the Authority granting consent to register a fund. Once the consent is granted, the applicant then proceeds to submit the final duly executed documents for registration of the funds within 3 months.

Cytonn Asset Managers applied to the Authority for the registration of the Cytonn High Yield Fund among two other funds namely; the Cytonn Africa Financial Services Fund and Cytonn Money Market Fund. Through their counsel, Cytonn submitted the documents for registration via letter dated June 20, 2019. . Section 78 of 'The Capital Markets (Collective Investment Schemes) Regulations, 2001' provides various investment limits that all registered collective investment schemes should adhere to.

However, the Authority received numerous requests from the market to make exemptions in the strict investment limits envisage by the 2001 framework due to passage of time.

Consequently, and as provided for under Section 12A of 'The Capital Markets Act', the Authority developed a Framework for "Special Collective Investment Schemes" to facilitate schemes to have an increased exposure in one asset class not currently provided for under the said Regulation 78¹.

¹ The Authority is at advanced stage of review of the current Collective Investments Schemes framework to make provisions for emerging practices in the market

Once the application for consent was submitted, the Authority immediately commenced the review and the outstanding concerns/issues to the applicant accordingly. The application was then taken through the approval procedure and finally granted consent via a letter dated February 12, 2019. In the same letter, the Authority also approved the Cytonn Dollar Money Market Fund as well as the Cytonn Africa Financial Services Fund. The consent was granted with the following conditions:

- a) All advertisements in whatever medium to clearly indicate which entity within the Cytonn Group and/or its affiliates is issuing the announcement. If the announcement relates to any of the regulated activities, it should be boldly indicated that the said activities are regulated by the Authority. In contrast, if the announcement relates to any unregulated activities, the announcement should indicate that the said activities are not regulated by the Authority. All announcements relating to regulated activities should be approved by the Authority prior to publication;
- b) Proper segregation and Chinese Walls between all the entities and Funds under the Cytonn Group and its affiliates;
- c) Any other conditions as communicated by the Authority from time to time.

Further, in relation to Cytonn High Yield Fund, the consent to register the Fund was granted subject to:

1. The Fund being strictly for sophisticated investors and marketing of the Fund should be targeted to such investors;
2. The Road Map of transitioning the Cytonn High Yield Solution to Cytonn High Yield Fund being adhered to as per the terms stated in the Road Map. In any case, any offering of the Cytonn High Yield Solutions should cease within 3 months from the date of registration of the Cytonn High Yield Fund;
3. Cytonn Asset Managers Limited availing to the Authority prior to registration of the Fund a risk disclosure document to be given to any investor prior to any investments in the Fund for execution. This document was submitted to the Authority vide letter dated March 30, 2019;
4. Cytonn Asset Managers providing details of how it intends to compensate all investors who choose not to transition to the Cytonn High Yield Fund.

CMA continuously engaged Cytonn Investment Management Limited and Cytonn Asset Managers on the conversion of the CHYS to the regulated CHYF and a Road Map for the conversion was developed. The Road Map stipulated how the clients in the CHYS would convert into the regulated CHYF and the eventual wind up of the CHYS. Cytonn via several letters committed to convert the CHYS product to the Cytonn High Yield Fund once registered as follows;

1. Within 3 months from when the approval for the acquisition of the Serian Money Market Fund they would stop onboarding the one-month CHYS clients and transfer them to the now acquired Money Market Fund;
2. Within 3 months of operationalization of the registered Cytonn High Yield Fund- cease offering the 2-6 months Cytonn High yield Solutions product. The 3 months transition period was needed to obtain investor buy in as this would establish a track record in terms of performance;
3. Within 6 months of operation of the CHYF, stop offering the 6-9 months Cytonn High Yield Solutions product;
4. Within 12 months of operation of the CHYF, stop offering the 12 months Cytonn High Yield Solutions product; and
5. The investment process of CHYS in CHYF was to be as follows:
 - a) A transfer Agreement would be drawn between CHYF and CHYS, which Agreement would transfer the entirety of CHYS assets to CHYF.
 - b) Deeds of Novation to be prepared in respect of all financing agreements between CHYS and special purpose vehicles, effectively awarding CHYF all benefits CHYS under the financing agreements.
 - c) Loan Note certificates in favor of CHYF was to be issued as evidence of the assets transferred to CHYF to be remitted to the CHYF Custodian.
 - d) Charges were to be drawn in favor of CHYF with Units in the real estate entities and shares in the private equity entities as collateral as case may be.
 - e) CHYS would thereafter be given units in CHYF equal to the value of the assets transferred upon the execution and delivery of the aforementioned documents.
 - f) CHYS would address payment of matured investments by issuing withdrawal instructions to CHYF for an amount equivalent to that due to the CHYS Client, if withdrawal instructions shall at no time be more than value of units issued in favor CHYS and
 - g) CHYS was to rely on Cytonn Investments Management Limited (Principal partner) to cover any shortfalls in the amount due, in the event that amounts due to clients is more than the return on the investments of CHYS in CHYF.

To ensure and facilitate a smooth transition, the Authority required Cytonn Investments Management Limited (CIML) to submit monthly updates before the 5th of every month on the progress made towards adhering to the Road Map.

CIML failed to adhere to the said conversion roadmap prompting CMA vide a letter dated December 27, 2019 to direct that onboarding of clients, rolling over and offering of any 2-6 months CHYS products to cease with immediate effect by January 31, 2020 since CHYF was already operational Cytonn threatened to sue the Authority and issued a demand letter

demanding withdrawal of the Authority's directive. Following several meetings with the Cytonn team to deliberate on the repercussions of the directive, the Authority granted a three-month extension via a letter dated February 4, 2020.

5.4.7 Application for registration of a D REIT and licensing of CAML as a REIT Manager

During the extension period, CMA continued to engage with CIML and it was deemed fit to transition the CHYS to a Development Real Estate Investment Trust (D-REIT) due to its generic brick and mortar nature of the underlying asset (illiquid investments as opposed to liquid nature of investments in CIS funds).

Regulation 55 of the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013 (REIT Regulations) requires every authorised REIT to appoint a duly licensed REIT Manager to manage a REIT. As a consequence, CAML vide a letter dated August 9, 2018 had applied to be licensed as a REIT Manager. The application was taken through the review process. Vide letter dated March 22, 2018 the Authority granted a licence to Cytonn Asset Managers Limited to operate as a REIT Manager.

Once the licence to operate as a REIT Manager was granted, Cytonn Investments (the proposed Promoter of the REIT) through their transaction adviser, SIB Investment Bank submitted an application for authorization of the Cytonn Investments Plc D REIT vide letter dated October 3, 2019. The Authority commenced the review process of the application just like any other application with outstanding issues being communicated to the applicant through the transaction adviser. Among the key outstanding issues that were communicated by the Authority included the following;

- i. Hiring of qualified staff under the Cytonn REIT Manager to manage the REIT. Specifically, the Authority noted that the REIT manager did not have qualified staff to manage the REIT. This was communicated to the applicant.
- ii. Hiring a qualified REIT Trustee who is dully licensed as such by the Authority as per Regulation 43 of the REIT Regulations. Housing Finance Company (K) Limited (HF) was the proposed REIT Trustee. However, HF subsequently indicated their unwillingness to continue offering such services to Cytonn.

Several correspondences and meetings were held between the Authority and the Cytonn together with their transaction adviser to have them come to compliance with the REIT Regulations. Specifically, vide letter dated January 17, 2020 to Cytonn Investments Limited and copied to the Authority, HF terminated its contract to offer REIT trustee services to the proposed Cytonn D-REIT. After several reminders and meetings and more importantly the lack of appointment of a licensed entity to undertake the role of a REIT Trustee, the application was finally formally closed by the Authority. This decision was communicated to the applicant/transactions adviser vide letter dated November 5, 2020.

Following the failure by CIML to take advantage of the grace period for the conversion of CHYS to CHYF, the Authority forwarded the matter to Capital Market Fraud Investigations Unit (CMFIU – which is under the Directorate of Criminal Investigations) to investigate the action of CIML of obtaining money through false pretense and raising money from the public without proper licensing contrary to the provisions of the 'Capital Market (Securities) (Public offers, Listings and Disclosure) Regulations, 2002' and specifically regulations 20 and 21 and Part IV of the Capital Markets Act.

The Authority does not have sight of all the businesses undertaken by Cytonn Investment Management Limited, its associates and related persons. The investigations being undertaken by the Authority and the CMFIU with respect regulatory and criminal breaches have been temporarily halted by the *ex parte* Court Order obtained by Mr. Edwin Dande and two others in Petition E007 of 2021 of June 29th 2021. See attached **Annexure 10**

5.5 COURT CASES BY EDWIN DANDE Vs THE CAPITAL MARKETS AUTHORITY

5.5.1 HCCC PETITION NO. E007 OF 2021

EDWIN H. DANDE, PATRICIA N. WANJAMA AND ELIZABETH NKUKUU VS CAPITAL MARKETS AUTHORITY AND DIRECTOR OF CRIMINAL INVESTIGATIONS AND INTERESTED PARTIES (CYTONN INVESTMENT MANAGEMENT (PLC), CYTONN HIGH YIELD SOLUTIONS (CHYS) AND CYTONN REAL ESTATE PROJECT NOTES LLP)

A. Summary of Facts of the Case

1. The founders and Board members of Cytonn Investment Management (PLC) Edwin H. Dande, Patricia N. Wanjama and Elizabeth Nkukuu filed and served the petition on 21st June, 2021. The Petition is a culmination of the recent and ongoing events surrounding the concerns of alleged fraud by Cytonn's investment schemes. The Petitioners pray for several reliefs including:
 - a) A declaration be issued that the purported illegal, unlawful and malicious directive issued by the Authority through a letter dated 13th November 2020 purporting to close down the consideration of proposed conversion of CHYS into CIMP-REIT and advising that CHYS has been forwarded to the CMFIU unit under the DCI constitutes a Violation of the Petitioners' and other stakeholders' rights under Articles 27, 28, 40, 47 and 50 of the Constitution.
 - b) A declaration that the summoning for inquiry and the intention to charge the Petitioners and any other persons, assigns and/or agents of Cytonn Group of Companies with regards to the products CHYS and Cytonn Real Estate Project Notes LLP is a violation of Article 47 and 50 of the Constitution.
 - c) A declaration that the Petitioners be compensated a total sum of Kes. 10,000,000 or any other amount that the Court deems sufficient by the Authority for the violation

of the Petitioners' rights and fundamental freedoms under Article 27, 28, 40, 47 and 50 of the Constitution.

- d) A declaration that the activities of CHYS in fundraising through an identifiable restricted market constitutes a "private offer" under Section 30A of the Capital Markets Act and Regulation 21 of the Capital Markets (Securities, Public Offers, Listing and Disclosures) Regulations, 2002.
 - e) An order of permanent injunction restraining the DCI and any other agent or entity acting under its instructions from purporting to arrest, interrogate and intimidate through prosecution, the Petitioner and any other employee or director of Cytonn Group of Companies on any issue regarding the legality of CHYS and Cytonn Project Notes.
2. The Petitioners simultaneously filed an application for interim orders seeking orders including:
- a) Conservatory Orders be issued prohibiting DCI from summoning, investigating, questioning, intimidating, harassing and/or contacting the Applicants/Petitioners in relations to the activities of Cytonn High Yield Solutions and Cytonn Real Estate Project Notes LLP pending hearing and determination of this matter.
 - b) Temporary injunction restraining CMA and DCI from considering or preferring any charges and arraignment of the Applicants/Petitioners in relation to the activities of Cytonn High Yield Solutions and Cytonn Real Estate Projects Notes LLP pending the hearing and determination of the Application/Petition.
 - c) That the Petition and the proceedings be heard in camera to protect the integrity of the Interested Parties from public spite and ridicule.
3. The Petitioners' contentions are premised on the following grounds:
- a) That Cytonn High Yield Solutions is a Limited Liability Partnership with governance structure of its own and partners with its principal, the Cytonn Investment Management (PLC) which is the main group company of Cytonn Group of Companies.
 - b) That Cytonn High Yield Solutions fundraises through identifiable restricted markets under Section 30A of the Capital Markets Act and as such, it is a Private Offer under Regulation 21v of the Capital markets (Securities, Public Offers, Listing and Disclosures) Regulations, 2002. This therefore excludes it from the regulation ambit of the Authority.
 - c) That in terms of fundraising and investments, Cytonn Group of Companies is affiliated with Cytonn Assets Managers (CAM) which is categorized under Collective Investment Schemes and is licensed by the Authority and fundraises from the public markets (retailing markets) and Cytonn Investment Management which fundraises from private market and therefore unregulated by the Authority.
 - d) That the dispute in question revolves around the notion by the Authority that Cytonn High Yield Solutions is a collective Investment Scheme and therefore falling under its regulations as such under the Capital Markets (Collective Investment scheme) Regulations 2001.

- e) That the current dispute can be traced to early 2015. The Authority wrote a letter to CIMP, which was still a private liability company, to file an Information Notice under section 30A of the Capital Markets Act, (the Act) concerning some media report published by Business Daily.
- f) That the Authority intentionally or not is a discriminative Agency that favours banking products as against Capital markets products. It has consistently discriminated against Cytonn's products (CMMF, CHYF and now CHYS).
- g) That the continued interrogations/inquiries and the intention to prosecute the Applicants with regards to CHYS and Cytonn Real Estate Project Notes LLP is founded on malice, illegalities and on an improper factual and legal foundation.
- h) That the Authority's actions amount to abuse of office and power and is a manifest exercise of unfair administrative action that is detrimental to the Applicants/Petitioners, the interested parties and the business community at large.

B. The Court Orders issued on 29th June 2021- *Ex parte*

- 1. The Petitioners appeared in Court on 29th June 2021.
- 2. The orders were granted ex-parte since the Notice for the mention of 29th June 2021 was not served on the CMA.
- 3. The Authority was served with a court order on 30th June, 2021 at 5.15 pm through email to the Chief Executive.
- 4. The orders issued in the interim do not adversely affect the mandate of the Authority as anticipated under the Capital Markets Act, Chapter 485A of the Laws of Kenya.

The Hon. Lady Justice Wilfrida Okwany ordered as follows;

- 1. *"THAT conservatory orders be and is hereby issued, Prohibiting the 2nd Respondent, its employees, servants, or agents from summoning, investigating, questioning, intimidating, harassing and or in any way whatsoever contacting the applicants/Petitioners or nay other employee or Agent of the Cytonn Group of companies in relation to the Activities of Cytonn High Yield Solutions and Cytonn Reals Estate Project Notes LLP pending the interparty hearing of this Application."*
- 2. *"THAT an order of temporary injunction be and is hereby issued restraining the Respondents in any manner whatsoever from considering and /or preferring any charges and arraignment of the Applicants/Petitioners or any other employee or Agent of Cytonn Group of Companies in relation to the activities of Cytonn High Yield Solutions and Cytonn Real Estate Project Notes LLP pending the inter parties hearing of this Application."*
- 3. *"THAT the petition and the Proceedings herein be heard on camera to protect the integrity of the Interested Parties from public spite and ridicule."*

The matter remains in court.

5.5.2 NAIROBI HCCC PETITION NO. E283 OF 2020

EDWIN H. DANDE VS CAPITAL MARKETS AUTHORITY & 2 OTHERS

- a) An order of Certiorari be and is hereby issued, to bring the High Court and quash the Respondents' directive contained in the letter dated 3rd June, 2020 limiting the Interested Parties to invest only up to a maximum of 10% of funds in their portfolio in Cytonn related projects;
- b) An order of prohibition be and is hereby issued against the Respondent from bringing the 2nd Interested Party under the ambits of Regulation 16 (2) of the Capital Markets (Collective Investment Schemes) Regulations, 2001;
- c) A declaration be and is hereby issued that the purported illegal, unlawful and malicious directive issued by the Respondent through a letter dated 3rd June 2020 directing that the 1st Interested Party do comply with the 10% limit in line with Regulation 16(2) constitutes a violation of the Petitioner's and the Interested Parties' rights under Articles 27, 28, 40, 47 and 50 of the Constitution;
- d) A declaration that the Petitioner be compensated a total sum of fifty million Kenya Shillings (Kes. 50,000,000.00) or any other amount that the Court deems sufficient and/or appropriate by the Respondent for the violation of the Petitioner's rights and fundamental freedoms under Articles 27, 28, 40, 47 and 50;
- e) A declaration that the provisions of Regulation 16 (2) of the Capital Markets (Collective Investment Schemes) Regulations, 2001 does not apply to Special Collective Investments Schemes in which a Fund manager, Trustee and or a custodian is not related to each other by either through holding company or a subsidiary;
- f) An order of permanent injunction restraining the Respondents and any other agent or entity acting under its instructions from purporting to classify the 2nd Interested Party as falling under Regulation 16(2) of the Capital Markets (Collective Investment Schemes) Regulations 2001; and
- g) Costs of the Petition.

On September 21, 2020 the court issued interim orders in terms of prayers 2 and 4 of the application *to wit*;

"This Honourable Court be pleased and do hereby suspend the purported malicious directive dated 3rd June, 2020 and the subsequent email dated Mon 15th June, 2020 limiting the 1st Interested Party, to invest not more than 10% of the funds in its related projects and subsequent freezing any investment of the funds held in SBM awaiting further directive from the Respondent pending the hearing and determination of this application;

1. *A conservatory order do issue staying the Respondent's decision to limit the investment of the 2nd Interested Party's portfolio funds to 10% in Cytonn related projects and its further directive through the Trustee not to allow the 1st Interested Party to invest any*

further funds held at SBM Bank and in Cytonn affiliated notes pending the hearing and determination of this application;”

The matter is still pending in court.

5.5.3 NAIROBI HCCC PETITION NO. E173 OF 2019

EDWIN DANDE VS CAPITAL MARKETS AUTHORITY & 2 OTHERS

- a) A declaration be issued that the purported malicious directive issued by the Respondent pursuant to section 11(3) (cc) of the Capital Markets Act Cap. 485 A constitutes a violation of the Petitioner’s and other stakeholders rights under Articles 27, 28, 40, 47 and 50 of the Constitution;
- b) An interpretation be made on Regulation 29(1) of the Capital Markets (Collective Investments Schemes) Regulation, 2001;
- c) A declaration be made that Regulation 26 (1) of the Capital Markets (Collective Investments Scheme) Regulations 2001 is unconstitutional.

In the Ruling of Hon. Lady Justice Grace L. Nzioka on the 14th October, 2020 ruled that;

“Further, it is noteworthy that since the application came to court it has been eight (8) months and if there was effort, to recruit a new Trustee, it should have been done. However, in the interest of Justice, I order that within thirty (30) days of the date of this order the applicant shall take all necessary steps to facilitate the recruitment of a new Trustee. In the meantime, the Respondent is at liberty to issue a fresh thirty (30) day notice properly anchored in law.”

