

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 35 Volume CV dated 29th June, 2012

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

S T A T U T O R Y I N S T R U M E N T S

2012 No. 46.

THE CAPITAL MARKETS (ASSET BACKED SECURITIES)
REGULATIONS, 2012.

Regulation.

PART I—PRELIMINARY.

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

PART II—PARTIES TO SECURITISATION.

4. Sponsor.
5. Originator.
6. Depositor.
7. Issuer.
8. Objects of an issuer.
9. Marketing of issuer.
10. Voluntary winding up of issuer.
11. Consent of the Authority and issuer.
12. Auditor.
13. Duties of an auditor.
14. Communication of the information to the Authority.
15. Managing agent.
16. Officer in charge of keeping records.
17. Servicing agent.
18. Appointment of servicing agent.
19. Agent to keep proper records.
20. Servicing agent to operate as a liquidity provider.

Regulation.

21. The signature of servicing agents.
22. The termination of appointment of a servicing agent.
23. Appointment of new servicing agent.
24. Surrender.
25. Trusts and trustees.
26. Duty of a trustee to investors.
27. Void agreements.
28. Duties and obligations of trustee.
29. Trustee to be excused in certain cases.
30. Form of trustee.
31. Liability of a trustee to asset backed security investors.
32. Change of address of registered office or permanent place of business.
33. Powers of trustee.
34. Appointment of advisers.

PART III—LEGAL STRUCTURE OF ASSET BACKED SECURITIES.

35. Legal form of asset backed securities.
36. Nature of asset backed securities.
37. Value and interest rates.
38. Self liquidation.
39. Issuance of asset backed securities.
40. Structuring of asset backed securities.

PART IV—ISSUANCE OF ASSET BACKED SECURITIES.

41. Offers of asset backed securities.
42. Application for approval of asset backed securities.
43. Content of application.
44. Information to the Authority.
45. Communication of information.
46. Application procedure.
47. Signing of application.
48. Submission of application.
49. Consideration of application.
50. Submission of information memorandum to the Authority.
51. Offer period.

Regulation.

- 52. Subscription of the offer
- 53. Subscription amount
- 54. Investor compensation fund
- 55. Allotment of securities
- 56. Results of allotment

PART V—ASSETS TO BE SECURITISED

- 57. Assets to be securitised
- 58. Rights of originator
- 59. Transfer of rights of originator
- 60. Redemption of asset backed securities
- 61. Ownership of assets, by the issuer
- 62. Valuation of the assets
- 63. Ownership by originator or depositor with regard to any asset included in the asset pool
- 64. Non-performing assets
- 65. Delinquent assets

PART VI—MANAGEMENT AND PROTECTION OF THE ASSET POOL

- 66. Removal of assets
- 67. Replacement assets
- 68. Addition of assets
- 69. Conditions for addition of assets
- 70. Conditions for open issues
- 71. Schedule of assets
- 72. Segregation of assets

PART VII—CREDIT RATING AND CREDIT ENHANCEMENT

- 73. Rating of asset backed securities
- 74. Credit enhancement

PART VIII—CONTINUING DISCLOSURE AND PERIODIC REPORTING

- 75. Information to the Authority
- 76. Reports to the Authority
- 77. Quarterly reports
- 78. Annual and Semi-annual financial reports
- 79. Annual and interim financial reports

Regulation.

- 80. Inspection of reports
- 81. Financial records

PART IX—LISTING, SUSPENSION OF DEALING AND DE-LISTING

- 82. Listing of asset backed securities
- 83. Suspension or delisting
- 84. Public notes

PART X—FEES AND CHARGES

- 85. Fees

SCHEDULES

Schedule—I Information Memorandum

Schedule—II Asset Backed Securities Continuous Reporting Obligations

STATUTORY INSTRUMENTS

2012 No. 46.

The Capital Markets (Asset Backed Securities) Regulations, 2012

(Under Section 101 of the Capital Market Authority Act, Cap. 84)

IN EXERCISE of the powers conferred upon the Capital Markets Authority by section 101 of the Capital Markets Authority Act, these Regulations are made this 7th day of May, 2012

PART I—PRELIMINARY

1. Title.

These Regulations may be cited as the Capital Markets (Asset Backed Securities) Regulations, 2012.

2. Application.

(1) These Regulations shall apply to all offers of asset backed securities to the public or a section of this public in Uganda including issues by state corporations and other public bodies.

(2) The Rules and Regulations governing the issue, offer and listing of fixed income securities shall apply to asset backed securities to the extent that they do not conflict with these Regulations.

(3) In these regulations, the issuer of asset backed securities must be a single-purpose legal entity created solely for the purpose of issuing asset backed securities and it will not have an established history of operations or financial performance. For the purposes of this regulation, it is the sponsors, originators and obligors involved in the securitization transaction that are of interest to the Authority and the investors.

3. Interpretation.

In these Regulations, unless the context otherwise requires—

“adviser” means a person appointed to arrange, package, place or market the application for issue, offer and listing of the asset backed securities;

“affiliate” or “affiliated entity” means any entity that controls, is controlled by or under common control with another entity, and for purposes of this definition, “control” means actual control regardless of proportion of share ownership or the means by which the control is exercised;

“allowable expenses” includes trust fees, ongoing fees paid to rating agencies, servicing fees, origination fees, acquisition expenses, liquidation expenses, bank service charges, legal fees, audit fees and other direct charges incurred in the ordinary course of business, exclusive of organisational and offering expenses, conversion expenses and extraordinary expenses, all being deemed incidental expenses relating to the authorisation and issue of asset backed securities offered for the purchase by the general public for the purposes of the Income Tax Act Cap. 340;

“asset” includes credit, loan, receivables and similar financial asset, for the time being or to be created in the future, with an expected cash payment stream, whether or not the cash payments are certain, for example, mortgage loans for real property, receivables of credit card issue, bonds, equipment leases and concession contracts for operation of revenue producing properties, including toll roads and seaports, and other asset backed securities.

“asset backed securities” means securities—

- (a) that are issued as part of a securitisation transaction in which assets are transferred to a third party that issues the securities; and

- (b) that are primarily serviced, with respect to both return of investment and return on investment, by cash flow from assets described in paragraph (a) and for the purposes of this definition, cash flow may include revenues derived from the sale or liquidation of property which secures the assets where the sale of that property is incidental to the credit transaction by which the asset was created.