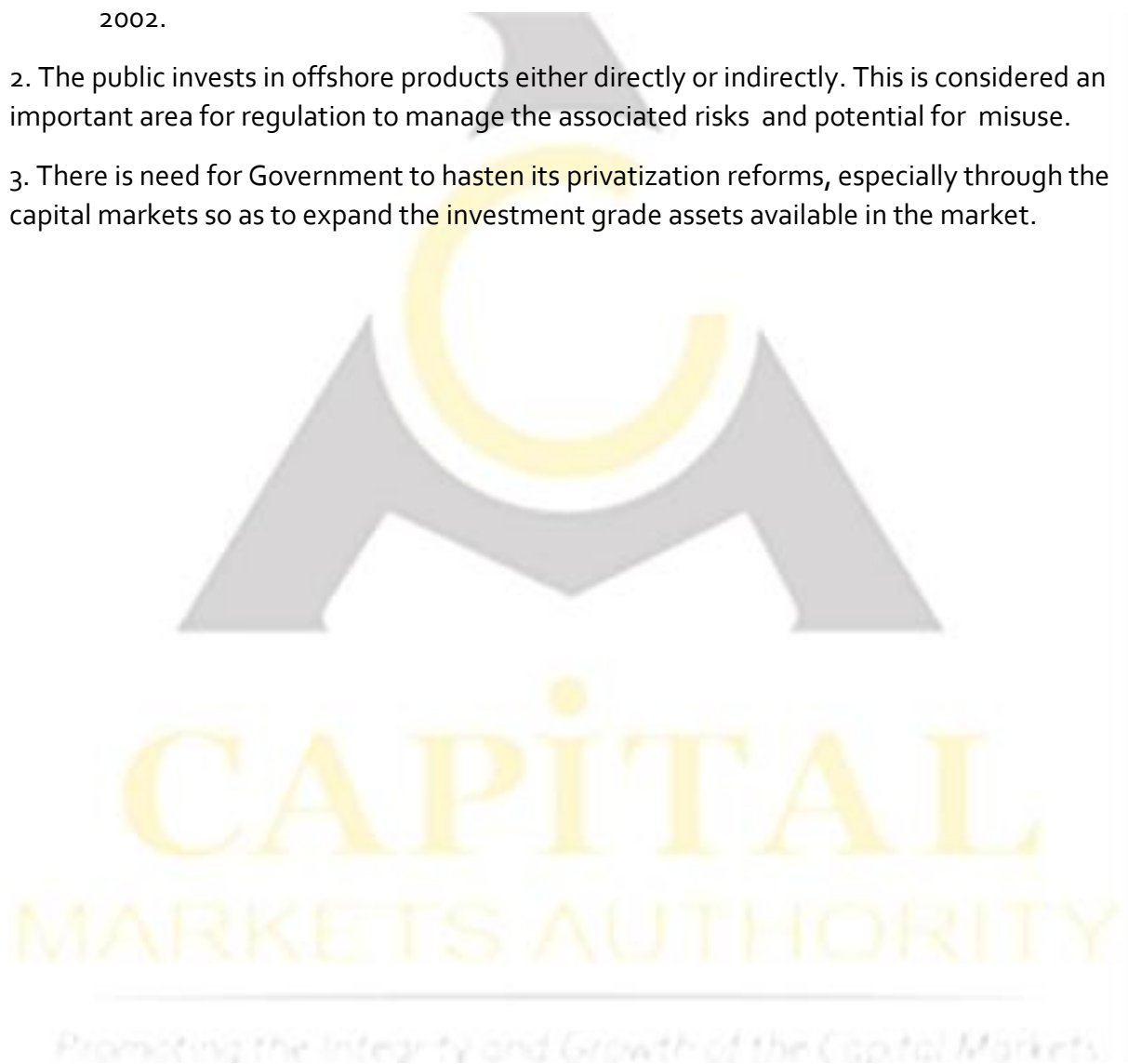
“At the expiry of the period set, the respondent should move appropriately and take the relevant action according to the law. In that regard, save for the orders granted above, I decline to grant any other orders sought as the 2nd interested Party cannot continue to operate without a trustee. The cost of the application will abide the outcome of the Petition.”

The Court did not make any orders or issue directions on the hearing of the main petition.

6 PROPOSED REFORMS

Priority areas for regulatory reforms include the following:

1. An overhaul of the following pieces of legislations;
 - (i) The Capital Markets Act through repeal and replacement with the proposed Securities Investments and Derivatives Bill.
 - (ii) The Capital Markets (Collective Investment Schemes) Regulations, 2001.
 - (iii) The Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.
2. The public invests in offshore products either directly or indirectly. This is considered an important area for regulation to manage the associated risks and potential for misuse.
3. There is need for Government to hasten its privatization reforms, especially through the capital markets so as to expand the investment grade assets available in the market.



7 ANNEXURES



7.1 ANNEXURE 1 - ADMINISTRATIVE MEASURES TAKEN BY THE CMA IN HANDLING UNLICENSED ENTITIES / ONLINE FOREX BROKERS AND DEALERS FROM 2015 TO 2020

	Entity Involved	CM Offense committed / Issue	Period	CMA Action
1	Cytonn High Yield Solutions (CHYS) and Cytonn Project Notes (CPNs)	<p>Cytonn Investments offered CHYS and CPNs (LLP investment vehicles) – in form of a private arrangement with investors who were deemed to be sophisticated and joined the partnerships as private investors not under the regulatory purview of CMA.</p> <ul style="list-style-type: none"> In June 2019 the Authority received a complaint from Ms. Anne Kimathi against Cytonn High Yield Solutions for extending maturity of her KES 5.05M. CMA forwarded the complaint to Cytonn and it was resolved. In March 2020 the Authority received a complaint from Jane Boke Nyansiri who had her KES 1.56M delayed redemption with CHYS. CMA forwarded the issue to Cytonn Investments who responded in a letter dated 12th March stating that the issue was resolved. The Authority called the complainant who confirmed payment. The Authority received several additional complaints which were referred to Cytonn for resolution. The total value of complaints received at the Authority as at the end of June 2021 was KES 350 million. 	2020-2021	<ul style="list-style-type: none"> CMA issued a cautionary statement on 20th April 2020 informing the public that CHYS and CPNs are not licensed entities and that only Cytonn Assets Management Limited (and funds under it) are the only licensed Cytonn entities. CMA further urged investors to undertake due diligence and check the license status of any entity from the CMA website CMA forwarded several complaints on CHYS to Cytonn for resolution in different official letters (dated 21st September, 12th October, 3rd November and 27th November). Further CMA held a meeting on 6th October and had several email and telephone communication to have Cytonn resolve the complaints received by CMA. CMA issued an investor alert on 21st June 2021 to reiterate and refresh the one cautionary statement issued on 20th April 2020. The Authority in collaboration with the CMFIU/CID initiated criminal investigations on the Directors and senior management at Cytonn Investment management. The Director of Public Prosecution issued instructions on prosecution of high-end persons. The court has barred/stopped prosecution of the Cytonn team. An interparty hearing is scheduled for September 2021.

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2	PetronPay	<ul style="list-style-type: none"> The company was running a Ponzi Scheme collecting money from members of the public promising attractive returns. The company was not licensed to sell or promote the selling of shares/ securities by the Authority contrary to the public offer regulations. 	2021	<ul style="list-style-type: none"> The CMA in collaboration with the CMFIU/CID are investigating the company and its director Ms. Mary Wachira for criminal investigations. CMA issued Cautionary statement on the company to the investing public.
3	Iforex time	<ul style="list-style-type: none"> Operating forex broker without a license from the Authority contrary to the online forex brokers regulations and the Capital markets Authority Act. Securities fraud and theft. Complaints received from members of the public. 	2021	<ul style="list-style-type: none"> The CMFIU are on the pursuit of the four culprits. <ul style="list-style-type: none"> i. Hussein Hudow ii. Abdi Muhumed iii. Abdi Hassan iv. Hassan Juma CMA issued a Cautionary statement against the company
4	Grace Mumbi Maina and Anthony Muchiri	<ul style="list-style-type: none"> Operating an illegal forex trading investment firm, known as Trends Forex Traders, without a license from the Authority contrary to Online Forex Regulations and the Capital markets Authority Act. The Authority established that they do not work under any registered company but as money managers for interested members of the public. 	October 2020	<ul style="list-style-type: none"> The Authority in conjunction with the CMFIU/CID initiated criminal investigations on the company.
5	AutoTrade Markets	<ul style="list-style-type: none"> Operating an illegal forex trading investment business without a license from the Authority contrary to Online Forex Regulations and the Capital markets Authority Act. Complaints received from the public. 	May 2020	<ul style="list-style-type: none"> The Authority in conjunction with the CMFIU/CID initiated criminal investigations on the company.

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6	Charles Kibue Mwaura	<ul style="list-style-type: none"> Operating an illegal forex trading investment business without a license from the Authority contrary to Online Forex Regulations and the Capital markets Authority Act. . The Authority established that Mr. Kibue operates from Nakuru where he collects funds of between KES 5,000 and KES 20,000 from clients and promises them a daily return of 10% from the day the money is invested. 	April 2020	<ul style="list-style-type: none"> The Authority in conjunction with the CMFIU/CID initiated criminal investigations on the company.
7	Everjoy Forex Institute (Joyce Mbugua)	<ul style="list-style-type: none"> Fraudster purporting to be a forex money manager. Joyce Mbugua and another man known as Fortune operated Everjoy promising a return of 20% to investors. It was located at 6th floor, Room 21 Kimathi House, Kimathi Street. 	April 2020	<ul style="list-style-type: none"> The Authority in conjunction with the CMFIU/CID initiated criminal investigations on the company.
8	County Capital	<ul style="list-style-type: none"> Operating Fund Management services without a license from the Authority contrary to the Collective Investments Regulations and the Capital markets Authority Act. The Authority received a complaint from Ms. Esther Njambi Chege who has invested KES 4,000,000 through the company and could not get her money back. 	March 2020	<ul style="list-style-type: none"> The Authority had the company pay back the Ms. Njambi her KES 4,000,000 investment. The Authority in conjunction with the CMFIU/CID initiated criminal investigations on the company.



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9	<ul style="list-style-type: none"> i. Forex Trading Company ii. Thika Forex Trading Lounge iii. Forex Trading Consultancy iv. Templer FX v. Paris FX vi. GFX vii. FX Success viii. Hot Forex 	<ul style="list-style-type: none"> • Online Forex Trading Broker and Money Manager without a valid license from the CMA in line with Section 23(1) of the Capital Markets Act. • Business model resembled traits of a pyramid or Ponzi scheme, where investors were promised high returns and encouraged to recruit other investors for a commission. • CMA received complaints and intelligence from affected investors 	September 2019	<ul style="list-style-type: none"> • The Authority in collaboration with CMFIU/CID initiated criminal investigations on the operations of the company. • A raid was conducted on his business premises. • The company directors were arrested and prosecuted in court. • The Authority issued a cautionary statement to the investing public against the company and encouraged members of the public to avoid dealing with unlicensed and unregulated financial entities since they risk being defrauded or losing their money. • Initiated discussions with Communications Authority (CA) • Engagements with the National Industrial Training Institute NITA to streamline entities offering training services and those masquerading as trainers yet are trading for investors without a legal status.
10	Women Investing in Entrepreneurship (WIIE)	<ul style="list-style-type: none"> • Raising Capital and Issuing shares to the public (IPO) without a licence or approval from CMA contrary to the public offer regulations 	September 2019	<ul style="list-style-type: none"> • The Authority in collaboration with other law enforcement agencies has frozen the company's bank accounts pending further inquiries. • The Authority issued a Cautionary statement against WIE and urged members of the public to exercise caution before participating in any public offer lacking regulatory sanction. • Matter was reported to the CID (CMFIU) and have instituted criminal investigations on the company operations.

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11	Interweb Global Fortune (Manasseh Kuria Karanja)	<ul style="list-style-type: none"> Interweb Global Fortune operated as an Online Forex Trading Broker and Money Manager without a valid license from the CMA in line with Section 23(1) of the Capital Markets Act. Interweb Global Fortune's business model resembled traits of a pyramid or Ponzi scheme, where investors were promised high returns and encouraged to recruit other investors for a commission CMA received complaints from affected investors who lost value. 	September 2019	<ul style="list-style-type: none"> The Authority in collaboration with CMFIU/CID initiated criminal investigations on the operations of the company. A raid was conducted on his business premises. The company directors were arrested and prosecuted in court. The Authority issued a cautionary statement to the investing public against the company and encouraged members of the public to avoid dealing with unlicensed and unregulated financial entities since they risk being defrauded or losing their money.
12	Wiseman Talent Ventures (Kenicoin)	<ul style="list-style-type: none"> The company made an initial coin (ICO) of crypto currencies and invited members of the public to subscribe to the initial coin offering. The company promised a return of ten (10) percent per month. 	January 2019	<ul style="list-style-type: none"> CMA issued a cautionary statement to the investing public. Company was notified of the Authority investigations on its operations by way of a letter. The directors went to court to counter CMA.
13	Winnas Sacco Ltd	<ul style="list-style-type: none"> Offer of shares to the public without Authority/ Approval from the Authority Promoting a Real Estate Investment Trust 	2018	<ul style="list-style-type: none"> At the Authority's intervention the sacco which is also regulated by SASRA was guided to restrict advertisements and promotions of shares to its members and not everyone. Company regularised operations and enforcement action was stayed.
14	Choice Micro finance	<ul style="list-style-type: none"> In December, 2016, 'Choice Choice Microfinance Bank was in drive to raise Kes 60 million for expansion'. It was reported the company was raising the funds from the public. 	2016	<ul style="list-style-type: none"> The Micro finance falls under the CBK and had received approval from CBK to raise funds. The Micro finance was guided to raise funds from the public they should get an approval from the Authority. From the guidance given by the Authority the microfinance changed strategy top raising funds from its members. Matter was resolved.

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15	Cembe Millers	<ul style="list-style-type: none"> The company made a public offer of securities (shares) without approval from the Authority contrary to the public offer regulations 	February 2015	<ul style="list-style-type: none"> CMA issued an investor alert/cautionary statement to the investing public. CMA further advised investors to confirm with the Authority any public offers for shares by entities before participating to avoid loss of funds and unnecessary financial exposure. Cease and desist issued to the company for the unauthorised IPO
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7.2 ANNEXURE 2 - CRIMINAL ACTION TAKEN BY THE CMFIU IN HANDLING UNLICENSED ENTITIES / ONLINE FOREX BROKERS AND DEALERS FROM 2015 TO 2020

S/NO	CMFIU NO. NO/CR/CF.NOs	COMPLAINANT	COMPANY INVOLVED OR LISTED COMPANY	CHARGE & SECTION OF THE LAW	SUSPECT/ACCUSED	POSITION	REMARKS
1.	CR. NO.141/367/19 CF 1676/19	Capital Markets Authority & 189 Others	Interweb Global Fortune Limited	Carrying Out Business As An Online Forex Broker W/O A Licence C/Sec23[1]As Read With Sec 34[A]Of The Cma Act Cap 485a Lok	Manases Kuria Karanja	Pending Before Court	HG DATE 26/27 & 28 /10/2021
2.	CR.NO.011/53/19 CF 1787/19	Capital Markets Authority	Hot Forex Limited	Carrying Out Business As An Online Forex Broker W/O A License C/Sec23[1]As Read With Sec 34[A]Of The Cma Act	1.Fortune Orianwo 2.Joshua Gitau (First Accused Was Granted Bail By Court And Later Absconded Hence At Large)	Pending Before Court	HG DATE 6/8/2021
3.	CR.NO.145/7/2021 CF. NO. 209/21	Cma & Eight Others	Mission Academy/Mission Pro Traders	Carrying Out Business As An Online Forex Broker W/O A License C/Sec23[1]As Read With Sec 34[A]Of The Cma Act	Samwel Wageroka Ngángá	Pending Before Court	HG DATE 30/9/2021
4.	CMFIU NO.5/2020	Cma Through Loise Waithera Kabucho	VIP Portal Markets		Alfred Mungai	Pending Under Investigations	

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5.	CMFIU NO.23/19 &13/2020 CR. NO. 111/138/2020 CF.NO. 367/2020	Cma & 1. James Hesbon Segoh 2.Stanley Mwiti	1.Forex Consultancy Limited 2.Exness 3.Templer Fx 4.Traders Way	Carrying out business as an Online Forex Broker W/O A License C/Sec23[1]As Read With Sec 34[A]Of The Cma Act	1.Emanuel Mulinge Maundu 2.Isaiah Odhiambo Ouma	Pending Before Court	HG DATE 28/07/2021
6.	CMFIU NO.22/2020	Paul Nyaga Ndungú & 2 Others	Exnestic Investment Limited		Simon & James	Pending Under Investigations	
7.	CMFIU NO.25/2020	Grace Wanjiru Ndungu	Invest That Company			Pending Under Investigations	
8.	CMFIU NO.13/15/2021	1.Mohammed Yasin Mohammed 2.Hussein Hodow 3.Abdi Mohamed Hassan 4.Hasan Juma	Iforex Time Limited	Carrying Out Business As An Online Trader W/O A License C/Sec 23[1] As Read With Sec 34[A][1] Cap 485 L.O.K	Abdulrahman Mohammed	Pending Under Investigations	
9.	CMFIU NO. 20/2021	Flora Amolo Okelo	Leosher Africa Limited & Fbs Securities Ltd		Mr. Prince Leshage	Pending Under Investigations	

10.	CMFIU NO. 24/2020 CR.NO. CF.NO.	William Outa Ogola	Exness Global Limited		Kelvin Toyo Odhiambo	Pending Before Court	HG DATE 30/9/2021
11.	CMFIU NO.16/2020 CR. NO.121/163/2021 CF.NO. 884/21	1.Felgona Khasira 2.Beatrice Odhiambo 3.Jackline Kingóri 4.Mary Kanyingi	Auto Trade Markets Limited	Carrying Out Business As An Online Forex Broker W/O A License C/Sec 23[1]As Read With Sec 34[A]Of The CMA Act Cap 485a L.O. K	James Ikuu Macharia	Pending Before Court.	HG DATE 29/07/2021
12.	CMFIU NO.3/2019	Members Of The Public Through CMFIU	Church Blaze Investment Company Ltd	1.Operating Share Business W/O Licence 2. Dealing on Criptocurrency Business W/O Licence.	Isaac Muthui	Pending Under Investigations	

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MARKETS AUTHORITY

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13	CMFIU NO.145/98/2021	Col. (Rtd) Justine Khaduli Ojiambo & 25 Others	Cytonn High Yields Solution	Obtaining Money By False Pretences C/Sec. 313 P/Code	Edwin Harold.Dayan Dande Elizabeth Nkukuu Nailantei Patricia Njeri Wanjama	File placed before ODPP for directions to Prosecute	
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Promoting the Integrity and Growth of the Capital Markets

7.3 ANNEXURE 3 - PRESS RELEASES AND CAUTIONARY STATEMENTS

I. Caution against unregulated entities



CMA cautions investors against investing in unregulated products offered or promoted by unlicensed firms or unapproved entities

Nairobi, 17 June 2021...In line with its investor protection mandate, the Capital Markets Authority (CMA) has cautioned investors against investing through unlicensed and unapproved entities.

The CMA Chief Executive, Mr. Wyckliffe Shamiah, advised investors to only invest through licensed and approved entities who offer and promote regulated products, to enable them get protection offered by the Authority through the capital markets legal and regulatory framework. Investors who invest in unregulated products offered or promoted by unlicensed and unapproved entities risk loss of their investments with no recourse afforded to them under the capital markets regulatory framework.

Following numerous enquiries regarding the licensing status of the Cytonn Investment Group, Mr. Shamiah said, "the Authority confirms that Cytonn Investments is not a licensed and approved entity." He further stated that, "investors who are affected by investing in unregulated products should report to the Capital Markets Fraud Investigation Unit (CMFIU), which is the Police Unit attached to the Capital Markets Authority. CMFIU is currently investigating the issue for criminal violations for investors in the Cytonn High Yield Solutions (CHYS). He reiterated the Authority on 20 April 2020 communicated this same information to the public."

CMA has licensed Cytonn Asset Management Limited, which is licensed as a Fund Manager managing the following regulated funds: Cytonn Money Market Fund; Cytonn Balanced Fund; Cytonn Equity Fund; Cytonn Africa Financial Services Fund; Cytonn Money Market Fund (USD); and Cytonn High Yield Fund. So far CMA has not received any complaints on these regulated products.

Investors are advised to confirm the names of the licensed and approved entities offering services in the capital markets industry from the CMA website www.cma.or.ke. Members of the public who have been affected or have come to be aware of such illegal entities are advised to report to the Authority or to the Capital Markets Fraud Investigation Unit.

ENDS

BACKGROUND INFORMATION ON THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing an orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence. The regulatory functions of the Authority as provided by the Act and the regulations include; Licensing and supervising all the capital market intermediaries; Ensuring compliance with the legal and regulatory framework by all market participants; Regulating public offers of securities, such as equities and bonds & the issuance of other capital market products such as collective investment schemes; Promoting market development through research on new products and services; Reviewing the legal framework to respond to market dynamics; Promoting investor education and public awareness; and Protecting investors' interest. For more information, please contact: Antony Mwangi, Manager, Corporate Affairs and International Relations, on amwangi@cma.or.ke

II. Joint Financial Sector Regulators Statement





Ministry of Agriculture, Livestock, Fisheries and Cooperatives

State Department for Co-operatives



Central Bank of Kenya



PUBLIC NOTICE

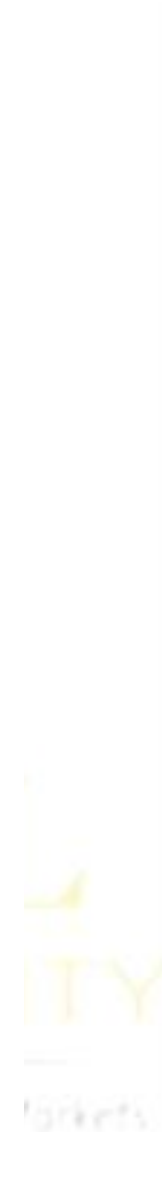
FRAUDULENT AND UNLICENSED FINANCIAL SCHEMES

As the coronavirus (COVID-19) pandemic continues to unfold, we warn the public of the re-emergence of fraudulent and unlicensed financial schemes seeking to take advantage of Kenyans during these challenging times. These rogue entities include online pyramid schemes, unlicensed credit and savings schemes, and unlicensed online forex brokers and traders.

Some of the fraudulent entities have styled themselves as **online global networking companies** that seek to recruit members of the public to join and make cash deposits purportedly to buy shares in the company. The encouragement to recruit new members in order to receive more benefits is a characteristic of a **fraudulent pyramid scheme**. We had previously, issued a [Public Notice](#) in July 2018 warning the public against such unlicensed financial services and products.

Other fraudulent unregulated entities styling themselves as **online foreign exchange (forex) brokers and traders** have also emerged. These entities promise customers huge returns and are not licensed as required, either as online forex brokers or traders by the Capital Markets Authority (CMA) or as forex dealers by the Central Bank of Kenya (CBK). CMA licenses and regulates online forex brokerage and trading, and other capital market products while CBK licenses and regulates all forex dealers and the Kenya Shilling component of any online forex trading and brokerage. These rogue entities seek to exploit Kenyans and pose Money Laundering and Financing of Terrorism risks to the financial sector. CBK had previously issued a [Public Notice](#) in August 2019 warning the public against unlicensed forex dealers.

The purpose of this notice is to **warn members of the public against dealing with unlicensed financial schemes and unlicensed online forex dealers**. The public should only deal with licensed financial institutions and entities in order to protect themselves from being defrauded and losing their money.



Members of the public are reminded that in addition to a business permit, regulated financial institutions are required to have a valid license issued by a financial sector regulator. The list of financial institutions licensed by the financial sector regulators may be accessed from the Central Bank of Kenya's website www.centralbank.go.ke, Sacco Societies Regulatory Authority's website www.sasra.go.ke; Capital Markets Authority's website www.cma.or.ke; Insurance Regulatory Authority's website www.ira.go.ke and the Retirements Benefits Authority's website www.rba.go.ke.

Inquiries on the activities of all other cooperative societies or non-deposit-taking SACCOs should be directed to the office of the Commissioner for Cooperative Development or the nearest County/Sub-County Cooperative offices. The Commissioner for Cooperative Development can be reached through contacts on the website www.ushirika.go.ke.

Appropriate action will be taken against unlicensed entities involved in the provision of fraudulent or unlawful financial services, and unlicensed forex dealers. Members of the public should therefore report individuals and entities offering unlicensed or fraudulent financial services and unlicensed forex dealers to any of the financial sector regulators through the contacts available on their websites.

We welcome innovative legitimate businesses who meet the stipulated licensing criteria to the financial sector to provide Kenyans with a variety of suitable financial services and products.

CAPITAL MARKETS AUTHORITY

CENTRAL BANK OF KENYA

INSURANCE REGULATORY AUTHORITY

MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES

RETIREMENT BENEFITS AUTHORITY

SACCO SOCIETIES REGULATORY AUTHORITY

AUGUST 25, 2020



III. Caution against investing in unlicensed entities



PRESS RELEASE

CMA cautions investors against investing through unlicensed firms offering Fund Management and Investment Advisory Services

Nairobi, 20 April 2020...In line with its investor protection mandate, the Capital Markets Authority (CMA) has cautioned investors against investing through unlicensed and unapproved entities.

The CMA Acting Chief Executive, Mr. Wyckliffe Shamiah, advised investors to only invest through licensed and approved entities to enable them get protection offered by the Authority through the capital markets legal and regulatory framework. Mr. Shamiah observed; "Investors who invest in unregulated and unapproved entities risk loss of their investments with no recourse afforded to them under the capital markets regulatory framework".

Following numerous enquiries received by the Authority regarding the licensing status of the Cytonn Investment Group, Mr. Shamiah said, "the only licensed entity is Cytonn Asset Management Limited, which is licensed as a Fund Manager and a Real Estate Investment Trust (REIT) Manager. The funds managed by the entity under the approved Collective Investment Schemes are; Cytonn Money Market Fund; Cytonn Balanced Fund; Cytonn Equity Fund; Cytonn Africa Financial Services Fund; Cytonn Money Market Fund (USD); and Cytonn High Yield Fund.

Investors are advised to correctly check the names of the licensed and approved entities".

Mr. Shamiah advised investors to confirm the licensing status of any firms offering services in the capital markets industry with the Authority since it has been noted that some of unlicensed and unapproved entities are pitching investment opportunities as if they are licensed. He added; "investors should undertake due diligence and check the license status of any entity marketing investment opportunities and purporting to be licensed by the Authority from the CMA website www.cma.or.ke".

The Authority will take appropriate enforcement action against any persons or entities illegally conducting business in the capital markets industry without a license. Members of the public who have been affected or become aware of such illegal entities are advised to report to the Authority or to the Capital Markets Fraud Investigation Unit.

ENDS

BACKGROUND INFORMATION ON THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing an orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence. The regulatory functions of the Authority as provided by the Act and the regulations include; Licensing and supervising all the capital market intermediaries; Ensuring compliance with the legal and regulatory framework by all market participants; Regulating public offers of securities, such as equities and bonds & the issuance of other capital market products such as collective investment schemes; Promoting market development through research on new products and services; Reviewing the legal framework to respond to market dynamics; Promoting investor education and public awareness; and Protecting investors' interest. For more information, please contact: Antony Mwangi, Manager Corporate Affairs & International Relations on amwangi@cma.or.ke



IV. Caution against unlicensed Online Forex Trading



Cautionary Statement: Online Forex Trading by Unlicensed Entities

In line with its investor protection mandate, the Capital Markets Authority (CMA) has warned Kenyans against engaging in online foreign exchange trading through platforms of unlicensed entities as they risk losing their investments and may not be protected by the law. CMA also requires all online foreign exchange brokers or money managers not licensed by the Authority to cease and desist from trading, conducting sensitizations in Kenya and onboarding Kenyan investors or managing online foreign exchange portfolios.

CMA has issued three non-dealing online foreign exchange brokers licenses to EGM Securities Ltd, SCFM Limited, and Pepperstone Markets Kenya Ltd in line with the Capital Markets Act and the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017. The Authority has also granted a Money Manager license to Standard Investment Bank (SIB) Limited.

According to the Capital Markets Act, section 23 (1), " No person shall carry on business as online forex broker or hold himself out as carrying on such a business unless he holds a valid license issued under this Act or under the authority of this Act".

The Authority has also noted that offshore firms are advertising online foreign exchange products during this Covid 19 crisis in Kenya without a license. This is illegal and such firms are directed to cease advertising their services locally unless they are licensed.

The Authority will take appropriate enforcement action against any persons or entities illegally conducting online foreign exchange trade or collecting client funds in contravention of the above regulatory provisions. Members of the public who have been affected or become aware of such illegal online foreign exchange transactions are advised to report to the Authority or to the Capital Markets Fraud Investigation Unit.

END

30 March 2020

V. Caution against Interweb Global Fortune



CMA cautions investors against dealing with Interweb Global Fortune

Nairobi, 26 September 2019...In a bid to enhance investor protection and the fair treatment of customers, Capital Markets Authority (CMA) has cautioned the public against participating in Online Forex Trading through Interweb Global Fortune and its director Mr. Manasseh Kuria Karanja.

Preliminary investigations conducted by the Authority have revealed that Interweb Global Fortune has been purporting to carry on business as an Online Forex Trading Broker and Money Manager without a valid license from the CMA in line with Section 23(1) of the Capital Markets Act. In addition to unlawfully collecting funds from investors, Interweb Global Fortune's business model features traits of a pyramid or ponzi scheme, where investors are promised high returns or dividends which are not realistically available through credible investment products. Investors have also been encouraged to recruit other people for a commission', CMA Chief Executive, Mr. Paul Muthaura observed.

Promoting the Integrity and Growth of the Capital Markets

The Authority's Capital Markets Fraud Investigation Unit in collaboration with the Directorate of Criminal Investigation conducted an operation against unlicensed and unregulated Online Forex Trading entities in the country. Consequently, the Authority in collaboration with other law enforcement agencies has frozen the company's bank accounts pending further inquiries.

The investigation further revealed that Interweb Global Fortune has misled investors by claiming that it has applied for a license from the Authority. 'Contrary to the entity's claim, the Authority has never received any application for license to operate as an online forex broker or money manager from the Interweb Global Fortune or its directors,' Mr. Muthaura added.

Members of the public are encouraged to avoid dealing with unlicensed and unregulated financial entities as they risk being defrauded or losing their money. A list of licensed entities is available on the CMA website www.cma.or.ke. Members of the public who have been affected or become aware of such illegal online foreign exchange are advised to report to the Authority's Capital Markets Fraud Investigation Unit and/or any police station.

ENDS

BACKGROUND INFORMATION ON THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing an orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence. The regulatory functions of the Authority as provided by the Act and the regulations include; Licensing and supervising all the capital market intermediaries; Ensuring compliance with the legal and regulatory framework by all market participants; Regulating public offers of securities, such as equities and bonds & the issuance of other capital market products such as collective investment schemes; Promoting market development through research on new products and services; Reviewing the legal framework to respond to market dynamics; Promoting investor education and public awareness; and Protecting investors' interest. For more information, please contact: Antony Mwangi, Head of Corporate Communications on amwangi@cma.or.ke

VI. Caution against Women Investing in Entrepreneurship (WIIE)



PRESS RELEASE

CMA warns against WIE Limited and Women Investing in Entrepreneurship (WIIE) Public Offering

Nairobi, 2 September 2019...In a bid to enhance investor protection and the fair treatment of customers, Capital Markets Authority (CMA) has cautioned the public against participating in any capital raising and public offer of shares offered by WIE Limited also operating under the name Women Investing in Entrepreneurship (WIIE).

The Authority's preliminary investigations revealed that WIE Limited has been raising money from the public through a public offer of shares targeting women as their customers and also branding itself as 'A women's income and wealth incubator'. 'WIE Limited business model furthermore seems to have been endorsed by various women celebrities in the country in a bid to lure more women investors', CMA Chief Executive Mr. Paul Muthaura said.

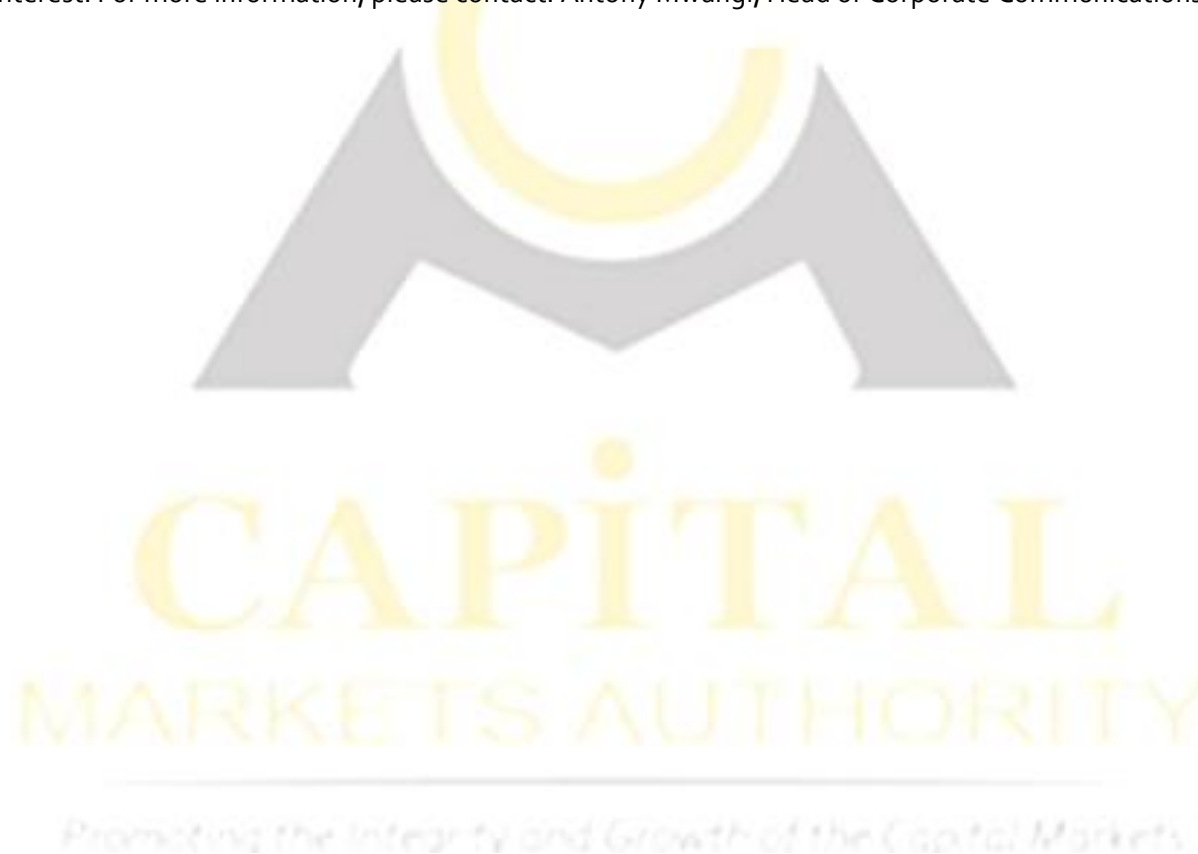
The Authority noted discrepancies in the information provided in the firm's website <https://www.wiie-wiwi.com> and the information given to the Authority by WIE Limited in relation to its operations.

The Authority in collaboration with other law enforcement agencies has frozen the company's bank account pending further inquiries noting that the nature and features of the capital raising by WIE Limited is taking the form of a regulated activity, which has not been approved by the Authority. Members of the public are therefore urged to exercise caution before participating in any public offer lacking regulatory sanction.

ENDS

BACKGROUND INFORMATION ON THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing an orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence. The regulatory functions of the Authority as provided by the Act and the regulations include; Licensing and supervising all the capital market intermediaries; Ensuring compliance with the legal and regulatory framework by all market participants; Regulating public offers of securities, such as equities and bonds & the issuance of other capital market products such as collective investment schemes; Promoting market development through research on new products and services; Reviewing the legal framework to respond to market dynamics; Promoting investor education and public awareness; and Protecting investors' interest. For more information, please contact: Antony Mwangi, Head of Corporate Communications on amwangi@cma.or.ke



VII. Caution against Kenicoin initial Coin Offering



PRESS RELEASE

CMA warns against Kenicoin initial coin offering and trading

Nairobi, 3 January, 2019...In a bid to protect investors, Capital Markets Authority (CMA) has cautioned the public against participating in any initial coin offering or trading in any coin exchange offered by Wiseman Talent Ventures.

'It is important for the public to note that the nature and features of the Capital Raising and Coins Trading promoted by Wiseman Talent Ventures is taking the form of Regulated activities which have not yet been approved by the Authority', CMA Chief Executive Mr. Paul Muthaura noted.

CMA noted that Wiseman Talent Ventures is raising money from the public through issuance of digital tokens in the form of Coins and further providing a platform for the trading of the said Coins on its coin exchange styled as www.kenicoinexchange.com. The firm also promised guaranteed returns of 10 percent monthly on the initial investment in Coins which were issued at Kes100 at the Initial Coin Offering (ICO) and are now purportedly being marketed as trading at Kes2,000 at its Coin Exchange. Further, the Kenicoin value being marketed as exponentially rising since its initial offering poses substantive information asymmetry, liquidity and fraud risks.

'The Authority is currently investigating the operations of Wiseman Talent Ventures. We have noted discrepancies in the information provided on the firm's website www.kenicoin.com and the information given to the Authority during interviews of Wiseman Talent Ventures leadership in relation to the total number of Kenicoin sold and the total funds raised', Mr. Muthaura added.