“asset backed securities holder” means a person whose name appears in the register of asset-backed securities holders.

“asset pool” means the unique collection of assets which secure an issue of asset backed securities.

“Authority” means the Capital Markets Authority established under section 5 of the Capital Markets Authority Act;

“day” means any calendar day excluding Saturdays, Sundays and public holidays;

“Bank of Uganda” means the Central Bank of Uganda established by the Bank of Uganda Act Cap. 51;

“close relation” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, grand child or spouse of a grandchild, and any blood relative within three degrees of consanguinity;

“credit enhancement” means any arrangement, including but not limited to insurance, letters of credit, lines of credit, collateralization, and guarantees, intended to decrease the credit risk on the asset backed securities;

“credit enhancer” means a person or entity that provides credit enhancement;

“credit rating” means an objective and independent opinion on the creditworthiness, safety and security of the asset backed security to be issued by a credit rating agency based on relevant risk factors;

“credit rating agency” means an agency engaged regularly in the business of providing credit ratings to businesses and securities and which is approved by the Authority in accordance with its regulations and or guidelines;

“Commissioner” means a Commissioner of Insurance appointed under the Insurance Act;

“depositor” means a person that acquires and directly transfers assets to an issuer;

“eligible assets” means assets which are the subject matter of the securitisation transaction;

“generally accepted accounting principles” means the accounting rules, principles and guidelines required to be applied by licensed accountants in Uganda;

“independent director” means a director who—

- (a) is not and has not been employed by the sponsor, originator, depositor or servicing agent in an executive capacity within the five year period preceding the date of application;
- (b) is not a member of the sponsor's, originator's, depositor's or servicing agent's senior management or a significant customer or supplier to the sponsor, originator, depositor or servicing agent or is an entity that receives significant contributions from the sponsor, originator, depositor or servicing agent; or within a period of five years immediately preceding the date of application has not had any business relationship with the sponsor or originator, other than service as a director, for which the sponsor or originator has been required to make disclosure;
- (c) has no personal service contract with any of the shareholders, directors or members of the senior management of the sponsor, originator, depositor or servicing agent;

- (d) is not employed by a company at which a director of the sponsor, originator, depositor or servicing agent serves as a director as defined in this regulation;
- (e) is not a close relation of any person as defined in this regulation; or
- (f) has not had any of the relationships as defined in this regulation with any affiliate of the sponsor, originator, depositor or servicing agent;

“information memorandum” means any information memorandum, document, notice, circular, advertisement, or other invitation in print or electronic form containing information in relation to an issue of asset backed securities and inviting offers from the public or a section of the public to subscribe for the purchase of asset-backed securities;

“issuer” means a person created by a sponsor as a single-purpose entity to acquire assets and issue asset backed securities to the public or a section of the public;

“liquidation expenses” means the expenditures necessary to convert residual or non-performing eligible assets or any underlying collateral, into cash, including expenditures necessary to collect on credit enhancement;

“liquidity provider” means a person who provides funds to an issuer for the settlement of payments due to asset backed securities holders in accordance with the schedule of payments stipulated for the terms and conditions of asset backed securities to cover any short-term cash flow shortfalls;

“managing agent” means a person or an entity that provides management services to an issuer on a contractual basis, including by way of illustration and not limitation accounting, record keeping and management of the asset backed securities;

- “Minister” means the Minister responsible for Finance;
- “originator” means a person that advances the funds, goods or services underlying creation of an asset transferred to an issuer in a securitisation transaction, including by way of illustration and not limitation, a financial institution that advances a loan;
- “obligor” means a person who is directly or indirectly obligated by contract to make payments on an asset.
- “open issue” is an issue of asset backed securities described in regulation 70 approved by the Authority;
- “origination fees” means all fees, commissions or other consideration, paid by any party to another party in connection with the origination and sale of eligible assets to the issuer, but not including the purchase price of the eligible assets, initial fees paid to rating agencies and professional fees paid to advocates, valuers and similar professionals for providing routine professional services;
- “participant in the securitisation transaction” includes a sponsor, originator, depositor, servicing agent, managing agent, or trustee, but does not include investors in the asset backed securities;
- “securitisation transaction” means an arrangement which involves the transfer of assets or risk to a special purpose vehicle where the transfer is funded by the issue of securities to investors and payments to investors in respect of those securities, are principally derived, directly or indirectly, from the cash flows of the transferred assets;
- “selling agent,” means a person or an entity appointed to distribute or offer the asset backed securities to the public or a section thereof;
- “servicing agent” means an entity appointed to manage collections on the assets underlying the asset backed securities and administering the cash flows of the asset pool;

“significant obligor” means an obligor who is obligated on twenty five percent more of the assets in an asset pool;

“significant originator” means an originator who is responsible for originating twenty percent or more of the asset pool;

“sponsor” means a person that organises or initiates an asset backed securities transaction by selling or arranging for the sale of assets to an issuer, either directly or indirectly, including through an affiliated person, for the purposes of their duty a sponsor may be an originator, depositor or servicing agent.

“transaction documents” means an agreement, contract, deed, indentures schedule, or filing executed by and among the participants in the securitisation transaction and required to be provided to the Authority and the investors in the asset backed securities under this regulation;

“transfer” means the transfer of title to the assets that are the subject matter of a securitisation transaction;

“trust” means a legal arrangement entered into in connection with an asset backed securities transaction by which a trustee is appointed under these Regulations in a fiduciary capacity to acquire, hold, transfer, supervise, or exercise any property or right on behalf of the holders of the asset backed securities;

“trust agreement” means an agreement, contract, deed, indenture or other legal agreement or device establishing a trust in connection with an asset backed securities transaction;

“trustee” means a person or institution appointed to serve as the trustee under any trust agreement;

“working hours” means between 8.00 a.m. and 5.00 p.m. on any working day;

4. Sponsor.

(1) The sponsor shall be—

- (a) a public company incorporated or registered under the Companies Act;
- (b) a statutory corporation, local authority or Government Ministry; or
- (c) an entity established in Uganda under the provision of any written law;.

(2) The sponsor is considered to be the responsible party for the purposes of compliance with the law and this regulation.

(3) Determination of which entity is a sponsor will be made by the Authority considering the totality of circumstances of the issue, including without limitation initiative in creating the issue, origination of the assets, ownership of the assets, provision of credit enhancement and the flow of funds in the transaction. There may be one or more sponsors of the issue.

(4) The sponsor may be an originator, depositor or servicing agent.