Global trends in unregulated digital currencies demonstrates that the cryptoasset market is uncertain and has experienced accelerated boom and bust cycles which may expose investors to substantial losses. By comparison in December 2017, the price of Bitcoin was US\$19,783 and it has since fallen to US\$3,810, Litecoin was US\$366 a coin and has since come down to US\$30. Ethereum was US\$ 1,400 in January 2018 and has fallen to US\$130.

ENDS

BACKGROUND INFORMATION ON THE CAPITAL MARKETS AUTHORITY

The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing an orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence.

The regulatory functions of the Authority as provided by the Act and the regulations include; Licensing and supervising all the capital market intermediaries; Ensuring compliance with the legal and regulatory framework by all market participants; Regulating public offers of securities, such as equities and bonds & the issuance of other capital market products such as collective investment schemes; Promoting market development through research on new products and services; Reviewing the legal framework to respond to market dynamics; Promoting investor education and public awareness; and Protecting investors' interest. For more information, please contact: Antony Mwangi, Head of Corporate Communications on amwangi@cma.or.ke



VIII. Caution against Cembe Millers



PRESS RELEASE

CMA cautions investors about the Unlawful Public Offer by Cembe Millers

Nairobi 19 February, 2015...In line with its mandate of protecting investors, the Capital Markets Authority (CMA) would like to caution members of the public against participating in the unlawful public offer by Cembe Millers, since it has not been approved by the Authority. The public offer was made today (February 19, 2015) through a public advertisement in the print media.

While issuing the cautionary statement, the CMA confirmed that the Cembe Millers public offer had not been approved as required for all public offers. The Authority noted that the purported offer was in breach of Section 30A Subsection (4) of the Capital Markets Act Cap 485A, which states; "Subject to the provisions of this Act, an issuer or an offeror shall not make a public offer of securities unless that issuer or offeror has submitted a prospectus in respect of that offer to the Authority for approval".


The CMA has written to the promoters of the Cembe Millers offer requiring them to immediately withdraw it. The Authority will further proceed to launch investigations in collaboration with other arms of Government to establish the identity of the persons behind the offer and take appropriate action against them.

The Authority finally advised Kenyans to confirm if any public offers have been approved by the Authority before participating to avoid loss and exposure.

7.4 ANNEXURE 4 - ENFORCEMENT ACTIONS TAKEN BY THE CMA FROM 2015 TO 2020

No.	Licensee/Listed Company/individual	Contraventions(s)	Enforcement Action Taken
ENFORCEMENT ACTIONS FOR YEAR 2015			
1.	Citidell Limited	The firm had a liquid capital deficit as at 30 November 2013 contrary to the requirements of regulation 30(4) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002	<p>Capital Markets Act, a Public Reprimand</p> <ul style="list-style-type: none"> • Pursuant to section 11(3)(i) and 13(1) of the Capital Markets Act, an Enforcement Directive to furnish the Authority with a confirmation of injection of additional capital as at 30 June 2014 and 31 July 2014, so as to reach the Authority by the 5th day of the succeeding month. • Pursuant to Section 24(4) and 25A(1)(a)(iv) of the Capital Markets Act, and subject to the company's full compliance with the requirements of Regulation 30 (4) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 before 31 July 2014, the

			<p>license of Citidell was restricted by being prohibited from acquiring, attempting to acquire or taking any steps that may be interpreted by the Authority to be primarily intended to acquire new clients, customers or associates, including engaging in any agreements, contracts or other like arrangements for purposes of carrying on the regulated business.</p> <ul style="list-style-type: none"> • The Authority rescinded the conditional suspension contained in its letter of 23 April 2014 and pursuant to Section 11(3)(i) of the Capital Markets Act, the Authority issued an Enforcement Directive to Citidell Limited to settle a previous penalty of Kes.159,999.84.
2.	Suntra Investment Bank Limited	<p>The firm had a liquid capital deficit as at 30 September 2013 and 30 November 2013 contrary to the requirements of regulation 16(3) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002</p>	<p>Capital Markets Act, a Public Reprimand</p> <ul style="list-style-type: none"> • Pursuant to Section 11(3)(i) and 13(1) of the Capital Markets Act, and Enforcement Directive to furnish the Authority with monthly Statements on collections relating to the company's Rights Issue, prepared and endorsed by Suntra for every calendar month, so as to reach the Authority by the 5th day of every succeeding month.

			<ul style="list-style-type: none"> • Pursuant to Section 24(4), 25A(1)(a)(iv) and 26(1) of the Capital Markets Act, the company's license was restricted; <ul style="list-style-type: none"> i) by being prohibited from acquiring, attempting to acquire or taking any steps that may be interpreted by the Authority to be primarily intended to acquire new clients, customers or associates, or engaging in any agreements, contracts or other like arrangements for purposes of carrying out or profiting from any business of a sponsoring stockbroker; and ii) Pursuant to section 26(1) of the Capital Markets Act, subject to the full compliance with the requirements of Regulation 16(3) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 before 31 July 2014, Suntra will be deemed suspended from trading at the NSE, effective 1 August 2014.
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Promoting the Integrity and Growth of the Capital Markets

3.	Home Africa	<p>By marketing the bond as a partially secured bond and further commencing the process of encumbering the assets of a subsidiary of the Issuer, and by purporting to revise the Coupon Rate to 17%, the Issuer was in contravention of the terms of approval issued by the Authority.</p>	<p>Enforcement Action</p> <ul style="list-style-type: none"> • A Regulatory caution pursuant to section 30G of the Capital Markets Act; • Pursuant to Section 11(3)(cc)(ii) and 30G of the Capital Markets Act, an enforcement directive to the Issuer to ensure full reimbursement of all the investors who submitted applications and funds as subscribers to the offer.
		<p>In the knowledge that the changes above were inconsistent with the approved Information Memorandum and contrary to the terms of approval issued by the Authority thereby causing the publication and marketing of unapproved terms of a public offer, in contravention of Section 30A (4) of the Capital Markets Act</p>	
		<p>By marketing an unapproved Information Memorandum, the Issuer knowingly misinformed the public in a false, misleading and</p>	

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		/or deceptive manner that the issue was a partially secured bond in contravention of Section 30D (1) of the Capital Markets Act	
4.	Kingdom Securities Limited	Failing to exercise due care and skill in advising the Issuer to market the bond as a secured bond, or in the alternative, negligently failing to advise the Issuer against unilaterally amending the approved coupon rate from 13.5% to 17%, or in the alternative, negligently failing to advise the Issuer against amending this to 17% and further, failing to advise the Issuer to fully adhere to the terms of the approved Information Memorandum by failing to confirm the Authority's approval of the amended terms with the Authority and instead placing reliance on a third party, Kingdom Securities Limited was in contravention of the terms of approval issued by the Authority and Regulation 3 (b) and (c) of the Capital Markets (Conduct of Business) Regulations.	<p>Enforcement Action</p> <ul style="list-style-type: none"> • A Regulatory caution against Kingdom Securities Limited to ensure that its future operations as a Sponsoring and Placing Agent are conducted in full compliance with the requirements of the regulatory framework; • An Enforcement directive pursuant to section 11 (3)(cc)(ii) of the Capital Markets Act to submit a comprehensive report to the Authority on measures currently in place and those proposed to be implemented, including timelines for implementation, relating to the weaknesses in the company's processes and procedures that led to these contraventions of the regulatory framework; and • An enforcement directive pursuant to section 11 (3) (cc) (ii) of the Capital Markets Act to facilitate full reimbursement of all investors who submitted

			applications and funds as subscribers to the offer.
5.	Mazars Certified Public Accountants	Failing to disclose overdraft/credit facilities in a market intermediary's Audited Accounts for the period ending 31 December 2012, contrary to Regulation 55A (2) (a) & (c), and Regulation 55A (5) of the Capital Markets (Licensing requirements) (General) Regulations 2002.	<p>Enforcement Action</p> <ul style="list-style-type: none"> • A Regulatory reprimand pursuant to Section 25A (1) (a) (i) for failing to disclose the existence of credit facilities in the financial statements of the Firm prepared for the period ending 31 December 2012 • An enforcement directive pursuant to Section 11 (3) (i) of the Act for the Audit firm to seek the Authority's clearance where it seeks to engage in any capital markets transactions or the undertaking of activities that are subject to the Authority's approval for a period of twelve months.
6.	Tsavo Securities Limited	Knowingly misrepresenting the existence of a counterparty for a Sale Buy Back (SBB) transaction and thereby inducing its client to enter into an SBB for Kes. 200 Million Bonds in the full knowledge that the SBB transaction had no existing counter party contrary to Section 31 (5) of the Capital Markets Act.	<p>Enforcement Action*</p> <p>A Regulatory reprimand was issued pursuant to Section 25A (1) (a) (i) for:</p> <p>a) Knowingly and intentionally misrepresenting to the client that there was a counterparty to the transaction; and,</p> <p>b) Recommending a Sale Buy Back transaction which</p>

		<p>Recommending to its client a Sale Buy Back proposal which did not have an existing counterparty in the full knowledge of the client's investment objectives and requirements and knowing that such a transaction was unsuitable to the client, contrary to the provisions of Regulation 33(1) (a) of the Capital Markets (Licensing Requirements) (General) Regulations 2002</p>	<p>did not have a counterparty in the full knowledge of the investment objectives and requirements of its client which indicated that such a transaction was not suitable for the client.</p>
7.	<p>Sterling Capital Limited</p>	<p>Count 1.</p> <ul style="list-style-type: none"> • By taking a position between the seller and the buyer prior to the intended sale buy back transaction contrary to the provisions of Regulation 24(1)(d) of the Capital Markets (Licensing Requirements) (General) Regulations 2002 <p>Count 2</p> <ul style="list-style-type: none"> • Misrepresenting to the purchasing client that there was a counterparty in the sale buy back transaction through its duly appointed agents 	<p>Enforcement Action</p> <p>Count 1</p> <ul style="list-style-type: none"> • Disgorgement of the illicit profit and commissions amounting to Kes. 1,170,000/- which were earned by the market intermediary through its dealing subsidiary pursuant to section 11(3)(i) of the Capital Markets Act • Penalty of Kes.2,340,000/- by virtue of the breach of Regulation 24(1)(d) of Capital Markets (Licensing Requirements) (General) Regulations 2002, pursuant to the provisions of Section 11(3)(cc)(i) and Section 25 A(1)(a)(v) of the Capital Markets Act

		<p>contrary to the provisions of Section 31(5) of the Capital Markets Act</p> <p>Count 3</p> <ul style="list-style-type: none"> • Entering into a sale buy back transaction between its client and proprietary dealing subsidiary and subsequently failing to undertake the 2nd leg of the sale buy back transaction contrary to the provisions of Regulation 22(b) & (d), 23(a),(b),(f) and (h), 24(1)(d) of the Capital Markets (Licensing Requirements) (General) Regulations 2002 <p>Count 4</p> <ul style="list-style-type: none"> • Misrepresenting through its duly appointed agents the existence of a counterparty for a sale buy back transaction contrary to the provisions of Section 31(5) of the Capital Markets Act, Regulation 22(b) &(d), Regulation 23(a),(b),(f), and (h) and Regulation 24(1) d) of the Capital 	<p>Count 2</p> <ul style="list-style-type: none"> • A Directive to the Market Intermediary to make arrangements as are necessary to complete the second leg of the outstanding transaction pursuant to the provisions of Section 11(3)(cc)(ii), Section 11(3)(i) of the Capital Markets Act. <p>Count 3</p> <ul style="list-style-type: none"> • Complaint withdrawn by complainant <p>Count 4</p> <ul style="list-style-type: none"> • A Directive for the Market Intermediary to pay the sum of Kes.15,119,856/- to the purchasing client being restitution for the loss incurred by virtue of the failure to complete the second leg of the transaction pursuant to Section 25A(2) of the Capital Markets Act <p>Count 5</p> <ul style="list-style-type: none"> • A regulatory reprimand against the Market Intermediary pursuant to Section 25A(1)(a)(i) of the Capital Markets Act for failing; - to disclose the existence of credit facilities which
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		<p>Markets (Licensing Requirements) (General) Regulations 2002</p> <p>Count 5</p> <ul style="list-style-type: none"> • Failure by the Market Intermediary to disclose overdraft facilities/credit facilities. • Failing to disclose the existence of credit facilities extended to its dealing subsidiary in the audited financial reports for the period ending 31 December 2012 contrary to the provisions of Regulation 51A (1) of the Capital Markets (Licensing Requirements) (General) Regulations 2002 	<p>were granted to its dealing subsidiary in the financial statements of the firm prepared for the period ending 31 December 2012.</p> <p>-to comply with the provisions of Section 31(5) of the Capital Markets Act, Regulation 22(b) &(d), Regulation 23(a), (b),(f) and (h) and Regulation 24(1)(d) of the Capital Markets (Licensing Requirements)(General) Regulations 2002 with respect to the conduct and omissions of the firms in counts 1-3 , which adversely affected the efficient and orderly operations of the capital market with respect to fixed income securities.</p>
8.	Nairobi Securities Exchange	<p>Failing to make settlement of the due interest amount outstanding from the initial public offer in continued contravention of the Terms of Approval issued by the Authority in contravention of Section 18(2)(e), Section 30G (ii) as read with Sections 30G(b) and (c) of the Capital Markets Act.</p>	<p>Enforcement Action</p> <ul style="list-style-type: none"> • A Financial Penalty pursuant to Section 25A (6) (c) of the Capital Markets Act amounting to Kes. 1,943,076 for failure to comply with Section 18 (2) (e) of the Act, Section 30G (ii) and Section 30G (b) and (c) of the Act; • An Enforcement Directive suspending consideration of all applications submitted by NSE for the Authority's

			approval pursuant to Sections 11(3) (i) and (w), 30G (iii), and Sections 30G(b), (c), (d) and (h) of the Capital Markets Act.
9.	EBI Investments Corporation Kenya Limited	Failing to publish the full year audited accounts for the period ended 31 December 2014 in contravention of Regulation 51 (A)(2) of the Capital Market (Licensing Requirements) (General) Regulations in at least two daily newspapers of national circulation	Enforcement Action Regulatory caution pursuant to section 25A(1)(a)(i) of the Capital Markets Act.
10.	Mumias Sugar Company Limited	Late submission of half year reports for the period ended 31 December 2014 contrary to Paragraph B.07 Fifth Schedule Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2002 Discrepancy in financial reports for the period (i) of the Capital Markets Act. ended 31 December 2014 due to erroneous statement of total assets contrary to Section 34 of the Capital Markets Act	Enforcement Action <ul style="list-style-type: none"> • A Regulatory Caution for the late submissions and failure to ensure the financial statements were accurate and provided a true and fair view of the position of the company pursuant to Section 25A(1) (a)

11.	Standard Investment Bank	Effecting and thereby facilitating numerous transactions in the CDS account of an Investor who was selling Kenya Orchards Ltd shares and leading to increasing prices contrary to the provisions of Section 31 (5) of the Capital Markets Act.	Enforcement Action <ul style="list-style-type: none"> • Pursuant to Section 11 (3) (cc) (ii) and Section 11 (3) (w) of the Capital Markets Act, a disgorgement order over the illicit commissions amounting to Kes. 9,004.93. • A financial penalty pursuant to Section 25A (1) (a) (vi) of the Capital Markets Act amounting to Kes. 758,858.43. • A regulatory caution pursuant to Section 25A (1) (a) (i) of the Capital Markets Act to ensure that it maintains due regard for its obligations under the provisions of the capital markets regulatory framework on market manipulation; • An enforcement directive under section 11 (3) (i) of the Act that the firm conducts an independent systems audit to establish the status of compliance of their Operating Trading System with their regulatory framework; and submit the System’s Audit Report to the Authority.
		Playing a dominant role as the selling broker of Kenya Orchards Ltd shares on behalf of an investor who undertook trades which led to the price rally of the shares contrary to Regulation 24 (d) of the Capital Markets (Licensing requirements) (General) Regulations.	

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12.	Henry Ngati Nugi	<p>Undertaking a purchase of 1,000 and 4,500 Kenya Orchards shares on 25 April and 15 August 2014 at Kes. 6.55 and Kes. 10.50 respectively and subsequently selling the same mainly in lots of 100 shares at progressively increasing prices of between Kes. 11.50 and Kes. 190 on diverse dates between 20 August 2014 and 24 October 2014, and thereby occasioning an artificially induced market price rally, leading other participants in the market to purchase the security on the mistaken belief that the “inflated price” reflected a true value for the underlying company contrary to the provisions of Section 31 (7) (e) of the Capital Markets Act.</p>	<p>Enforcement Action</p> <ul style="list-style-type: none"> • Disgorgement of all the capital gains earned amounting to Kes. 374, 926.75 pursuant to Section 11 (3) (cc) (i) and Section 25A (2) of the Capital Markets Act • An Enforcement directive to ensure that the amount of disgorged profits amounting to Kes. 374,926.75 is paid to the Investor Compensation Fund Bank Account; • A Freeze Order on the Investor’s CDS Account in accordance with Section 11 (3) (t) and (u) of the Capital Markets Act effective until the disgorged amounts are fully settled.
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		<p>Conducting subsequent sales of Kenya Orchards shares in lots of 100 at progressively increasing prices of between Kes. 11.50 and Kes. 190, whereby as the party dominating sale of the shares, played a critical role in determining the prevailing price for the shares on diverse dates between 20 August 2014 and 24 October 2014, causing an increase in the price of securities with the intention of inducing other persons to purchase securities in the company contrary to the provisions of Section 32F (1) (a) of the Capital Markets Act.</p>	
13.	NIC Capital Limited	<p>Advising an Issuer to market the bond as a partially secured bond and by advising the issuer to unilaterally amend the approved coupon rate from 13.5% to 17%, or in the alternative, negligently failing to advise the Issuer against amending this to 17%, and further, by leading the Issuer to believe that the amendments to the Information Memorandum</p>	<p>Enforcement Action</p> <ul style="list-style-type: none"> • A Regulatory Caution against NIC Capital to ensure that its future operations as a lead arranger are conducted in full compliance of the Capital Markets Regulatory framework • Restriction of NIC Capital's license for a period of 90 days pursuant to sections 24 (4) and 25 (1) (a) (iv) of the Capital Markets Act by being prohibited from acquiring,

		<p>had been approved by the Authority, or by knowingly influencing, advising or otherwise causing the Issuer to purport to include new terms and conditions to the issuer, NIC Capital Limited was in contravention of the terms of approval issued by the Authority and was in further contravention of Regulation 3(b) and (c) of the Capital Markets (Conduct of Business) Regulations</p>	<p>attempting to acquire or taking any steps that may be interpreted by the Authority to be primarily intended to acquire new clients, customers or associates, or engaging in any agreements, contracts or other like arrangements for purposes of carrying out or profiting from any transaction advisory services.</p> <ul style="list-style-type: none"> • An enforcement directive pursuant to section 11 (3)(cc)(ii) of the Capital Markets Act to submit a comprehensive report to the Authority on measures currently in place and those proposed to be implemented, including timelines for implementation, relating to the weaknesses in the company's processes and procedures that led to these contraventions of the regulatory framework; and • An enforcement directive pursuant to section 11 (3) (cc) (ii) of the Capital Markets Act to facilitate full reimbursement of all investors who submitted applications and funds as subscribers to the offer.
		<p>Advising and/or causing the Issuer to market the bond as a partially secured bond, or in the alternative, negligently failing to advise the Issuer against marketing the same as a secured bond, and further, by advising the Issuer to market the bond contrary to the approved terms as detailed, in the full knowledge that the information was misleading, erroneous and/or false to the public, with the intention, among</p>	

		<p>others, to induce the public to subscribe to the securities, NIC Capital Limited acted contrary to Section 30D (1) and Section 32H (a) of the Capital Markets Act</p>	
		<p>Failing to apply for an extension of the Offer Period before the lapse of the same and thereby causing subsequent non-compliance to the Approved Timetable contrary to the terms of approval given by the Authority and Regulation 3(b) and (c) of the Capital Markets (Conduct of Business) Regulations</p>	
		<p>Misinforming the Issuer that the Authority had approved a revised Offer Timetable with the full knowledge that the Authority had not approved any application for a revision, contrary to Regulation 3 (b) and (c) Capital Markets (Conduct of Business) Regulations and Section 32I(c) of the Capital Markets Act</p>	

		Misinforming the Authority that an Investor had made a subscription of Kes. 250,000,000/- in the full knowledge that the Investor had made no such subscription, NIC Capital Limited acted contrary to Section 26(1)(i) and 30G(g) of the Act.	
ENFORCEMENT ACTIONS FOR YEAR 2016			
14.	Marshalls East Africa Limited	Late submission of the shareholding status report for the period ending 30 April 2016 contrary to Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations, 2002	Enforcement Action A financial penalty of Kes.43,333.29/- pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act
15.	AIB Capital Limited	Executing sale order without the client's written instructions contrary to Regulation 23 (a) of the Capital Markets (Licensing Requirements) (General Regulations, 2002 Executing a transaction of sale before effecting the agency agreement	Enforcement Action a) A financial penalty of Kes. 43,572.10/- pursuant to Section 25A(1)(a)(v) of the Capital Markets Act b) Enforcement directive for AIB to provide to the Authority it's Procedures Manual for review of how similar contraventions are being redressed

		contrary to the requirements of Regulation 22A (1) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002	
16.	Marshalls East Africa Limited	Late submission of the shareholding status report for the period ending March 31 2016 contrary to Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations, 2002	Enforcement Action A financial penalty of Kes.17,777.76/- pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act
17.	East African Portland Company Limited	Late submission of the shareholding status report for the period ending 31 March 2016 contrary to Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations, 2002	Enforcement Action A financial penalty of Kes.33,333.30/- pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act
18.	National Bank of Kenya Limited	The bank delayed in its disclosure of changes in management of the company contrary to the requirements of Paragraph GO5(I) (b) and (3) of the 5th Schedule of the Capital Markets (Securities)(Public Offers Listing and Disclosures) Regulations,2002	Enforcement Action A financial penalty amounting to Kes. 100,000 pursuant to Section 11(3)(cc)(i) of the Capital Markets Act

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		Failing to disclose the changes in management to the Authority, the Exchange and the public through simultaneous notification contrary to the requirements of Regulation 19(1)(2) and (3) of the Capital Markets (Securities)(Public Offers Listing and Disclosures) Regulations, 2002	
19.	Jubilee Holdings Limited	Late submission of the Shareholding Status Report for the period ending 29 February 2016 contrary to Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations 2002	Enforcement Action A financial penalty of Kes. 4,444.44 pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act
20.	Longhorn Kenya Limited	Late submission of the Shareholding Status Report for the period ending 29 February 2016 contrary to Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations 2002	Enforcement Action A financial penalty of Kes.13,333.32 pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act
21.	Marshalls East Africa Limited	Late submission of Shareholding Status Report for the period ending 29 February 2016 Regulation 4(1) of the Capital Markets (Foreign Investors) Regulations 2002	Enforcement Action A financial penalty of Kes.18,888.89 pursuant to Section 11(3)(cc)(i) and Section 25(A)(6)(b) of the Capital Markets Act

22.	National Bank of Kenya Limited	The Bank failed to issue a profit warning contrary to the requirements set out under Regulation 19(3) of the Capital Markets (Securities) (Public Offers, Listing & Disclosures) Regulations 2002 as read together with Paragraph G.05 (1) (f) of the Fifth Schedule to The Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002	<p>Enforcement Action</p> <p>a. A regulatory reprimand pursuant to the provisions of Sections 11(3)(i) and 25 A (1)(a) of the Capital Markets Act</p> <p>b. A financial penalty for the amount of Kes. 50,000/- pursuant to the provisions of Section 25 A (1) (a) (vi) of the Capital Markets Act</p> <p>c. An Enforcement Directive that NBK prepares and submits a draft public announcement setting out material changes in it's performance, pursuant to Section 11(3)(cc)(ii) of the Capital Markets Act</p>
23.	Suntra Investments Limited	<p>Failing to maintain and preserve detailed client records which set out all client transactions contrary to Regulation 19(e) of the Capital Markets (Licensing Requirements) (General) Regulations 2002</p> <p>Failing to issue the client with a refund contrary to the Regulation 22A(7) of the Capital Markets (Licensing Requirements) (General) Regulations</p>	<p>Enforcement Action</p> <p>a. A Public Reprimand pursuant to Section 25(A)(1) (a)(i) of the Capital Markets Act</p> <p>b. A Directive to make restitution of Kes.15,500/- which was owing to the client pursuant to Section 25A (2) and 11(3)(cc)(ii) of the Capital Markets Act.</p>

		<p>2002 as read together with Section 25(A)(5) of the Capital Markets Act</p> <p>Failing to issue the client with a refund contrary to the requirements of Regulation 22(b) of the Capital Markets (Licensing Requirements) (General) Regulations 2002</p>	
24.	Faida Investment Bank	<p>Failing to confirm the true identity and releasing a cheque for the amount of Kes.73,500/- to a person other than the complainant, contrary to the requirements of Regulation 80(2) of the Capital Markets (Licensing Requirements) (General) Regulations 2002</p> <p>Failing to provide the client with a refund cheque of Kes. 73,500/-contrary to the requirements of Regulation 3(b) of the Capital Markets (Conduct</p>	<p>Enforcement Action</p> <p>a. A Public reprimand pursuant to Section 25A(1)(a) (i) of the Capital Markets Act</p> <p>b. A Directive to make restitution to the client with a refund amount of Kes.73,500/-pursuant to Section 11(3)(cc)(ii) of the Capital Markets Act</p> <p>c. A financial Penalty amounting to Kes. 147,000/- pursuant to Section 11(3)(cc)(i) and Section 25A(1) (a)(v) of the Capital Markets Act.</p> <p>d. A Directive to Faida Investment Bank to furnish the Authority with a report showing the</p>

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		of Business) (Market Intermediaries) Regulations, 2011	investigations taken by it after the incident was discovered, actions if any, taken against persons implicated in such report and details of corrective and preventive measures put in place to avoid recurrence of similar incidences.
25.	Sterling Capital Limited	Failing to ensure that the accrued dividends are settled by the agent pursuant to the an agreement and/ or failing to take responsibility for the actions/omissions of the agent contrary to the requirements of Regulation 22A (7) of the Capital Markets (Licensing Requirements) (General) Regulations 2002	<p>Enforcement Action</p> <p>a. A Public Reprimand pursuant to Section 25A(1)(a) (i) of the Capital Markets Act</p> <p>b. A Directive to Sterling Capital Limited to make restitution of 936 shares and Kes.152,705/- to the client pursuant to Section 25 A(2) and Section 11(3)(cc)(ii) of the Capital Markets Act</p> <p>c. An Enforcement Directive, pursuant to Section 11(3)(cc)(ii) of the Capital Markets Act, for Sterling Capital Limited to furnish a report to the Authority on;</p> <p>i. Whether any action has been taken against the agent who committed the fraudulent act</p>

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			ii. What internal controls have been put in place to prevent a recurrence of another case of unauthorized transactions and to protect investors against financial loss of this nature
26.	Co-op Trust Investment Services Limited	<p>By effecting an unauthorized transaction of sale of shares contrary to the requirements of regulation 43 as read together with regulation 33(1) (a) and 33(1)(b) of the Capital Markets (Licensing requirements (General) Regulations, 2002</p> <p>By failing to adhere to the requirement to distribute the sums deposited by the client as per the Investment Agreement contrary to Regulation 43 as read together with Regulation 33(1) (d) and 33(1)(i) of the Capital Markets (Licensing requirements) (General) Regulations, 2002</p>	<p>Enforcement Action</p> <p>The following Enforcement directives were imposed pursuant to Section 11(3)(cc)(ii) of the Capital Markets Act</p> <p>a. Co-op Trust Investment Services Limited to provide a Management report on the measures that have been put in place to ensure that the dividends received on behalf of Co-op Trust clients are applied as per the clients' instruction.</p> <p>b. Co-op Trust to provide details of the firm's operational procedures which deal with crediting of dividends to client/nominee accounts</p> <p>c. Co-op Trust to reinstate to the client 600 EABL shares</p> <p>d. Co-op Trust to reinstate to the client 6000 HFCK shares.</p>

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			<p>e. Co-op Trust to make payment of all the dividends accruing to the client amounting to Kes.56,550</p> <p>f. A Financial penalty of Kes.255,735.59 pursuant to the Section 11(3)(cc)(i) and Section 25A(1)(a)(v) of the Capital Markets Act</p>
27.	Old Mutual Securities Limited	<p>Failing to ensure that the CDS account was opened by a duly authorized representative of the estate of the deceased contrary to the requirements of Regulation 22(d) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002</p> <p>Failing to have proper records of the client, including their identification records contrary to the requirements of Regulation 80(1)(e) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002</p> <p>Executing the sale of shares in the absence of a duly filled and written sale order contrary to the requirement of Regulation 23(b) Capital Markets (Licensing Requirements)</p>	<p>Enforcement Action</p> <p>a. A restitution order that OMSL makes payment to the client totalling the amount of Kes 53,265/-, pursuant to Section 11 (3) (cc) (ii) of the Capital Markets Act</p> <p>b. An Enforcement Directive, for OMSL to furnish the Authority with a copy of its internal investigative report on factual findings and disciplinary actions taken against employees found culpable pursuant to Section 11 (3) (cc) (ii) of the Capital Markets Act</p>

		(General) Regulations, 2002	
		Releasing the sale proceeds to a person other than the client contrary to the requirements of Regulation 20(b) and 22(b) of the Capital Markets (Licensing Requirements)(General) Regulations, 2002	
ENFORCEMENT ACTIONS FOR YEAR 2017			
28.	CMC Holdings Limited	The existence of a scheme involving over invoicing on importation of vehicles into Kenya by CMC and operation of various offshore bank accounts for purposes of channelling the margins from the over-invoicing for the benefit of select former key officers of CMC Holdings to the detriment of the Company and its shareholders	During the period the Authority recovered the sum of Kes 131,077,000 from former directors of the Company as disgorgement of sums irregularly received from offshore accounts.
29.	Various Market intermediaries	Late submission of Monthly Management Accounts and/or Monthly Risk-Based Capital Adequacy returns contrary to the provisions of	During the period, the Authority imposed financial penalties for amounts ranging from Kes 2,222.22 to Kes 15,555.55

		Regulation 32 (2) of the Capital Markets (Licensing requirements) (General) Regulations 2002 and Clause 45 (1) of the Guidelines on Financial Resource Requirements for Market Intermediaries	against seven market intermediaries which delayed in submission of the regulatory reports for periods seven (7) days or less. The cumulative amount of the financial penalties imposed amounted to Kes 45,555.51
<p>NOTES:</p> <ol style="list-style-type: none"> 1. During the financial year 2017/2018, the Authority imposed Kes. 113,481,196.07 in financial penalties for contravention of the capital markets legal and regulatory framework. 2. No contest settlements of Kes. 49,012,007/= were executed between the Authority and individuals who had contravened capital markets legal and regulatory framework. 3. The Authority received a settlement of Kes. 56,972,625/= in the CMC administrative action matter 4. All financial penalties and no contest settlements received by the Authority are payable to the investor compensation fund in accordance with Section 18(2) of the Capital Markets Act. 			
ENFORCEMENT ACTIONS FOR YEAR 2018			
30.	Cytonn Investments Management Ltd (Cytonn Investments	Conduct of capital markets regulated business without a valid license contrary to section 23(1) of the Capital Markets Act	Regulatory Directive to Cytonn Investments Ltd directing the company to ensure it takes requisite steps to bring Cytonn entities into compliance with the capital markets regulatory framework are commenced within

			30 days and not later than 18 th September 2017 pursuant to section 11(3)(cc) of the Capital Markets Act. Cytonn Investments complied with the directive and Cytonn Asset Managers Limited was licensed by the Authority as a Fund manager
31.	Mr Kunal Somchand Bid c/o Bid Management Consultancy Ltd	Wash trades conducted on Eaagads Shares counter on 23 rd and 24 th February 2017 contrary to Section 32G(1)(a) and 32G(2)(b) of the Capital Markets Act	a) Regulatory warning issued pursuant to Section 11(3)(cc) of the Capital Markets Act. b) Financial penalty of Kes.30,850 issued Pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.
32.	Regnum Consultants Ltd	Presentation of unaudited accounts and late submissions of Audited accounts for year ended December 31, 2016 contrary to Section 34(b) of the Capital Markets Act and Regulation 32(1)(d) Capital Markets (Licensing Requirements) (General) Regulations, 2002 amended 2016	A reprimand issued to the company pursuant Section 25A(1)(a)(i) of the Capital Markets Act
33.	Kenya Orchards Ltd	Failure to publish interim financial statements for half year ending 30 th June 2017 in two newspapers of national circulation contrary to Paragraph B.07 of the 5 th schedule of the Capital	A financial penalty of Kes. 220,000/= issued against the company pursuant to Section 11(3)(cc)(i) of the Capital Markets Act for failure to publish its interim financial statements in two newspapers of national circulation

		Markets (Securities) (Public offers, Listing and Disclosure) Regulations ,2002.	
34.	Shelter Afrique	Late submission of half year interim financial statements for period ending 30 th June 2017 contrary to Paragraph B.07 of the 5th schedule of the Capital Markets (Securities) (Public offers, Listing and Disclosure) Regulations ,2002.	A financial penalty of Kes. 59,999.94/= issued against the company pursuant to Section 11(3)(cc)(i) and section 25(A)(6) (b) of the Capital Markets Act and Regulation 19(5) of the Capital Markets (Securities) (Public offers, Listing and Disclosure) Regulations ,2002.
35.	Mr. Kumar Sheth Harshad	Market manipulation of Nairobi Business Ventures Ltd (NBV) shares contrary to Section 32F(1) and 32G(1) of the Capital Markets Act.	a) A regulatory warning issued pursuant to Section 11 (3) (cc) of the Capital Markets Act b) A financial penalty of Kes 50,000 issued pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.
36.	Umeme Ltd	Late submissions of half year interim financial statements for the period ending June 30,2017 contrary to Paragraph B.07 of the 5th schedule	Financial penalty of Kes 128,888.76, issued to the company pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.

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		of the Capital Markets (Securities) (Public offers, Listing and Disclosure) Regulations ,2002.	
37.	East African Portland Cement Plc	Failure to publish a profit warning in respect of financial results for the year ending 30 th June 2017 contrary to Regulations 19(3) and G.05(i)(f) and G.05(2) of the Capital Markets (Securities) (Public offers, Listing and Disclosure) Regulations,2002	a) Financial penalty of Kes. 50,000/= pursuant to Section 11(3)(cc)(i) of the Capital Markets Act. b) Regulatory directive for the company to submit a plan on how they intend to address the issue of negative working capital.
38.	Cannon Asset Managers Ltd	Late submission of Non- Collective Investments Schemes portfolio returns contrary to the reporting requirements outlined under Regulation 32 (1) of the Capital Markets (Licensing requirements) (General) Regulations 2002 amended 2016.	Financial penalty of Kes. 37,778/= issued against the company pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.
39.	Fusion Investments Management Ltd	Late submission of Non- Collective Investments Schemes portfolio returns in breach of the reporting requirements outlined under Regulation 32 (1) of the Capital Markets (Licensing requirements) (General) Regulations.	Financial penalty of Kes. 33,333.30 Pursuant to Section 11(3)(cc)(i) of the Capital Markets Act

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40.	Car & General (Kenya)Ltd	Late Publication of full year financial statements for the year ended September 30,2017 contrary to Regulations 19(1) and Paragraph B.20 of the 5th schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations ,2002.	Financial penalty of Kes. 35,555.55/= issued against the company pursuant to Section 11(3)(cc)(i) and Section 25(A) (6) (b) of the Capital Markets Act and Regulation 19 (5) of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations ,2002.
41.	Mr. Wycliffe Kivunira (Former Ag. Chief Financial Officer, National Bank of Kenya Ltd	Misrepresentation of financial statements for the period ended 30 th June 2015 and 30 th September 2015 leading to presentation and publication of misleading financial statements in contravention of Regulation B.06 of the 5 th Schedule of the Capital Markets(Securities)(Public Offers, Listing and Disclosure) Regulations 2002	Financial penalty of Kes. 1 Million issued against Mr. Kivunira pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.
42.	Mr. Munir Ahmed Sheikh (former Managing Director of National Bank of Kenya Ltd)	a) Misrepresentation of financial statements for the period ended 30 th June 2015 and 30 th September 2015 leading to presentation and publication of misleading financial statements in contravention of Regulation	a) Disqualification from holding office as a key officer of a public listed company and/or issuer, licensee or any approved institution of the Capital Markets for a period of 3 years, pursuant to Section 25A(1)(c)(i) of the Capital Markets Act.

		<p>B.o6 of the 5th Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations ,2002.</p> <p>b) Failure to supply the Board of NBK with relevant, accurate and timely information to enable the Board to discharge its duties contrary to Article 2.1.3 of the Guidelines on Corporate Governance Practices by Listed Companies in Kenya, 2002.</p> <p>c) Failure to execute proper due diligence and oversee the bank’s deposit mobilization exercise and failure to foster the long-term business of NBK contrary to Article 3.1.1 of the Guidelines on Corporate Governance Practices by Listed Companies in Kenya, 2002.</p>	<p>b) Financial penalty of Kes 5 Million, pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.</p> <p><i>Mr. Munir challenged the Authority’s Enforcement Action at the Capital Markets Tribunal and proceeded to HC,</i></p>
43.	Mr. Chris Kisire (former Chief Financial	a) Approval of payments to be made to the deposit mobilization agents without conducting appropriate checks to ensure	a) Financial penalty of Kes. 1 Million pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.