(5) The sponsor shall retain ownership of at least five percent of the nominal value of any issue of asset backed securities and if the issue is divided into tranches as least five percent of the nominal value of each tranche.

5. Originator.

(1) The originator may be a person authorised by law to create, hold and transfer the assets.

(2) An originator may be a sponsor, depositor or a servicing agent.

6. Depositor.

(1) A depositor is a person that acquires and directly transfers assets to the issuer.

(2) A depositor shall be a company incorporated under the Companies Act or be of such other form as may be prescribed by the Authority upon a determination that such other form complies with the requirements of this regulation.

(3) A depositor may be a sponsor, originator or servicing agent.

(4) A depositor may transfer to an issuer, assets which it originates or assets acquired from other originators.

7. Issuer.

(1) An issuer shall be a company incorporated under the Companies Act or be of such other form as may be prescribed by the Authority upon a determination that, that other form complies with the requirements of these Regulations.

(2) The equity securities of the issuer shall consist of single class, may not be publicly traded or traded on an organised exchange, and may not be sold, exchanged, pledged or otherwise transferred by their owners except with the consent of the Authority.

(3) Unless otherwise approved by the Authority an issuer shall be a newly created entity with no pre-existing creditors or other claims against it other than formation expenses. An issuer may not have employees but may contract for services as required to carry out its purposes.

(4) At least one third of the members of the board of directors or other governing body of the issuer shall be independent directors.

(5) An issuer shall not be reorganised or its constitution documents amended or modified except with the consent of the Authority.

(6) The Board of Directors of the issuer shall submit a request for changes to the Authority, together with all relevant documents.

(7) The Authority may deny approval of changes to the issuer's constitution documents if in its opinion the change would result in violation of the law or these regulations, or if the proposed change is considered by the Authority to be contrary to the interests of investors.

(8) An issuer may not incur debt except as required to implement the asset backed securities transaction.

8. Objects of an issuer.

The sole objects of an issuer shall be to—

- (a) offer, issue and list or otherwise sell asset backed securities;
- (b) purchase eligible assets, enter into principle agreements required in connection to an asset backed securities transaction; and
- (c) undertake any other matters consistent with these Regulations.

9. Marketing of issuer.

An issuer shall neither be marketed as a subsidiary or a company within the group of any other party to the securitisation transaction nor shall the name of the issuer or the asset backed securities product imply any relation to the sponsor or any originator.

10. Voluntary winding up of issuer.

An issuer shall not be voluntarily wound up until its asset backed securities are fully redeemed in accordance with the terms and conditions of the issuance.

11. Consent of the Authority and issuer.

(1) Before the commencement of any voluntary insolvency, bankruptcy, winding up or equivalent proceedings of the issuer, the written consent of the Authority, the board of directors or governing body of the issuer shall be sought.

(2) The written consent referred to in sub regulation (1), shall in each case include the written consent of the majority of the independent directors of the Authority, the board of directors or the governing body of the issuer.

12. Auditor.

(1) An auditor appointed by an issuer shall be a person who is a member of the Institute of Certified Public Accountants of Uganda and shall comply with generally accepted accounting principles on auditing in conducting the audit of the issuer.

(2) The auditor of an issuer shall—

- (a) have a place of business in Uganda; and
- (b) not be an affiliate of any participant in the securitization transaction or a close relation of any officer or director of any participant in the securitization transaction.

(3) An auditor shall cease to hold his or her appointment as auditor of a securitisation transaction if he or she ceases to fulfill any of the requirements of sub regulation (2).

(4) Where the issuer revokes the appointment of the auditor or there is a change of auditor, it shall immediately notify the Authority of the revocation and the reasons for it.

(5) Where a vacancy occurs, the issuer shall as soon as practicable make a new appointment of an auditor.

13. Duties of an auditor.

(1) The auditor shall carry out the duties of an auditor in accordance with the requirements of the relevant auditing standards and such other standards as may be directed by the Authority.

(2) The auditor's report shall state whether or not in the opinion of the auditor, the accounts give a true and fair view of the cash flows and of the financial position of the issuer and the assets as at the end of the accounting period to which they relate, and include details of any breaches of the transaction documents or these Regulations that it becomes aware of during the course of the audit.

(3) An auditor appointed in relation to a securitisation transaction has the right of access at all reasonable times to the systems, software, data, information, documents, books, financial records and financial information of any other participant in the securitisation transaction relating to the securitisation and may require any officer of any such participant to provide information, explanations of assistance that would be reasonably necessary to permit it to carry out its role and obligations.

14. Communication of the information to the Authority.

A duty to which an auditor of an issuer is subject shall not be regarded as contravened by reason of his communicating in good faith to the Authority, any other regulator of a party or to the investors in the asset backed securities, whether or not in response to a request from the Authority or any other regulator, any information or opinion on a matter of which the auditor has become aware in his or her capacity as auditor of the issuer and which is relevant to any function of the Authority under these regulations or to the protection of the rights of investors in the asset backed securities.

15. Managing Agent.

(1) There may be appointed for the issuer a managing agent.

(2) A managing agent shall not be an employee of the issuer and shall provide management services for the issuer on a contract basis, including by way of illustration and not limitation accounting and record keeping services and management of the asset backed securities.

16. Officer in charge of keeping records.

The officer in-charge of any entity to which is delegated the function of keeping the records of the issuer shall be a member of the Institute of Certified Public Secretaries of Uganda.

17. Servicing Agent.

(1) An issuer shall appoint a servicing agent in accordance with these Regulations.

(2) A servicing agent shall be responsible for—

- (a) timely collection of cash flow from the assets and remittance of such income to the issuer, trustee or other recipient designated under the terms of the transaction documents;
- (b) ensuring that appropriate steps are taken to protect the legal rights of the issuer and the holders of the asset backed securities to the assets, including monitoring activities necessary to preserve and protect property serving as collateral for the assets;
- (c) supervision and monitoring of performance of obligors' obligations and providing notifications to obligors of delinquencies and defaults;
- (d) if provided in the servicing agreement, enforcing the rights of the issuer, trustee, and holders of the asset backed securities in case of defaults by obligors; and
- (e) other tasks described in the servicing agreement which are not inconsistent with this regulation.

(3) A servicing agent shall be independent of the issuer, but may be a sponsor, originator or depositor.