	Officer, National Bank of Kenya Ltd)	<p>that the agents had legitimately mobilized deposits in favour of NBK; and</p> <p>b) Instructing deposit mobilization agents to deposit proceeds of the fraudulent scheme in identified accounts thereby facilitating the deposit mobilization embezzlement scheme to siphon funds out of NBK- a listed company whose securities are publicly traded- contrary to protection of investors' interests as per Section 11(1)(d) of the Act.</p>	<p>b) Disqualification from holding office as a key officer of a public listed company, issuer, licensee or any approved institution of the Capital Markets Authority for a period of 3 years Pursuant to Section 25A(1)(c)(i) of the Capital Markets Act.</p> <p>c) Matter was referred to the Director Public Prosecutions (DPP) for criminal investigations.</p> <p><i>Mr. Chris Kisire filed a Constitutional Petition at the High Court challenging the Authority's enforcement action.</i></p>
44.	Mr. George Jaba (former Chief Credit Officer, National Bank of Kenya Ltd	<p>Failure to provide relevant, accurate, timely and adequate credit performance information to guide the Board of NBK in making an informed assessment of adequacy of provisions for non-performing loans in contravention of Article 2.1.3 of the Guidelines on Corporate Governance Practices by Listed Companies in Kenya, 2002.</p>	<p>Financial penalty of Kes 1 Million issued against Mr. Jaba pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.</p> <p><i>Mr. Jaba challenged the Authority's Enforcement Action at the Capital Markets Tribunal, HC...</i></p>
45.	Mr. Solomon Alubala (former Head of	<p>a) Causing contracted deposit mobilization agents of NBK to raise invoices for payment</p>	<p>a) Financial penalty of Kes. 104,800,000/= issued against Mr. Alubala pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.</p>

	Treasury, National Bank of Kenya Ltd	<p>by NBK irrespective of whether they had mobilized such amounts; and</p> <p>b) Depositing or directing deposits amounting to Kes. 52 million to his Advocates' client account following a deposit mobilization embezzlement scheme to siphon funds out of NBK- whose securities are publicly traded- contrary to protection of investors' interests as per Section 11(1)(d) of the Capital Markets Act.</p>	<p>b) Mr. Alubala was disqualified from holding office as a key officer of a public listed company, issuer, licensee or any approved institution of the Capital Markets for a period of 10 years pursuant to Section 25A(1)(c)(i) of the Capital Markets Act.</p> <p>c) This matter was referred to the Director Public Prosecutions (DPP) for criminal investigations.</p> <p>Mr. Alubala challenged the Authority's Enforcement Action at the Capital Markets Tribunal, HC..CA....</p>
46.	Sanlam Investments East Africa Ltd	Late submission of Non-Collective Investment Scheme Portfolio returns in breach of the reporting requirements outlined under Regulation 32 (1) of the Capital Markets (Licensing requirements) (General) Regulations 2002 amended 2016.	Financial penalty of Kes. 35,555.52/= issued against the company pursuant to Section 11(3)(cc)(i) of the Capital Markets Act.
ENFORCEMENT ACTIONS FOR YEAR 2019			

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47.	Jacob Israel Segman	<p>Non- Compliance with the Regulatory Requirements on Disclosure of Shareholding Information in Kenol Kobil Limited through Energy Resources Capital Limited contrary to Regulation 19(1) of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations (2002) and Paragraph D.01 of the Fifth Schedule and E.05 of the Third Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) (2002). These provisions require disclosure of the aggregate of the direct and indirect interests of directors holding in excess of 3% of the share capital of the issuer distinguishing between beneficial and non-beneficial interests.</p>	<p>In August 2018, a Financial penalty of Kes.5 million was issued against Mr. Segman pursuant to Section 11(3)(cc)(i) and Section 25A(1)(c)(iii) of the Capital Markets Act.</p> <p>Mr. Segman filed an appeal at the Tribunal, HC...</p>
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48.	David Maena Tumaini	<p>Irregular trading in fixed income securities contrary to Sections 32H(b), 32I(b) and 31(5) of the Capital Markets Act and Regulations 24(1)(a), 24(1)(d) of the Capital Markets (Licensing Requirements) (General) Regulations (2002) and Regulations 3(a) and 12(3) and (4) of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations (2011).</p>	<p>In February 2019, Mr. Maena was disqualified from holding office as a key officer of a public listed company and or issuer, Licensee or any approved institution of the Capital Markets Authority; and</p> <ul style="list-style-type: none"> • Mr. Maena was fined Kes. 166,950,000/= being twice the amount of the benefit which directly accrued to him from the irregular trading;
49.	Rodrick Muhoro Ngugi	<p>Irregular trading in fixed income securities contrary to Sections 32I (a) and (b) and 32JA (1) and (2) of the Capital Markets Act.</p>	<p>In May 2019, Mr. Muhoro was restricted from conducting bonds trading for a period of ten (10) years pursuant to the provisions of Section 11 (3) (cc) and 11 (3) (w) of the Capital Markets Act.</p> <ul style="list-style-type: none"> • Mr. Muhoro was fined Kes. 208,303,718/= being an amount equivalent to two times the benefit of Kes. 104,151,859/= which he made from the scheme in the

			bonds transactions.
50.	Pesos Capital Markets Limited	Holding themselves out as carrying on the business of a Fund Manager and an Online Forex Dealer in Kenya without holding a valid license issued under the Capital Markets Act.	In October 2018, a Notice to Cease and Desist was issued against the Company for carrying on capital markets business without holding a valid license
<p>NOTES:</p> <p>1) The Capital Markets Authority recovered a total of Kes. 477 Million following signing of No Contest Settlement Agreements in the case of Insider trading in the Kenol Kobil PLC Counter in the Period March to May 2019; and</p> <p>2) The Capital Markets Authority recovered Kes. 82,890,986.95/= following signing of No Contest Settlement in cases involving unethical trading of Fixed Income Securities during the period July 01, 2018 to June 30, 2019.</p> <p>3) The Authority took action against three individuals namely: Mr. Andre Desimone (former CEO and Executive Director Kestrel Capital (East Africa) Ltd), Mr. Aly Khan Satchu and Mr. Kunal Kamlesh Bid(both stockbroking agents of Kestrel Capital(East Africa)Ltd, for involvement in the insider trading of Kenol Kobil Plc shares prior to the takeover announcement being publicized in October 2018. The Authority imposed enforcement actions ranging from financial penalties, disgorgement of commissions and disqualification from holding office as a key officer and director of a public listed company and or issuer, licensee or in any other approved institution under the Capital Markets Authority. Appeals against the enforcement actions are pending at the Capital Markets Tribunal and Court of Appeal.</p> <p>4) During the period under review, the Authority took minor administrative actions (issuance of warning, reprimand or cautions) against</p>			

	market intermediaries arising from contraventions which were found not to be material in nature. Examples of such contraventions include delay in Settlement of market development fees by issuers, failure to ensure that financial reports submitted to the Authority match the required format and failure to seek the Authority's approval prior to making publications.		
ENFORCEMENT ACTIONS FOR YEAR 2020			
51.	Aly Khan Satchu	Insider trading of the Kenol Kobil plc counter contrary to section 32 B (1) (a) and (b) of the Capital Markets Act	Disqualification from holding office for 3 years as a key officer and director of a public listed company and or issuer, licensee or in any other capacity in approved institution of Capital Markets Authority pursuant to the provision of Section 11(3) (w), section 24 A (2), Section 25 A (1) (b) (ii) and Section 25 A (1) (c) (i) of the Capital Market Act
52.	Kunal Kamlesh Bid	Insider trading of the Kenol Kobil plc counter contrary to section 32 B (1) (a) and (b) of the Capital Markets Act	Disgorgement of Kes 23,413,700 being irregular gains made pursuant to trades conducted on the basis of the disclosure of MNPI to trading clients pursuant to the provisions of sections 11 (3) (cc) (ii) and section 25A (1) (a) (v) of the Capital Markets Act.

			Disgorgement of Kes 333,747 being commissions pursuant to trades conducted on the basis of the disclosure of material non-public information (MNPI) to trading clients pursuant to the provisions of sections 11 (3) (cc) (ii) and section 25A (1) (a) (v) of the Capital Markets Act
53.	Andre Desimone	Insider trading of the Kenol Kobil Plc counter contrary to section 32 B (1) (a) and (b) of the Capital Markets Act	Disqualification from holding office for one year as a key officer and director of a public listed company and or issuer, licensee or in any other capacity in approved institution of Capital Markets Authority pursuant to the provision of Section 11(3) (w), section 24 A (2), Section 25 A (1) (b) (ii) and Section 25 A (1) (c) (i) of the Capital Market Act Financial penalty of Kes 2,500,000 pursuant to the provision of section 25A (1) (b) (iv) of the Capital Markets Act.
54.	Bora Capital	Noncompliance with liquid capital contrary to Regulation 30(4) of the Capital Markets (Licensing Requirements) (General) Regulation 2002, Non-compliance with Corporate	Suspension of license pursuant to section 26(1) (f) and (g) of the Capital Market

		<p>Governance Requirements contrary to Regulation 22, 24(6) and 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulation 2011</p>	
<p>Notes</p> <p>Mr. Aly Khan Satchu appealed the decision of the Authority in Judicial Review Case Number 220 of 2019, whereby a decision was delivered on 3rd December 2019, setting aside the Authority’s enforcement action.</p> <p>The High Court determined that:</p> <ul style="list-style-type: none"> a) The suit by Mr. Khan offended the doctrine of exhaustion of remedies b) Mr. Khan was a regulated person as per the Capital Markets Act c) Mr. Khan was not charged and tried for the “criminal offence” of insider trading, on the contrary the Authority was exercising its mandate under the Capital Markets Act. d) The assault on the ruling dismissing Mr. Khan’s preliminary Objection is an invitation for the High Court to delve into the merits of the ruling, which is outside of the province of judicial review. e) Since the Authority was found to have acted as the investigator, prosecutor and judge and the executioner by allowing four of its members to the ad hoc Committee, the decision of the Committee was arrived at in violation of the principles of natural justice i.e. could not pass the constitutional lens of the fair administrative action contemplated in Article 47 of the Constitution and Section 4 of the Fair Administrative Actions Act. 			

COURT CASES

1 Mr. Aly khan Satchu appealed the decision of the Authority in Misc Civil Application No 220 of 2019, whereby a decision was delivered on 3 December 2019, setting aside the Authority’s enforcement action. The Capital Markets Authority being dissatisfied with the decision of the High Court has lodged an appeal to the Court of Appeal against the said decision. Mr. Satchu has also lodged a counter appeal to the court of Appeal


ENFORCEMENT ACTIONS FOR YEAR 2021

55.	Mr. Arumugam Padachie	Failure of oversight of RPKL contrary to the provisions of Article 1.1.6 and 2.1.3 of the Code of Corporate Governance Practices for Issuers of Securities to The Public, 2015 and is prejudicial to investor’s interests protected under Section 11(1)(d) of the Capital Markets Act Publishing false, and misleading deceptive IM contrary to the provisions of Section 30 D, 30E and Section 34 (b) of the Capital Markets Act.	Mr. Arumugam Padachie was disqualified from being board member or key personnel of any Issuer, licensed or approved person in the capital market in Kenya pursuant to Section 11(3)(w) as read together with Section 11(3) (cc) of the Capital Markets Act. The disqualification will only be lifted once the bond holders recover their money in full (KES 1,303,000,000) together with the outstanding interest. A financial penalty of KES 2.5 million imposed on Mr. Arumugam Padachie pursuant to Section 11(3)(w) as read together with Section 11(3) (cc) of the Capital Markets Act
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Promoting the Integrity and Growth of the Capital Markets

			Mr. Padachie has appealed the decision in the Capital Markets Tribunal
56.	Robert Arthur Arnold	<p>Failure of oversight contrary to the provisions of Article 2.3.1 and 2.3.2 of the Code of Corporate Governance Practices for Issuers of Securities to The Public, 2015.</p> <p>Publishing false, and misleading deceptive IM contrary to the provisions of Section 30 D, 30E and Section 34 (b) of the Capital Markets Act</p>	<p>Mr. Arthur Arnold was disqualified from being board member or key personnel of any issuer, licensed or approved person in the capital market in Kenya pursuant to Section 25A (1) (c) (i) as read together with Section 11(3) (cc) of the Capital Markets Act. The disqualification will only be lifted once the bond holders recover their money in full (KES 1,303,000,000) together with outstanding interest.</p> <p>A financial penalty of KES 5,000,000 imposed on Mr. Arthur Arnold pursuant to Section 25A (1) (c) (iii) as read together with Section 11(3) (cc) of the Capital Markets Act.</p> <p>Mr. Arnold has appealed the decision in the Capital Markets Tribunal</p>
57.	Bruce Aubrey Schenk	<p>Failure of oversight contrary to the provisions of Article 2.3.1 and 2.3.2 of the Code of Corporate</p>	<p>Mr. Bruce Aubrey Schenk was disqualified from being board member or key personnel of any issuer, licensed or approved person in the capital market in Kenya</p>

		<p>Governance Practices for Issuers of Securities to The Public, 2015.</p> <p>Publishing false, and misleading deceptive IM contrary to the provisions of Section 30 D, 30E and Section 34 (b) of the Capital Markets Act</p>	<p>pursuant to Section 25A (1) (c) (i) as read together with Section 11(3) (cc) of the Capital Markets Act. The disqualification will only be lifted once the bond holders recover their money in full (KES 1,303,000,000) together with the outstanding interest.</p> <p>A financial penalty of KES 2.5 million imposed on Mr. Bruce Aubrey Schenk pursuant to Section 25A (1) (c) (iii) as read together with Section 11(3) (cc) of the Capital Markets Act.</p> <p>Mr. Schenk has appealed the decision in the Capital Markets Tribunal</p>
58.	Neil Grobbelaar	<p>Failure of oversight contrary to the provisions of Article 2.3.1 and 2.3.2 of the Code of Corporate Governance Practices for Issuers of Securities to The Public, 2015.</p> <p>Publishing false, and misleading deceptive IM contrary to the provisions of Section 30 D, 30E and Section 34 (b) of the Capital Markets Act</p>	<p>Mr. Neil Grobbelaar was disqualified from being board member or key personnel of any issuer, licensed or approved person in the capital markets in Kenya pursuant to Section 25A (1) (c) (i) as read together with Section 11(3) (cc) of the Capital Markets Act. The disqualification will only be lifted once the bond holders recover their money in full (KES 1,303,000,000) together with the outstanding interest.</p>

			<p>A financial penalty of KES 5 million was imposed on Mr. Neil Grobbelaar pursuant to Section 25A (1) (c) (iii) as read together with Section 11(3) (cc) of the Capital Markets Act.</p> <p>Mr. Neil has appealed the decision in the Capital Markets Tribunal</p>
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CAPITAL
MARKETS AUTHORITY

Promoting the Integrity and Growth of the Capital Markets



7.5 ANNEXURE 5 – CIRCULAR



CMA CIRCULAR NO. 8/2016

AUGUST 22, 2016

TO: ALL MARKET INTERMEDIARIES

**RE: DISCONTINUATION OF THE CASH MANAGEMENT SERVICES/
PRODUCT AND GUIDANCE ON CONDUCTING UNREGULATED
ACTIVITIES**

Reference is made to the above subject.

The Authority is committed to facilitating the operation of an efficient capital markets where market participants are assured of a fair and efficient foundation. In this regard and in execution of the Authority's mandate to protect investors, the Authority requires that Market Intermediaries maintain due regard to their regulatory obligations to ensure that their operations are conducted honestly, fairly and with appropriate attention given to continuous identification, measurement and mitigation of risk in all their operations. This is in addition to the overall requirement for Market Intermediaries to maintain high standards of market conduct.

The Authority notes the increase in the cash management services/products (CMS/P) being arranged or facilitated by various Capital Market Intermediaries. The mode of operations of the CMS/P is noted to be such that provision of the service is excluded from the ambit of the Capital Market Act and it therefore constitutes an unregulated activity.

Following engagements between the Authority and the Central Bank of Kenya, it has been clarified that, in accordance with the interpretation of Section 2 (1) of the Banking Act and Section 2 of the Microfinance Act, products/ services with respect to CMS/P would be deemed to constitute banking or microfinance business.

The Authority wishes to draw the attention of Market Intermediaries to Section 26(1) (b) of the Capital Markets Act which provides that the Authority may suspend or revoke a license for

such period or until the occurrence of such event as the Authority may specify if a licensed person carries out any activity outside the scope of the licensed or approved activities.

Accordingly, pursuant to Section 11 (3) (d) and (i) of the Capital Markets Act, the Authority hereby directs all Market Intermediaries to cease and desist from any engagement in unregulated activities and that they should only offer products/ services allowable under the Capital Markets Act.

For products being considered to be offered on a principle based approval ground under Section 12A of the Capital Markets Act, the Authority, will appraise itself on risk management and mitigation, governance, safeguarding of investors and reporting and disclosures framework in reviewing applications for approval of such products.

Capital Market Intermediaries are encouraged to familiarize themselves with the regulatory requirements set out in the Capital Markets Act and the respective Regulations and to engage the Authority on areas that require clarification on the regulatory requirements.

In case of any further clarification and/or guidance, kindly contact the Authority.

Yours sincerely



Paul M. Muthaura
CHIEF EXECUTIVE

cc: Kenya Association of Stockbrokers and Investment Banks (KASIB)
City House, 6th Floor, Wabera Street
P.O. BOX 43593-00100
NAIROBI

Fund Managers Association (FMA)
P.O. BOX 27898-00100
NAIROBI
Attn: Steve Muriu, Renee Blasky, FMA Secretariat

Central Bank of Kenya
Haile Selassie Avenue
P.O. BOX 60000-00200
NAIROBI

7.6 ANNEXURE 6 - ROLE OF CMA IN ISSUANCE OF BONDS & RIGHTS ISSUE BY COMMERCIAL BANKS

Our Ref: CMA/ADM/1

July 18, 2016

Justin Bundi
Clerk of the National Assembly
National Assembly
Parliament Buildings
NAIROBI

Dear Mr. Bundi

**RE: APPEARANCE BEFORE THE DEPARTMENTAL COMMITTEE ON FINANCE
PLANNING & TRADE**

We acknowledge receipt of your letter dated July 6, 2016 requesting for appearance by the Capital Markets Authority before the Committee on July 19, 2016 to adduce evidence on the following matters:

- i. The specific role of the Capital Markets Authority in approval of both Bonds and Rights Issues by listed Commercial Banks
- ii. Findings of the due diligence that was done by the Capital Markets Authority prior to approval of Bond issues for the Commercial Banks under receivership. (Kindly note that Dubai Bank did not submit any application to the Authority for a Corporate Bond Issue or any other public product before it was placed under receivership).
- iii. Disciplinary measures that can be instituted against any bank that misleads the Capital Markets Authority when undertaking its due diligence

The Authority is pleased to share the following relevant information on the referenced topics and has attached hereto a detailed memorandum in response to the queries raised. Please note that Dubai Bank did not issue any Bond.