18. Appointment of servicing agent.

Appointment of a servicing agent shall be by way of a servicing agreement which shall provide—

- (a) that if the servicing agent is in default in the performance of its obligations under the servicing agreement, or becomes insolvent, or is otherwise unable to perform its obligations under the servicing agreement, the agreement may be terminated by the issuer and a replacement servicing agent appointed;
- (b) upon termination of the servicing agreement the servicing agent shall deliver to the issuer or the replacement servicing agent on demand, copies of all documents, books and records pertaining to the assets, whether in electronic or paper form;

- (c) upon termination of the servicing agreement the servicing agent shall deliver to the issuer or the replacement servicer all cash and accounts pertaining to the assets without set off or deduction of any kind;
- (d) until a replacement servicing agent is in place, the servicing agent shall continue to carry out its obligations under the servicing agreement; and
- (e) such other provisions that are not inconsistent with this regulation.

19. Agent to keep proper records.

(1) A servicing agent shall keep such books of account, records and statements in the name of the issuer as may be necessary to give a complete record of—

- (a) all receipts and payments in respect to the eligible assets;
- (b) the composition of the asset pool; and
- (c) every transaction carried out by the issuer with the assets.

(2) A servicing agent shall permit authorised agents of the Authority to inspect such books of account, records and statements at any time during working hours.

(3) The servicing agent shall report to the issuer, trustee and any other parties designated in the transaction documents, at least monthly, regarding the status of the assets and sources and uses of revenues from the assets.

20. Servicing agent to operate as a liquidity provider.

A servicing agent may operate as a liquidity provider to ensure that timely payments are made to the asset backed securities holders where there is a cash flow shortfall on a payment or repayment date in respect to the relevant asset backed securities.

21. The signature of servicing agents.

(1) A servicing agent who intends to resign shall give three months notice in writing to the issuer and copy the notice to the Authority, stating such intention and the reasons for resignation.

(2) Notwithstanding the notice period stipulated in sub regulation (1), the resignation shall not come into effect until a replacement has been duly appointed by the issuer.

22. The termination of appointment a servicing agent.

(1) An issuer who intends to terminate the appointment of a servicing agent shall inform the Authority of that intention at least 30 days prior to the termination and shall provide the Authority with the copy of the relevant notice and the reasons for termination.

(2) Notwithstanding sub regulation (1), where the appointment of a servicing agent is terminated for an act of misfeasance or malfeasance which threatens the safety and security of the assets or interruption of the collection or disbursement of the cash flow of the assets the issuer may replace the servicing agent with any other entity then serving as a servicing agent for an asset backed security issue approved by the Authority and notify the Authority of of at the earliest possible opportunity.

23. Appointment of new servicing agent.

An issuer shall appoint a new servicing agent at least thirty days before the expiry of the term of the outgoing servicing agent and ensure that there is adequate time for the hand-over and transfer of all information within itself in relation to its contractual duties to enable the incoming servicing agent to execute their duties properly.

24. Surrender.

An outgoing servicing agent shall hand over to the incoming servicing agent all the books of account, documents and records that are required to be kept under these Regulations.

25. Trusts and trustees.

(1) Trusts may be established in asset backs securities transactions for any purposes not inconsistent with this regulation.

(2) The objectives and purpose of the trust and the powers of the trustee should be described in a written trust agreement.

(3) A trustee shall be a registered public company in good standing and in addition be—

- (a) independent of the sponsor, originator or servicing agent;
- (b) approved by the Authority to act as a trustee in respect of asset backed securities transactions where the Authority is satisfied that the company or corporation in addition to its financial resources has sufficient resources and experience necessary to enable it to carry out effectively its obligations as a trustee.

26. Duty of a trustee to investors.

(1) A trustee has fiduciary responsibilities to the investors in asset backed securities.

(2) The trustee in exercising its powers and carrying out its duties as trustee must act in the interests of the holders of the asset backed securities strictly in accordance with the provisions of trust agreement.

(3) In relation to an asset backed securities transaction and except as provided by any other law the trustee must not incur fiduciary responsibilities to parties other than the investors in the asset backed securities.

(4) Notwithstanding sub regulation (3) the trustee shall notify the Authority in writing immediately after becoming aware of any failure, act or omission of the servicing agent, the managing agent or any other participants in the securitisation transaction constituting a breach or contravention of any of the provisions of these Regulations or of the transaction documents, and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

27. Void agreements.

Any provision in the trust agreement or in any transaction document, agreement or understanding shall be null and void insofar as it would have the effect of exempting the trustee from any fiduciary obligation or any failure to exercise due care and diligence in the discharge of their functions.

28. Duties and obligations of trustee.

Subject to any limitation specifically imposed by these Regulations and any limitations contained in the trust agreement establishing the trust, the trustee shall have all of the powers, duties and obligations provided for in the trust deed, these regulations and the laws of Uganda.

29. Trustee to be excused in certain cases.

A trustee may be excused from taking action for or on behalf of the investors in the asset backed securities where it has access to insufficient funds to pay the costs and expenses of taking such action and after written notice to the investors and such other steps as may be required by the trust agreement, the investors fail to provide the funds.

30. Form of trustee.

(1) Nothing in these Regulations is intended to exclude a provision in the trust agreement or other transaction document which provides for different classes of investor, or to prevent different classes of investors from having priority as regards payment or claims against the assets of the trust.

(2) A provision may be included in the trust agreement or the transaction documents which allows the trustee in order to give effect to the purposes of the trust to prefer the interests of one class of beneficiary to another.

31. Liability of a trustee to asset backed security investors.

The trustee is liable to the investors in asset backed securities for any loss by the trustee suffered by them as a result of any failure by trustee to perform its obligations or the improper performance of its obligations.

32. Change of address of registered office or permanent place of business.

A trustee shall notify the Authority in writing of any intended change of address of its registered office or permanent place of business in Uganda.

33. Powers of trustee.

A trustee shall have all the rights that accrue to the asset backed securities holders including but not limited to access to information on the performance, operation of the securitization transaction and the asset backed securities issued under it.

34. Appointment of advisers.

(1) A sponsor may appoint an adviser from among the duly licensed persons.

(2) An adviser appointed under sub regulation (1)—

- (a) shall be responsible for liaising with the Authority on the offer, issue or listing of the asset backed securities;
- (b) shall appoint an adviser where the Authority considers it lacks the experience and capabilities to efficiently structure and register the issue; and
- (c) may be an affiliated entity.

(3) An originator may also appoint such other advisers as it deems necessary.