Yours sincerely



Paul M. Muthaura
CHIEF EXECUTIVE

- Encl. **1. Imperial Bank Bond Correspondence**
2. Imperial Bank Bond Information Memorandum
3. Chase Bank Bond Correspondence
4. Chase Bank Bond Information Memorandum

MEMORANDUM ON THE MATTER REGARDING THE APPROVAL OF CORPORATE BOND ISSUES BY IMPERIAL BANK AND CHASE BANK (KENYA) LIMITED

The Capital Markets Authority (CMA or “Authority”) was set up in 1989 through an Act of Parliament Cap 485A Laws of Kenya. The CMA, which is a body corporate with perpetual succession and a common seal, was constituted and inaugurated in 1990. The Authority is a statutory agency charged with the prime responsibility of regulating the development of orderly, fair and efficient capital markets in Kenya. It licenses and supervises market intermediaries, conducts on-site and off-site market surveillance and enforces compliance, and promotes market integrity and investor confidence.

i. **The process undertaken for review of applications:**

With effect from December 2015, when the Authority receives applications for consideration it undertakes a pre-review assessment of applications within three (3) days of date of submission of an application. This is in order to confirm whether an applicant has submitted all the documents required for the Authority to undertake a holistic review of an application. Where an application is deemed not to be complete (by virtue of not having submitted all the requisite documentation), it is returned to the applicant with comments on what has not been provided.

Upon submission of a complete application, the Authority reviews the quality of the disclosures and documentation submitted in support of the application to confirm whether the application is in compliance with the detailed requirements under the Capital Markets Act and Regulations. The review process also includes obtaining clarifications from third parties e.g. other regulators (in the case of banks, the Central Bank of Kenya) as well as former employers and professional associations in cases where fit and proper assessments are required to be undertaken under the Capital Markets Act.

Where application requirements have not been met, the Authority writes to applicants highlighting the outstanding issues to be resolved or clarifications required to aid the Authority in making a determination on the application. Notwithstanding compliance with

the Capital Markets Act and requisite Regulations under which an application has been made, the Authority may take into account any additional factors prior to granting an approval to their application. The overall approvals process is guided by the following turn-around times in the grant of approvals as evidenced in the Authority's 2015/2016 Performance Contract with the Government of Kenya:

No.	Application Category	Turn-around time
1.	Issue of Licenses	Within twenty five (25) working days upon meeting all requirements*
2.	Issue and/or listing of securities and private transfers	within fourteen (14) working days upon meeting all requirements
3.	Corporate actions incidental to the issue of securities and licensing of market intermediaries (including but not limited to the issue of additional shares, bonus issues, share splits, shareholders circulars, disclosure documentation relating to takeovers and mergers, issue of additional shares to ESOP Trustees and approval of stockbroking agreements)	within seven (7) working days upon meeting all requirements
4	Announcements/advertisements/marketing material	within 1 day of submission of a complete application

* 'Meeting all requirements' includes receipt by the Authority of any third party information that may be required in the review of an application).

(The issue of bonds by commercial banks falls under the category '*Issue and/or listing of securities.*'))

Upon compliance with the Capital Markets Act and requisite Regulations under which an application has been made, an application is reviewed as per timelines indicated above. Any outstanding issues are notified to the applicant, upon full compliance application is forwarded to the management level Technical Committee of the Authority (Compliance and Facilitation Committee) and upon approval forwarded to the Chief Executive for consideration of the Committee's recommendations and final determination of the application. (This applies to the categories 2 and 3 in the above table)

In the case of a License applications, an application is reviewed as per timelines indicated above. Any outstanding issues are notified to the applicant, upon full compliance application is forwarded to the management level Technical Committee of the Authority (Compliance and Facilitation Committee) and upon recommendation for approval forwarded to the Chief Executive for consideration and progression to the Technical and Policy Committee of the Board and finally to the full Board for final determination having received recommendations from the Technical and Policy Committee of the Board.

2. Chronology of events for the review of the corporate bond applications by Imperial Bank and Chase Bank (Kenya) Limited

a) The following is a sequence of events relating to the corporate bond by Chase Bank up to the time it was placed under receivership:

Date	Events
February 6, 2015	Chase Bank applied for Bond Issue
March 10, 2015	<p>Review of application undertaken, CMA wrote to Chase bank asking them to disclose the following in the Information Memorandum (IM):</p> <ol style="list-style-type: none"> a) General information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular, the most significant recent trends in production, sales and stock, the state of the order book, recent trends in costs and selling prices; b) Information on the group's prospects for the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned in the IM and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits; c) Independent source of all the statistical information relating to the microfinance sector contained under clause 11 in the Information Memorandum; d) Expenses of the Offer; and e) The minimum level of subscription required to deem the offer successful. <ol style="list-style-type: none"> 2. Disclosure relating to the tenor of the bond and its maturity period which is indicated under clause 8.2 of the IM. 3. Submit the following documentation to the Authority:

Date	Events
	a) Audited or Management accounts for the period ending December 31, 2014 and also provide us with forecasts for the periods ending December 31, 2015 and 2016; and b) An updated accountant's report that includes the financial ratios for the Company 4).Legal opinion with regard to eligibility of private status of the bank to issue public bond
March 10,2015	CMA wrote to CBK inquiring if the Bank had any Concerns regarding proposed bond issue.
March 27,2015	Chase Bank wrote to CMA submitting the requested Documents/amendments
April 13,2015	Legal Opinion from the banks legal advisers Messrs.Mboya Wang'ong'u received on eligibility to issue corporate bond. Section 32(1) of the Companies Act (Now Repealed) allowed amendments to the Articles of Association to remove all other restrictions imposed by section 30 subject to filing requirements. The said articles were amended, filed with the Registrar of Companies and forwarded to the Authority. Having amended its Articles of Association as aforesaid, the company was no longer a private company and was therefore not subject to the restrictions on issue of securities in particular debt securities to the public. The applicant had complied with the "eligibility requirements for Public Offering of Fixed Income Securities and Listing on the Fixed Income Securities Market Segment" contained in the second schedule of The Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.
April 15,2015	CBK issued a No-Objection Letter for Chase to proceed with the public offer of the Bond
April 22, 2015	CMA (Compliance and Facilitation Committee) discussed the application and recommended approval of the Bond Issue after engagement with the applicant on outstanding issues and confirmation that the company was in compliance with the eligibility and disclosure requirements. Letter of Approval signed by the Ag. Chief Executive on the said date.
May 20, 2015	Chase Bank opens the Bond Offer
June 4, 2015	Chase bank closes the Bond Offer
June 10, 2015	Chase Bank issued the Bond to investors
June 22, 2015	The issued bond started trading
September 30, 2015	Chase Banks submits management accounts

Date	Events
March 31, 2016	Chase Bank published December 31, 2015 accounts without an audit opinion
April 6, 2016	Chase Bank published restated December 31, 2015 accounts with an audit opinion with an emphasis of matter
April 7, 2016	CBK placed Chase Bank in Receivership
April 8, 2016	CMA suspended the trading of the Chase Bank Bond from trading at the NSE
April 11, 2016	CMA wrote to CBK and KDIC to request for information relating to the reliability and completeness of information submitted at the time of the lodging of the Bond application as well as during the public listing and trading of the Bond. The Authority is still coordinating with the CBK to secure the relevant information.
April 21, 2016	CMA wrote to the Auditors requesting for information on the circumstances leading to the emphasis of matter and review of financial statements.
Currently	CMA is undertaking investigations. Meanwhile, the KCB Limited has been appointed as the Receiver of Chase Bank and reopened the Chase Bank branches on 27 April 2016

b) The following is a sequence of events from application of bond issue to the time when Imperial Bank went under receivership

Date	Events
April 30, 2015	Imperial Bank applied for Bond Issue. Though not all documents were submitted.
May 5, 2015	CMA wrote to CBK inquiring if the Bank had any Concerns regarding proposed bond issue.
May 27, 2015	CMA Vide email wrote to Imperial Bank asking the bank to clarify whether the application was a private placement/public offer noting that some disclosures in the Information Memorandum referred to private placement which the Authority does not approve. The applicant was also required to submit the Trust Deed and all agreements to enable the Authority undertake a holistic review of the application.
June 3, 2015	Imperial Bank submitted the requested outstanding documents
June 9, 2015	CBK issued a No-Objection Letter to Imperial proceeding with a public issue of the Kes 2 billion Bond
June 11, 2015	CMA wrote to Imperial Bank vide email to disclose in the Information Memorandum(I.M) the ratios as required by

Date	Events
	<p>paragraph G.11 on financial disclosures had not been provided in the reporting accountants report</p> <p>2.</p>
June 11,2015	<p>Imperial Bank responded vide email submitting amended IM and the Accountant's Report highlighting the Imperial Bank's Financial Ratios for the last five years.</p>
June 15,2015	<p>CMA vide email wrote to Imperial Bank asking them to confirm:</p> <ol style="list-style-type: none"> 1. Whether Imperial Bank as a private company is authorized to issue corporate bonds to the public in view of section 30(1) of the Companies Act. 2. To confirm whether the notes will be fixed rate or fixed and floating rate notes. 3. Whether there will be a pricing supplement as it is a single tranche issuance. 4. To complete all blanks in the document. 5. To submit more information on the majority shareholder i.e. Imperial Securities Ltd
June 19,2016	<p>Imperial Bank responded vide email stating as follows:</p> <p>As pointed out by the Authority, Imperial Bank is a private company, and is considering the conversion to a public company in order to comply with Section 30 (1) (c) of the Companies Act as guided. They had commenced the requisite internal approvals to effect the conversion. They requested that the application be considered on condition that they provide evidence of the conversion to a public company before the offer opens.</p> <p>They confirmed that the notes will be fixed rate to be issued with a single tranche and thus there will be no pricing supplement. They indicated these changes would be addressed and will be highlighted in a revised Information Memorandum.</p>

Date	Events
July 22,2015	<p>The Bank converted to a public company in order to comply with Section 30 (1) (c) of the Companies Act .The filing receipts, letter on change of name from the Registrar of Companies and Shareholders resolution dated 28/7/15 were all duly been submitted to the Authority. Having converted to a public company as aforesaid, the company was legally authorized to issue securities, in particular debt securities, to the public under the Capital Markets Act.</p> <p>The applicant had complied with the eligibility and disclosure requirements for the issue of corporate bonds.</p>
August 12, 2015	<p>CMA (Compliance and Facilitation Committee) discussed the application and recommended approval of the Bond Issue after engagement with the applicant on outstanding issues and confirmation that the company was in compliance with the eligibility and disclosure requirements.</p> <p>Letter of Approval signed by the Chief Executive on the said date</p>
August 24, 2015 to September 17, 2015.	Imperial Bank opens the Bond Offer
September 17 2015	Imperial bank closes the Bond Offer
September 22, 2015	Imperial Bank issued the Bond to investors
September 28, 2015	The settlement date
October 6,2015	Crediting of investors' CDS accounts
October 13	Proposed date for listing on NSE and commencement of trading
October 13, 2015	<p>Central Bank of Kenya (CBK) appointed Kenya Deposit Insurance Corporation (KDIC) to assume management and control of Imperial Bank Limited pursuant to the provisions of section 34(2) (b) of the Banking Act and sections 43 and 53(1) of the Kenya Deposit Insurance Act.</p>
October 13, 2015	CMA suspended the listing and trading of the Imperial Bank Bond at the NSE
October 14, 2015	CMA wrote to CBK and KDIC to request for information on the factors leading to the appointment of a receiver and for a confirmation that the funds raised for the bond continued to be

Date	Events
	held in a segregated account and distinct from the assets of the bank now under receivership.
November 20 2015 December 15,2015 December 17,2015	CMA wrote to CBK and KDIC to elaborate on its request for information and to detail the Authority's interpretation of the law as it applies to the bond offer and the rights entitlements of the investors in the bond.
April 4, 2016	CMA wrote to CBK and KDIC confirming that in the absence of information controverting the Authority's interpretation of the law as it applies to a bond transaction, the Imperial Bond would be deemed cancelled. In addition, the Authority forwarded a formal request for the KDIC to facilitate a refund of the bond proceeds to investors in view of the fact that the bond issue was made based on fraudulent misrepresentations by the bank vide the Information Memorandum. The CBK and KDIC are yet to communicate the proposed steps to comply with the directions of the Authority.
May,6 2016	CMA wrote Notice to show cause letters to the (former) Directors of Imperial Bank thereby commencing enforcement process for the former directors of Imperial Bank for their role in the handling and oversight of the corporate bond issue
Currently	The Directors of Imperial Bank have challenged the CMA enforcement actions being pursued in High Court Constitutional Petition no.245 of 2016. The case is ongoing.

3. Findings of the Due Diligence Conducted by the Authority prior to Approval of Bond issues

In the review of applications, the Authority is guided by the standards contained in the Capital Markets Act and Regulations. For bond issues, the requirements are set out under the Capital Markets(Securities) (Public Offers, Listings and Disclosure Regulations, 2002). The key requirements for issue of corporate bonds are:

- i. Eligibility requirements –this is the minimum criteria that a company must comply with for it to be considered eligible to offer corporate bonds in Kenya. They include financial and non-financial requirements

- ii. Disclosure requirements which are very detailed and cover, *inter alia*, a statement from directors of the company that they take responsibility for all the disclosures that are made in the Information Memorandum, the governance structure of the company, the use of proceeds, detailed disclosures on the company's financial position as verified by the reporting accountants, legal opinions from the lawyers, related party transactions, etc.

The Authority also has powers to ask for any additional information that may be required in the course of the review and which is necessary for investors to make an informed decision on the corporate bond issue.

In the event that an application does not meet the minimum requirements and if the Authority's regulatory concerns are not adequately addressed, it is not approved.

In granting its approval for corporate bond issues, the Authority is empowered under the Regulations to approve the Information Memorandum containing the disclosures being made by issuers to the investing public to ensure that all information required is made available to enable them make informed decisions. The Regulations explicitly provide that the Authority does not approve the merits of a corporate bond or any other public offer and that responsibility for the contents and commitments made in the Information Memorandum rests with the directors of the Issuer.

i) Application for approval of Corporate Bond Issue by Imperial Bank Limited

The Capital Markets Authority (the Authority) received an application from Imperial Bank Limited (the Bank) on April 30, 2015 for issue and listing of up to Kenya Shillings Two Billion (Kes. 2,000,000,000) Fixed Rate Notes. Based on the disclosures provided by the Applicant and its professional advisers in the course of the review process, the Authority was satisfied that the Bank had met all the relevant eligibility and disclosure requirements. The Authority wrote to the Central Bank of Kenya (CBK) vide letter dated May 5, 2015 and the Central Bank of Kenya (CBK) responded on June 9 2015 with a No Objection letter to the proposed issue. As a result approval was granted by the Authority on August 12, 2015.

Appointment of Kenya Deposit Insurance Corporation to assume Management of Imperial Bank Limited

On October 13, 2015, the Central Bank of Kenya (CBK) appointed Kenya Deposit Insurance Corporation (KDIC) to assume management and control of Imperial Bank Limited pursuant to the provisions of section 34(2) (b) of the Banking Act and sections 43 (on receivership) and 53(1) of the Kenya Deposit Insurance Act. The appointment of KDIC, according to CBK, was occasioned by inappropriate banking practices by the Bank that warranted immediate remedial action intended to provide a platform for KDIC to restore the safety and soundness of the Bank.

It came to the Authority's attention that information relating to the bank's operations and financial performance as provided by the Bank to the Authority pursuant to its application for issuance and listing of the Fixed Rate Note was not accurate. For this reason, the investors who participated in the bond issue may have relied on disclosures that may have been incomplete, inaccurate or otherwise misleading.

The Authority subsequently commenced enforcement actions against the directors of the Bank as the persons who take responsibility for the disclosures made in the Information Memorandum for the corporate bond. These actions have been challenged by the former directors of the bank in High Court Constitutional Petition no.245 of 2016.

ii) **Application for approval of Corporate Bond Issue by Chase Bank (Kenya) Limited**

On February 6, 2015 the Authority received an application from Genghis Capital Limited (alongside NIC Capital Limited acting as co-arranger) on behalf of Chase Bank (Kenya) Limited for the issue of a Kes. 10,000,000,000 Medium Term Note Programme (MTN Programme).

Based on the documentation and disclosures provided by the Applicant and its professional advisers in the course of the review process, the Authority was satisfied that the Bank had met the relevant eligibility and disclosure requirements. The Authority wrote to the Central Bank of Kenya (CBK) vide letter dated March 10, 2015 and the Central Bank of Kenya (CBK) responded on April 15 2015 with a No Objection letter to the proposed issue. As a result approval was granted by the Authority on August 2, 2015.

The Central Bank of Kenya (CBK) placed Chase Bank under Receivership on April 7, 2016.

CMA suspended the trading of the Chase Bank Bond from trading at the NSE on April 8, 2016 and has written to CBK and KDIC to request for information which has not been provided to date. CMA is undertaking investigations. Meanwhile, the KCB Limited has been appointed as the Receiver of Chase Bank and reopened the Chase Bank branches on 27 April 2016.

3. Regulatory tools for enforcement for Issuers of Securities

Cancellation of the offer and refund of bond proceeds

The Authority also has wide powers to issue appropriate directions under section 30G of the Act. This section empowers the Authority to issue directions to an issuer of an approved offer to do or not to do any matter as specified or with regard to any other matter that the Authority may consider necessary on the basis that:

- i. an issuer or other obligated party, has furnished the Authority with false, inaccurate or misleading information; or
- ii. an issuer or offeror has contravened or is about to contravene a provision of this Act;

In further, Regulation 14 of the Capital Markets (Securities) (Public Offers, Listings and Disclosures) Regulations, 2002, empowers the Authority cancel an offer where circumstances have occurred or new information has emerged that fundamentally alters the basis of approval of a public offer before the allotment or listing date in the case of an introduction.

On 4 April 2016, by way of a letter to KDIC, the Authority declared the bond issue as null and void and ordered the reimbursement of the principal amount to the investors. A response to this communication has yet to be received.

Liability to compensate investors for false/misleading prospectus

Investors have the right to receive accurate disclosures and the persons who are at fault in infringing on that right “should be held liable, whether they are primary or secondary actors”. Outside professionals such as accountants and lawyers often have much influence over corporate disclosures, in terms of both form and contents, which can deceive investors, and

therefore they should be made liable for defective disclosure even though their roles may be less direct.

The Issuer is required to provide the public with sufficient information to enable them make an informed investment decision regarding the securities being offered. Under the provisions of Regulation 17 (1) Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 and Section 30 E (1) (a) of the Act, an Issuer is liable to compensate investors affected by a false or misleading prospectus.

Under the provisions of Regulation 12 of Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, Imperial Bank was required to provide information on:

- (a) The assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) The rights attaching to those securities

This requirement is amplified under Section 30 F of the Act and Regulation 13 of Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, whereby an Issuer is required to issue a Supplementary Prospectus, where

- (a) There is a significant change affecting any matter contained in the prospectus the inclusion of which was required; or
- (b) A significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared; or
- (c) There is a significant inaccuracy in the prospectus.