PART III—LEGAL STRUCTURE OF ASSET BACKED SECURITIES.

35. Legal form of asset backed securities.

Asset backed securities may take any form which in the opinion of the Authority is consistent with the requirements of this regulation, and may be represented by debt obligations of the issuer secured by assets in an asset pool or legal or beneficial ownership interests in the assets or the revenues and proceeds of the assets or any combination of them.

36. Nature of asset backed securities.

Except where permitted by law or by this regulation, asset backed securities are not redeemable or callable by the issuer, the sponsor, or any originator or seller, and are not convertible into any other security of the issuer, sponsor, or any originator or seller.

37. Value and interest rates.

(1) Asset backed securities shall have defined principal values and interest rates.

(2) Residual value of the assets in excess of the payments of principal and interest due to investors may be allocated in accordance with the law, this regulation and the information memorandum.

38. Self liquidation.

(1) The asset backed securities, assets and asset pools shall be self-liquidating.

(2) Unless otherwise permitted under this regulation, addition of assets to the asset pool following issuance of the asset backed securities shall not be permitted.

39. Issuance of asset backed securities.

The issue of asset backed securities shall be structured in such a way that the investors in the securities have—

- (a) a legal or beneficial undivided ownership interest, or
- (b) a perfected first priority security interest, in the assets.

40. Structuring of asset backed securities.

The issue of asset back securities shall be structured under law and generally accepted accounting principles to be bankruptcy protected, for the purpose of this regulation means that—

- (a) the assets will not be subject to the claims of or otherwise reached by any creditors, liquidators, administrators, trustees or receivers of any sponsor or originator in any bankruptcy, insolvency, liquidation, winding up or equivalent proceeding, and
- (b) the issuer will not be consolidated with any sponsor or originator.

41. Offers of asset backed securities.

Asset backed securities and different classes of an issue of asset backed securities may be offered in public offerings or by private placement, in which case the registration of the securities must comply with the rules of the Authority governing the form of offering.

42. Application for approval of asset backed securities.

Before the Authority approves the application for the issue of the asset backed securities or approval of further series of an open issue, the sponsor must demonstrate to the satisfaction of the Authority that—

- (a) the issuer has been created and registered as a legal entity in accordance with all legal requirements;
- (b) the servicing agent and auditors identified, and the systems for accounting, record-keeping and safe-keeping of documentation relating to the assets and asset backed securities have been implemented;
- (c) the necessary organisation, facilities, technical equipment, services and human resources for managing the assets and the securities are available to the issuer;
- (d) the sponsor is current with respect to all reports, filings and other obligations to the Authority pertaining to other securities issued by the sponsor.

43. Content of application.

The content of the application for the issue and the information memorandum is based on the principles of materiality and applicability to the nature of the assets and the transaction, and not all of the information identified in this regulation is necessarily required to be included in the documentation for all issues.

44. Information to the Authority.

(1) The Authority shall presume that information or materials provided to independent credit rating agencies is material to the Authority and to investors, though not necessarily in the level of detail provided to such agencies.

(2) Summaries and narratives which reasonably present the essence of such information shall be acceptable to the Authority.

45. Communication of information.

The emphasis of documentation shall be on communication of information clearly, simply, and all documentation should be in plain language accessible to the ordinary investor.

46. Application procedure.

The application for the issue and information memorandum for asset backed securities should be prepared in accordance with the Authority's requirements for a registration application and information memorandum generally, unless otherwise provided in this regulation.

47. Signing of application.

The application for the issue must be signed by all persons deemed by the Authority to be sponsors of the issue.

48. Submission of application.

(1) An application for approval for the offer, issue or listing of asset backed securities shall be submitted to the Authority in the prescribed form.

(2) Compliance with the requirements set out in these Regulations does not guarantee an applicant's suitability which shall be determined by the Authority.

(3) The application to be submitted shall be accompanied by—

- (a) a term sheet setting out the salient terms and conditions of the proposed structure of the proposed securitisation transaction including—

- (i) name, date and place of incorporation, names and professions of directors; names and interests of shareholders and proposed structure of the Issuer;
- (ii) name, date and place of incorporation, names and professions of directors, names and interests of shareholders of the sponsor;
- (iii) names and business addresses of the transaction advisers;
- (iv) securitisation transaction overview;
- (v) proposed arrangements for the transfer of eligible assets and nature of the eligible assets;
- (vi) a detailed description of the assets, including without limitation total nominal value;
 - (ab) average principal amounts,
 - (ac) interest rates,
 - (ad) maturities,
 - (ae) age and time remaining to maturity;
 - (af) the distribution of principal amounts, interest rates, maturities, age and time remaining to maturity by segments of the asset pool;
 - (ag) information about the principal and interest payments on the assets;
 - (ah) the interest computation method; and
 - (ai) whether the assets may be prepaid by borrowers and the terms and conditions of prepayment;

- (vii) the schedule of assets, if available;
 - (viii) a description of the nature of the investors' security interest in the assets, together with a copy of any pledge or security agreement to be used for the purpose of pledging assets for the benefit of investors;
 - (ix) currency and principal amount of proposed issue;
 - (x) tenor of proposed issue and for each class or tranche of the proposed issue as necessary;
 - (xi) details of proposed credit enhancement and provision of liquidity by the liquidity provider, where applicable;
 - (xii) details of utilisation of proceeds;
 - (xiii) if a credit rating is to be obtained for the issue, the indicative credit rating;
 - (xvi) confirmation on whether the offer is to be listed and structure of issue; and
 - (xiv) conditions precedent;
- (b) the following documents relating to the sponsor—
- (i) resolution of the board of directors approving the transfer of eligible assets to the issuer; and
 - (ii) written consent from any existing secured creditor enjoying any security interest of any nature over the proposed eligible assets agreeing to wholly discharge their security in respect of the eligible assets to be transferred;
- (c) audited financial statements of any sponsor for the 3 year period immediately prior to the date of the application;

- (d) where the sponsor is a company incorporated under the Companies Act, it shall submit a certified copy of its certificate of incorporation including any certificate of change of name and the memorandum and articles of association;
- (e) the constitution documents relating to the issuer together with a written undertaking to comply with the requirements of these Regulations.
- (f) declarations from the sponsor and adviser confirming that they have taken all reasonable care in structuring the issue, preparing the information memorandum and developing all projections on performance;
- (g) a legal opinion from an attorney licensed to practice law in Uganda confirming that the transferred eligible assets would be bankruptcy protected as defined in regulation 40;
- (h) all reports by any expert included or referred to in the information memorandum;
- (i) draft copies of material contracts, where applicable, including the credit enhancement agreement, guarantee agreement, proposed servicing agreement, trust agreement, security agreement or management agreement between the issuer and any party;
- (j) duly executed declarations by the directors of the issuer in the form prescribed in the First Schedule;
- (k) if required by applicable law or regulation, a letter of no objection from the relevant primary regulator of the sponsor and any originator;
- (l) if the issue is rated, the credit rating report of the proposed issue from an independent credit rating agency; and
- (m) the prescribed application fee.

(4) Any information required to be provided with respect to the sponsor shall be provided also with respect to—

- (a) any depositor, if such depositor is not a single purpose entity created solely for purposes of implementing the securitisation transaction;
- (b) any significant originator;
- (c) any significant obligor;
- (d) the servicing agent; and
- (e) any third party which provides credit-enhancement.

49. Consideration of application.

The Authority shall upon receipt of a complete application to issue or list asset backed securities inform the applicant of its decision to approve or reject the application within 30 days after the date of application.

50. Submission of Information Memorandum to the Authority.

(1) The information memorandum and all required information relating to the proposed securitisation and asset backed securities shall be submitted to the Authority not less than twenty eight days before the opening of the offer period and the Authority may require additional disclosures as it deems fit.

(2) The documents required to accompany the application and the documents referred to in the information memorandum shall be made available for inspection at the registered office of the issuer for the period which the asset backed securities are in issue, unless otherwise advised by the Authority.

51. Offer period.

The offer period shall not exceed thirty days from the date of the opening of the offer unless the Authority approves otherwise.

52. Subscription of the offer.

Subscription for the issue of asset backed securities shall be made through one or more of the selling agents.

53. Subscription amount.

(1) The subscription amount shall be deposited with the selling agent and all the proceeds shall be held in a separate trust account in the name and for the benefit of the issuer and shall be applied by the issuer for the purposes specified in the information memorandum immediately after the offer period is closed.

(2) Notwithstanding sub regulation (1) where the minimum subscription is not raised, the issuer shall refund the subscribers their subscription amount.

54. Investor compensation fund.

The interest that accrues on the subscription proceeds shall be paid into the investor compensation fund in accordance with section 81 of the Act.

55. Allotment of securities.

(1) The allotment of securities offered to the public shall be made in strict accordance with the allotment policy disclosed in the information memorandum.

(2) Notwithstanding sub regulation (1) where the results of the subscription make that policy impractical, the allotment policy may be amended with the prior written approval of the Authority.

(3) Where the Authority approves the amendment under sub regulation (2), the issuer shall announce the fact of approval within twenty four hours of the grant of the approval.

56. Results of allotment.

The results of the allotment of a public offer shall only be published after the Authority has received prior notification of not less than twenty four hours.

57. Assets to be securitised.

The assets to be securitised for purposes of issuing asset backed securities shall be—

- (a) capable of generating a true and identifiable revenue stream that is projected to be sufficient to service the return of and return on investment as well as allowable expenses for the life of the asset backed securities;
- (b) free from any encumbrances or impediments to their free transfer and their transfer shall not constitute an event of default or acceleration trigger under any security agreement relating to the assets of the originator;
- (c) self-liquidating and subject to a finite maturity; and
- (d) transferred to the issuer at fair value as determined by generally accepted accounting principles.

58. Rights of originator.

An originator or depositor or both shall have and demonstrate an unencumbered right to transfer all legal and beneficial interests in the eligible assets and the rights to the eligible assets.

59. Transfer of rights of originator.

An originator or depositor shall transfer all its rights, title, interests and obligation in the assets to the issuer and shall not retain any beneficial interest or liability, except that—

- (a) where the eligible assets have declined to a level that renders the asset securitisation transaction uneconomical to carry on, a sponsor or depositor may retain an option to repurchase assets from an issuer at a fair value; or
- (b) a sponsor, originator or depositor may repurchase assets from the issuer if under an obligation to do so for breach of any condition, representation or warranty in respect of the assets.

60. Redemption of asset backed securities.

Until the redemption of the asset backed securities, the assets may not be pledged or used as collateral.

61. Ownership of assets, by the issuer.

Assets included in the asset pool must be owned by the issuer free and clear of encumbrances, restrictions and other interests on the issue date of the securities, provided that up to 50% of the assets may be acquired by the issuer during the period ending one year following the issuance date of the securities if permitted by the Authority.

62. Valuation of the assets.

Regarding assets which are secured by immovable property, the property shall have been valued by an independent professional valuer within the 2 year period prior to the date the asset is included in the asset pool, which shall be the date of registration of the schedule of assets with the Authority or any later amendment of the schedule of assets.

63. Ownership by originator or depositor.

With regard to any asset included in the asset pool the ownership of the originator or depositor must be perfected in accordance with the law applicable to perfection of ownership of the asset.

64. Non-performing assets.

(1) Non-performing assets may not be included in the asset pool on the date of issue of the asset backed securities.

(2) For purposes of this regulation, an asset is considered to be non-performing if under generally accepted accounting principles or the requirements of any public regulatory authority it is required to be classified as non-performing and provision is made for the full amount of the asset on the books of the owner.

65. Delinquent assets.

(1) Not more than 10% of the assets in the asset pool may be delinquent on the date of issue of the asset backed securities.

(2) For the purposes of this regulation a delinquent asset is any asset on which payment of principal or interest is more than 30 but not more than 90 days overdue.

PART VI—MANAGEMENT AND PROTECTION OF THE ASSET POOL.

66. Removal of assets.

With the exception of open issues, assets may only be removed from the asset pool and replaced by other assets in the following instances—

- (a) a participant in the securitisation transaction is obligated to repurchase or replace assets or both where under the provisions of the transaction documents it has breached any condition, representation or warranty with respect of the characteristics of the assets stated in the law, this regulation, or the registration documents;
- (b) the registration documents may permit removal of an asset from the asset pool for purposes of enforcement of claims against an obligor;

67. Replacement Assets.

Replacement assets shall comply with the law, this regulation and representations and warranties regarding the characteristics of the assets made in the information memorandum.