The Directors of Imperial Bank

Under Section 30 E (1) (b) of the Act and Regulation 17 (1) (b) of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 where an issuer is a body corporate, Directors at the time of publication of prospectus, are jointly and severally liable to pay compensation to any person who acquires the securities in reliance of the prospectus and suffers loss as a result of untrue/misleading statements in the prospectus or

omissions which significantly and adversely affect the truth and accuracy of the contents of the prospectus. They may also be criminally liable under section 30D of the Act.

Under Section 25A of the Act the Authority may impose the following sanctions or levy financial penalties in accordance with this Act, *for the breach of any provisions of this Act, the regulations, rules, guidelines, notices or directions made hereunder, or the rules of procedure of a securities exchange, by a licensed or approved person, listed company, employee or a director of a licensed or approved person or director of a listed company as provided under section 11 (3) (cc).*

(a) with respect to a licensed person, listed company, securities exchange or other approved person -

(i) A public reprimand;

(ii) Suspension in the trading of a listed company's securities for a specified period;

(iii) Suspension of a licensed person from trading for a specified period;

(iv) Restriction on the use of a licence;

(v) Recovery from such person of an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;

(vi) The levying of financial penalties not exceeding ten million shillings;

(vii) Revocation of the licence of such person;

(b) With respect to an employee of a licensed or approved person, including a securities exchange

(i) require the licensed or approved person to take disciplinary action against the employee;

(ii) Disqualification of such employee from employment in any capacity by any licensed or approved person or listed company for a specified period;

(iii) recovery from the employee of a licensed or approved person an amount double the benefit accruing to such person by reason of the breach;

(iv) The levying of financial penalties not exceeding five million shillings;

(c) With respect to a director of a listed company or a licensed or approved person, including a securities exchange -

(i) Disqualification of such person from appointment as a director of a listed company or licensed or approved person including, a securities exchange;

(ii) The recovery from such person of an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;

(iii) The levying of financial penalties in such amounts as may be prescribed.

(2) In addition to any other sanction or penalty that may be imposed under this section, the Authority may make orders for restitution, subject to the provisions of subsection (3).

(3) The Authority shall make orders under subsection 2 where the breach of the provisions of this Act or the regulations made under the Act results in a loss to one or more aggrieved persons, but subject to the following conditions –

(a) That the amount of the loss is quantified and proved to the Authority by the person making the claim; and

(b) That notice is served by the Authority on the person expected to make the restitution, containing details of the amount claimed and informing them of their right to be heard.

(4) The Authority shall, in its annual report, publish the names of persons against whom action has been taken by the Authority under this Part.

The Transaction Advisers, Lawyers and Accountants

Under Section 30 E (1) (c) & (f) of the Act and Regulation 17 (1) (c) & (f) any person who has accepted and is stated in the prospectus as accepting responsibility for, or for any part of the prospectus or who has authorized the contents of, or of any part of the prospectus, jointly and severally liable for to pay compensation to any person who acquires the securities in reliance of the prospectus and suffers loss as a result of untrue/misleading statements in the prospectus or omissions which significantly and adversely affect the truth and accuracy of the contents of the prospectus.

Lawyers and auditors are regarded as gatekeepers' i.e. independent professionals who serve investors by preparing, verifying, or assessing the disclosures that they receive. The liability

of auditors [and arguably lawyers and transaction advisers] is attributable to their substantial participation or intricate involvement in the preparation of a prospectus. Secondary actors, they may be, however they can be held liable as primary violators “where any person or entity, including a lawyer, accountant, or bank who employs a manipulative device or makes a material misstatement (or omission) on which a purchaser or seller of securities relies may be held liable as primary violator ...”

In the present instance, the Transaction Advisers, Lawyers and Accountants who issued authorization for their opinions to be included in the prospectus, may be found liable, for defects in their opinion, which can be ascribed to a failure/refusal and/or intentional provision of false, inaccurate statement or for an omission which adversely affects the truth and accuracy of the contents of the opinion.

Auditors have an extremely significant role to play in making reliable corporate disclosures to the public in the market for public offers. Consequently, auditors who have issued positive audit reports for failed entities are subject to actions by investors who suffer loss by relying on such reports.

Lawyers provide advice to issuers of securities on the legal requirements of disclosures in prospectuses and certify compliance with the relevant law. Investors buy securities based on those disclosures. At the same time lawyers are held responsible to make the issuer aware of legal requirements and consequences of noncompliance, hence they play a significant role in [public offers] and they could be held liable for inaccurate advice.

Note: Please note that Dubai Bank did not issue any Bond.

7.7 ANNEXURE 7 - MEMORANDUM OF SUBMISSIONS BY THE CAPITAL MARKETS AUTHORITY TO THE SENATE COMMITTEE ON INQUIRY TO THE FALL OF MAJOR SUPERMARKETS IN KENYA

MEMORANDUM OF SUBMISSIONS BY THE CAPITAL MARKETS AUTHORITY TO THE SENATE COMMITTEE ON INQUIRY TO THE FALL OF MAJOR SUPERMARKETS IN KENYA

Preamble

This report provides information in respect of Uchumi Supermarkets Ltd and Nakumatt Holdings Ltd. Uchumi Supermarkets Ltd is a company listed at the Nairobi Securities Limited and therefore under the oversight of the Authority. On the other hand, Nakumatt Holdings Ltd is a private company outside of the regulatory jurisdiction of the Authority. However, the Authority observed that there was some exposure to a few of its licensees who invested in Nakumatt privately placed commercial paper programme. The Authority's role in this case, has been to work with the affected licensees in ensuring the necessary disclosures are made, as informed by the appointed Administrator of Nakumatt.

UCHUMI SUPERMARKET

Background

Uchumi Supermarkets Limited (USL) is Listed in the Nairobi Securities Exchange.

The Authority engaged Uchumi following media reports regarding financial troubles and management malpractices at USL. On 15th June 2015, the Board of Uchumi Supermarkets Limited (USL) relieved from duty, the CEO (Dr. Jonathan Ciano) and the CFO (Chadwick Okumu) following allegations of misrepresentation of the actual value of outstanding suppliers, conflicts of interest, failure to effectively account for the rights issue proceeds amounting to Kes. 895 million and failure to account for an asset sale and lease back transaction amounting Kes 1.1 billion.

On 16 June 2015, CMA invited the Board of USL to shed more light on the matter. USL submitted written explanations for the termination through its letter dated 22 June 2015, and its Board appeared before CMA on 25 June 2015. During the meeting the USL Board confirmed that it had earlier appointed KPMG to carry out a forensic investigation on the financial affairs of the company.

A draft of the KPMG report was shared with the Authority on 17 December 2015 and later the final report by the then CEO Mr. Julius Kipng'etich requesting the Authority to take action on the former management at USL for gross misconduct. The Authority initiated investigations into the affairs of Uchumi Supermarkets. The Authority's investigations was based on the following specific areas: -

1. Whether the Rights Issue proceeds were actually received and used for the intended purposes as disclosed in the Approved Information Memorandum;
2. Whether the sale and lease back agreement entered by USL with Rent Co, was sanctioned by the Board, the resultant funds received by USL, how the proceeds were used, whether the transaction was in the best interest of USL and whether the relevant required disclosures were made and approvals obtained;
3. Whether the filed financial statements for the period 2010 to 2014 and in particular the period ended June 30, 2014 relied upon by USL to raise funds through the Rights Issue and subsequent financial statements for the period ended December 2014, were free from misstatements; and
4. Whether there were breaches of fiduciary duties and conflicts of interest by the USL Board and Management in their conduct of the affairs of USL.

Following finalization of the investigations, the Authority on 31st August 2016 issued Notice to Show cause (NTSC) to the following;

- a) Faida Investment Bank, the Lead Transaction Advisor during the Uchumi Supermarkets Limited (USL) Rights Issue
- b) Dr. Jonathan Ciano, the former Group Managing Director/ Chief Executive Officer of USL
- c) Mr. Chadwick Okumu, the former Finance Manager of USL
- d) Ms. Khadija Mire, the Former Board Chair of USL

- e) Mr. Bartholomew Ragalo, a former Board Member of USL
- f) Mr. James Murigu, a former Board Member of USL
- g) Ms Mbatha Mbithi, a former Board Member of USL
- h) Joyce Ogundo, a former Board Member of USL
- i) Ernst & Young (EY)- USL Auditor of USL

They were given an opportunity to file written submissions on the allegations contained in the NTSC and were given an opportunity to appear before the board of the Authority to highlight their submissions and to provide further oral evidence or clarifications.

Notifications of enforcement actions were issued on 16th December 2016, 17th December 2016, 18th November 2016 and on 9th December 2016. The Authority issued the following sanctions against individuals/ firms;

Faida Investment Bank Limited(FIB)

- i. A Regulatory Caution against FIB to ensure that its future operations as a Transaction Advisor are conducted in full compliance with the requirements of the Capital Markets regulatory framework;
- ii. The License of FIB was restricted for a period of 180 days (6 months) ending on 17th May 2017, by way of prohibition from acquiring, attempting to acquire or taking steps that may be interpreted by the Authority to be primarily intended to acquire new transaction advisory clients, customers or associates, or engaging in any agreements, contracts or other like engagements, for purposes of carrying out or profiting from any transaction advisory services.

Ms. Khadija Mire

- i. Disqualification from holding office as a Director and/or key officer of a public listed company and/or issuer, Licensee or any approved institution of the Capital Markets Authority for a period of two (2) years;
- ii. Disgorges Board allowances net of tax in the amount of Kes 1.77 Million deemed to have been earned and paid to her by USL for the financial years 2014 and 2015, being a benefit derived from USL.

- iii. Directive that she attends Corporate Governance Training in order to be eligible to be considered for appointment as director of a listed company.

Mr. James Murigu

- i. Disqualification from holding office as a Director and/or key officer of a public listed company and/or issuer, Licensee or any approved institution of the Capital Markets Authority for a period of one (1) year and;
- ii. Disgorgement of Board allowances of Kes 660,000/- net of taxes deemed to have been earned and paid to him by USL for the financial years 2014 and 2015, being a benefit derived from USL.

Mr. Chadwick Okumu

- i. Disqualification from holding office as a Chief Financial Officer, Director and/or key officer of a public listed company and/or issuer, Licensee or any approved institution of the Capital Markets Authority for a period of two (2) years.
- ii. The Authority to Lodge a request for the commencement of disciplinary proceedings by Institute of Certified Public Accountants of Kenya, in respect of your professional conduct as a Certified Public Accountant of Kenya – CPA (K).

Mr. Barth Ragalo

- i. A Regulatory Caution to ensure that in any future engagement as a Director and/or key officer of a public listed company and/or issuer, Licensee or any approved institution of the Capital Markets Authority you ensure compliance with the Corporate Governance Code;
- ii. Disgorgement of Board allowances net of tax in the amount of Kes 855,000/- deemed to have been earned and paid to him by USL for the financial years 2014 and 2015, being a benefit derived from USL; and
- iii. Directive that he attends Corporate Governance Training in order to be eligible to be considered for appointment as director of a listed company.

Dr. Jonathan Ciano

- i. Disqualification from holding office as a Director and/or key officer of a public listed company and/or issuer, Licensee or any approved institution of the Capital Markets Authority for a period of Five (5) years;
- ii. Financial penalty of Kenya shillings Five Million (Kes. 5,000,000.00); and
- iii. Disgorgement of deemed profits obtained by Eliehon Co. Ltd. being Kes 13,500,000.00 (i.e 10% of gross revenue of Kes. 135,721,580.00 for the period 2012 - 2015 net of tax), due to non-disclosure of the Conflicts of interest to the USL Board.

Ms Mbatha Mbithi

The Authority did not take enforcement action against Ms Mbatha Mbithi after she satisfactorily highlighted her individual efforts to hold management accountable on the issues raised in the NTSC.

Joyce Ogundo

The Authority did not finalise enforcement action against Joyce Ogundo due to injunctive orders issued in her favour in **Nairobi HCCC Misc Application 606 of 2016 R Vs Capital markets Authority & Another exparte Joyce Ogundo**. The Judicial review matter was filed on December 6, 2016. The judgement was delivered on January 16, 2018 allowing the application and issuing the following orders;

1. Certiorari quashing the Notice to show cause dated 31st August 2016.
2. Prohibition restraining the Respondents, their agents or employees from proceeding with NTSC dated 31st August 2016.

CMA being dissatisfied by the said judgement has filed an appeal, **Civil Appeal No. 131 of 2018 Capital Markets Authority vs Joyce Ogundo** at the Court of Appeal.

Ernst &Young (EY)

The Authority did not finalise enforcement action against Ernst &Young (EY) due to injunctive orders issued in their favour in **Nairobi HCCC No 385 of 2016, Ernst &Young LLP Vs Capital Markets Authority & Another**. On March 7, 2017 judgement was rendered in favour of the Authority where the orders sought by the Petitioners were denied. Ernst &Young being dissatisfied with the judgement filed an appeal **No Civil Appeal No 92 of 2017**.

On 23rd October 2017, the Authority held a board hearing for EY to highlight their submissions and raise any other concerns or provide additional evidence on allegations made against them in the NTSC dated 31st August 2016. However, before the Authority could render its decision, the court issued further orders in **Civil Appeal No 92 of 2017**, one of which was that the proceedings of the CMA be stayed until hearing of the Appeal and further orders of the Court.

OTHER ACTIONS TAKEN BY THE AUTHORITY

The Authority has referred Uchumi Supermarkets matters to the Director of Criminal investigations and the Director of Public Prosecutions for purposes of investigations and prosecution of allegations of financial and accounting improprieties and publishing of false statements by company officials. (see letter to DPP dated 21.12.2017)

UPDATE ON COURT MATTERS ARISING FROM UCHUMI MATTER.

After the Authority took enforcement action as outlined above, several individuals moved to court / tribunal to challenge the Authorities decision. The following is an update of those matters.

1. Nairobi Capital Markets Tribunal Appeal No 2 of 2016, Khadija Mire vs CMA

The memorandum of appeal was filed at the Capital Markets Tribunal on 1st December 2016. The matter is still pending at the Tribunal after the Chairman recused himself from the matter.

2. HCCC Misc. Application No.607 of 2016, James R. Murigu and Barth Ragalo vs CMA

The Judicial Review application was filed on December 6, 2016. Judgement was delivered on January 16, 2018. The court allowed the application and issued the following orders;

1. Certiorari quashing the enforcement actions taken by the Authority against James Murigu and Barth Ragalo dated 17th November 2016 and 18th November 2016.

2. Prohibition restraining the Respondents, their agents or employees from enforcing the decisions made on 17th November 2016 and 18th November 2016.

CMA being dissatisfied by the said judgement has filed an appeal, **Civil Appeal No. 132 of 2018, Capital Markets Authority vs James R. Murigu and Barth Ragalo.**

3. HCCC Constitutional petition no.510 of 2016, Chadwick Okumu vs CMA

The Petition was filed on December 2, 2016. Judgement was delivered in favour of the petitioner on May 2, 2018 and issued the following orders;

1. Declaration was issued that the investigations, proceedings and hearing conducted by CMA against the Petitioner Chadwick Okumu on 25th October 2016 was conducted in a manner that violated principles of natural justice and consequently the said proceedings and consequential decision is null and void for all purposes.
2. Certiorari quashing the investigations, proceedings and hearing conducted by CMA against the Petitioner Chadwick Okumu on 25th October 2016 and subsequent determination dated 18th November 2016.

CMA being dissatisfied by the said judgement filed a Notice of Appeal on 11th May, 2018

4. HCCC Miscellaneous Application 588 of 2016, R V Capital markets Authority & Uchumi Supermarkets Ltd exparte Jonathan Irungu Ciano

Judgement was delivered on 9th April 2018. The court allowed the application and issued the following orders;

1. Certiorari quashing the Notification of enforcement action taken by the Authority against Jonathan Ciano dated 17th November 2016.
2. Prohibition restraining the Respondents, their agents or employees from acting upon the Notification of enforcement action dated 17th November 2016.

CMA being dissatisfied by the said judgement has filed a Notice of Appeal on 23rd April, 2018

Way Forward

The Authority has to wait for the various appeals that have been filed on Uchumi matters to be heard and determined before it can decide on the way forward on Uchumi administrative actions.

NAKUMATT HOLDINGS LTD

Media reports last year touching on Nakumatt Holdings Limited indicated that the company was in financial distress where it is believed that the company has debt to a tune of KES 30 to 40 billion. The company has been and is still closing its branches due to the current financial situation.

Nakumatt Holdings Limited issued a commercial paper programme where some of the Fund Managers licensed by the Authority (five of them) had invested a total of Kes.660 million as principal and were being owed Kes.690 million at the point administrator was appointed.

Going by the media reports it became clear that the company was in financial difficulty and it might take a while before the company could fully recover from this situation. This cast doubts on the ability of firms which invested in the Commercial Paper to recover their investments.

In the context of the above, the Authority took a regulatory stance to the effect that it is a prudent accounting practice for the firms holding these investments to make adequate provisions in their books. This provision should reflect the probability of the commercial paper defaulting and the likely loss if the company actually defaults.

The Authority held several meetings with the five affected licensees to discuss the treatment of this investment in their financial statements. The Authority also invited Nakumatt Administrator, Mr. Peter Kahi of PKF Kenya to discuss the recovery plan of Nakumatt Holdings Ltd and also to give the Authority an opportunity to have a better understanding of the measures being taken by the company to revive its operations and honour its obligations to the holders of the Commercial Paper.

Mr. Peter Kahi was appointed by the High Court of Kenya to be the Nakumatt Administrator on 22nd January 2018 after 5 suppliers petitioned for Nakumatt to be administered instead of being liquidated. The Administrator was given 12 months protection from creditors to see if the company can be revived. Following the Administrator's appointment, all debts were frozen as at 22nd January 2018 and none can be rolled over. The Administrator indicated that Nakumatt's situation was as a result of relying on short-term borrowing for operations and expansion.

The Administrator indicated that he needed about Kes 3 to 4 billion to put Nakumatt back up to operation but banks were not interested in providing loans to Nakumatt because the company has no assets. The only asset held is the goodwill of its brand.

Way forward

In order to ensure consistency in its regulatory decisions, the Authority was keen to insist on accounting treatment of the affected investments in full compliance with International Financial Reporting Standards (IFRSs).

The Authority is conducting a study on how to prevent similar risks in the future, distinction between regulated and privately placed CPs, due diligence to be undertaken before investing in privately placed Commercial Papers and the management of such risks of default by issuers of Commercial Paper through instruments like insurance and other risk management tools.

- 7.8 ANNEXURE 8: CAPITAL MARKETS AUTHORITY STRATEGIC PLAN 2018-2023
- 7.9 ANNEXURE 9: CAPITAL MARKETS AUTHORITY ANNUAL REPORT 2015-2019
- 7.10 ANNEXURE 10: KRA SUMMARY ON TAX COMPLIANCE