68. Addition of assets.

With the approval of the Authority assets equaling at least 50% percent by value of the nominal amount of the asset backed securities may be included in the asset pool as of the date of issuance of the securities and the full amount of assets must be included in the asset pool no later than one year following the issuance date provided that—

- (a) the originators and depositors of the assets to be added to the pool are identified in the information memorandum;
- (b) the assets added to the pool are of the same quality as the assets described in the information memorandum; and

- (c) notwithstanding addition of assets, the asset backed securities will have a defined maturity date.

69. Conditions for addition of assets.

(1) The Authority shall take into account the fact that certain assets such as credit card receivables, revolving trade receivables, and public utility receivables, by their nature tend to have short or indeterminate maturities, and that asset backed securities having maturities attractive to investors may be difficult to achieve.

(2) In the cases mentioned in sub regulation (1), the Authority may allow addition of assets to the asset pool which are acquired by reinvestment of the revenues of the asset pool, on the following conditions—

- (a) addition of assets is in accordance with an obligation of the issuer to maintain a minimum value of the asset pool to secure investors;
- (b) the originators and depositors of the assets to be added to the pool are identified in the registration statement;
- (c) the assets added to the pool are of the same quality as the assets described in the information memorandum and there are clearly defined and effective means of assuring that substandard assets will be identified and replaced; and
- (d) notwithstanding the addition of assets, the asset backed securities will have a defined maturity date.

70. Conditions for open issues.

(1) The Authority may permit open issues of asset backed securities which anticipate the issue of more than one series of the same issue over a period of 3 years from the date of registration of the issue.

(2) Open issues entail addition of new assets to the asset pool and may be permitted on the following conditions—

- (a) the originators or depositors or both of the assets to be added to the pool are identified in the registration statement of the issue;
- (b) the assets added the pool are of the same quality as the assets described in the registration statement and there are clearly defined and effective means of assuring that substandard assets will be identified and replaced;
- (c) there is no modification of the terms of the securities outstanding, and the Authority has determined that the security of investors in earlier series of the issue have not been adversely affected or their security interests diluted by addition of new assets and the issue of the new securities.

(3) The initial registration of an open issue of asset backed securities shall remain in effect for the entire duration of the issue, provided that the issuer shall file with the Authority a supplemental registration application which shall include all information required by this regulation for the specific series of asset backed securities to be issued and any changes to the original registration application made necessary by events occurring in the period since the initial registration, and shall update the financial information of participants in the securitisation transaction provided with the initial registration.

(4) The form of the supplemental information memorandum shall accompany the original registration application of the open issue.

(5) A supplemental information memorandum may enhance but not contradict or materially modify the sense of any information provided in a previously approved information memorandum.

71. Schedule of Assets.

(1) The issuer shall establish and maintain at all times that the asset backed securities have each an outstanding schedule of assets.

(2) The schedule of assets may be kept in book or electronic format.

(3) The issuer's schedule of assets shall comply with the Second Schedule to these regulations.

(4) Assets may be added to or removed from the issuer's asset register only as permitted under this regulation.

(5) The schedule of assets shall be submitted to the Authority with the application for registration, if available, or as a supplement to the registration application at any time prior to the issuance date of the asset backed securities.

(6) The issuer is responsible for submitting to the Authority in a timely manner amendments of the schedule of assets to reflect addition to or removal of assets from the asset pool or material changes to the description of assets, but in any case an amendment shall be submitted within 30 days after the addition, removal or change.

(7) The schedule of assets shall be registered by the Authority under the name of the issuer. Schedules of assets registered with the Authority are public documents which may be made available in accordance with the regulations of the Authority.

(8) For the purposes of disclosing the schedule of assets the Authority shall delete any information relating to personal identification of debtors, and take such other steps as may be necessary to comply with laws of banking secrecy or data privacy.

72. Segregation of assets.

(1) The issuer shall establish and maintain a system for safekeeping of legal documents relating to the assets.

(2) Original documents pertaining to the assets of the issuer held in paper form shall be segregated and held in a safe and secure facility and may be removed from safekeeping only in connection with the removal of an asset from the asset pool as permitted by the issuer.

(3) Legal documentation pertaining to the assets may be held by a third party custodian.

(4) Assets in paperless form shall be held in the usual manner in the name of the issuer.

PART VII—CREDIT RATING AND CREDIT ENHANCEMENT.

73. Rating of asset backed securities.

Asset backed securities transactions may be rated by an independent credit rating agency.

74. Credit enhancement.

(1) An issuer may seek credit enhancement of the issue, which enhancement may be in the form of—

- (a) over collateralisation;
- (b) a standby letter of credit or line of credit issued by a bank or financial institution that is licensed by the Bank of Uganda;
- (c) a guarantee by a bank or financial institution that is licensed by the Bank of Uganda;
- (d) surety bond issued by an insurance company licensed by the Chief Executive Officer of Insurance;
- (e) an instrument issued by a bilateral or multilateral institution of which Uganda is a member;
- (f) issue of subordinated tranches of securities;
- (g) an instrument issued by the Government of Uganda; or
- (h) such other instrument or mechanism from such other entity as may be approved by the Authority.

(2) Where the credit enhancement is to be provided by a bank, financial institution or insurance company licensed in Uganda, the credit enhancement shall be provided in compliance with the applicable regulations of the Central Bank in the case of a bank or financial institution or the Chief Executive Officer of Insurance in the case of an insurance company.

75. Information to the Authority.

The issuer shall keep the Authority, all investors in the asset backed securities, the listing exchange, and the general public informed as soon as reasonably practicable, but in any case not later than the end of the next working day, of any information relating to the asset backed securities, or the performance of the assets, or of any participant in the transaction of which it is aware, that—

- (a) it is necessary to enable them and the public to appraise the performance of the assets, the asset backed securities and the potential risks associated with investment in the securities or the performance of any participant in the transaction;
- (a) it is necessary to avoid the establishment of a false market in the securities; or
- (c) might reasonably be expected to materially affect market activity in the price of its securities.

76. Reports to the Authority.

(1) The requirements for reporting, the obligations, form and content of any reports may vary as between the structure of the particular securitization transaction and the nature of the assets backing the asset backed securities.

(2) Where given the structure of the transaction or the nature of the assets the issuer, servicing agent, trustee or Authority is of the opinion that the form of the reports set out in the Second Schedule to these Regulations would not provide meaningful disclosure, accurately reflect the transaction or are otherwise inappropriate then the party may put an alternative form of report to the Authority for approval or the Authority may notify the party of the form it requires for the report.

77. Quarterly Reports.

(1) The sponsor with the assistance of the servicing agent shall prepare or cause to be prepared on behalf of the issuer and provided to the Authority, the investors and the trustee, if any, within 10 days after the close of each calendar quarter a quarterly report containing the information set out in the Second Schedule.

(2) Each quarterly report shall be certified as correct by one senior officer of the sponsor and one senior officer of the servicing agent who is in charge of the securitisation transaction and if there is more than one servicing agent then the certification shall be provided by at least one officer of each servicing agent.

(3) Where the servicing agent fails to sign and deliver the quarterly reports to the issuer by the required date then the issuer shall be obligated to the best of its ability from the information reasonably available to it, or reasonably obtainable by it, to prepare a substitute pro forma report within 10 days after the date on which the reports should have been delivered to the Authority and to lodge with the Authority, any listing exchange and distribute a copy of the report to investors and to any credit rating agency.

(4) The preparation of the quarterly reports by the issuer does not relieve the servicer from the obligation or the ongoing obligation to sign and deliver reports to the issuer, from liability for its failure to do so and shall not relieve the issuer of its obligation to take any additional action to give effect to the transactions documents and fulfill its obligations in relation to the investors in asset backed securities.

78. Annual and Semi-annual financial reports.

(1) The sponsor shall prepare or cause to be prepared on behalf of the issuer and delivered to the Authority and investors in the asset backed securities—

- (a) an annual report which complies with the Second Schedule and which contains the audited financial statements of the issuer; and

- (b) an interim financial statements accompanied by an auditor's report meeting the requirements of the Second Schedule and this regulation.

(2) The annual report and interim financial reports of an issuer shall comply with the requirements of the Second Schedule and include a declaration made and signed by the chief executive or that of the chief financial officer of the sponsor stating the opinion of the person making the declaration as to whether or not the—

- (a) financial records of the issuer have been maintained in accordance with the applicable laws and these regulations;
- (b) financial reports have been prepared in accordance with the law, these regulations and generally accepted accounting principles and give a true and fair view of the financial position and performance of the issuer;
- (c) details of distributions and other information contained in the reports are true and correct to the best of the person's knowledge, after making due and reasonable enquiry; and
- (d) the issuer has operated during the period in accordance with the terms of the transaction documents and these Regulations.

(3) The annual report and half-yearly financial reports of an issuer and any other additional reports, accounts or disclosures as may from time to time be required by generally accepted accounting principles.

(4) The financial accounts and notes to accounts and reports must comply with any relevant generally accepted accounting principles and comply with the requirements of the Second Schedule.

(5) The servicing agent, any managing agent and any other participant in the securitisation transaction shall furnish to the sponsor such information as it reasonably requires in order to enable it to fulfill its reporting obligations under these regulations and that information shall be delivered in good time to enable inclusion in the issuer's reports as necessary.

79. Annual and interim financial reports.

(1) The issuer's annual and interim financial reports shall be lodged with the Authority and circulated to investors not later than 4 months and 2 months respectively from the end of the accounting period to which they relate.

(2) All reports lodged with the Authority shall be made available by the Authority for public inspection as soon as possible after they are lodged with the Authority and maintained by the Authority in a register but shall not be available for public inspection except that this regulations shall not operate to preventing from the Authority disclosing the reports to the Central Bank or other regulator or pursuant to a subpoena, order for discovery, in any action brought by the Authority or as a result of any other legal process compelling its disclosure.

(3) Where an issue or offer is not a private offering the issuer shall make copies of the annual and half-yearly report available for inspection by any member of the public free of charge during ordinary office hours at its principal place of business in Uganda and at such other places as may be specified in the transaction documents.

80. Inspection of reports.

All reports and continuing disclosure documents lodged with the Authority which relate to a securitization transaction shall be made available by the Authority for public inspection as soon as possible after they are lodged with the Authority.

81. Financial records.

The issuer shall comply with the requirements of the Second Schedule and must keep financial records that—

- (a) correctly record and explain the transactions of the issuer including, financial records of transactions undertaken and the financial position and performance of the issuer; and
- (b) enable true and fair financial statements to be prepared.

PART IX—LISTING, SUSPENSION OF DEALING AND DE-LISTING

82. Listing of asset backed securities.

Upon approval and issue, the asset backed securities may be listed on the fixed income securities market segment at an approved securities exchange in Uganda.

83. Suspension or delisting.

Asset backed securities shall not be suspended or delisted by a securities exchange, without the prior written approval of the Authority.

84. Public notes.

Where an asset backed security has been suspended or delisted, the securities exchange shall within forty eight hours publish that information in at least two local dailies of national circulation.

PART X—FEES AND CHARGES

85. Fees.

An issuer of asset backed securities approved to offer, issue or list shall pay the prescribed fees.

SCHEDULE I

regulations 44, 48, 50

INFORMATION MEMORANDUM

DISCLOSURE REQUIREMENTS FOR PUBLIC ISSUE OF ASSET BACKED SECURITIES

Cover Page Disclosure and Declarations:

1. Disclaimer Statement

The information memorandum shall contain on its front page the following prominent and legible disclaimer statements:

“As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this information memorandum(s). Approval of the issue or listing by the Authority is not to be taken as an indication of the merits of the issuer, the originator or the asset backed securities”

“The sponsor and originator(s) of the assets do not underwrite the issue of asset backed securities by the issuer and shall not make good any losses or otherwise guarantee the credit risk of the issuer.”

2. Declaration by directors

(1) Declarations by directors of issuer:

(a) we being the directors of the issuer namely: accept responsibility for the information contained in this information memorandum. To the best of our knowledge and belief we have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of that information.

(b) in their opinion the issuer does not have any debts, liabilities or other such claims as may increase the likelihood of the issuer being subjected to voluntary or involuntary winding-up or liquidation proceedings.

(c) they have taken all reasonable care as would be expected of competent professionals in structuring the transaction, preparing the information memorandum and developing all projections

(2) Declaration by directors of originator:

In their opinion the originator is a going concern.

3. Resolutions statement

(1) A statement of the originator's board resolutions, shareholders approval where required and approval by existing debt holders where required.

(2) A statement of the issuer's board resolutions and shareholder approval of the issuer acknowledging and accepting the liabilities arising in accordance with the securitisation transaction.

4. Offering and Listing Summary

(1) A statement that the originator is incorporated or established in Uganda under the laws of Uganda together with the particulars of incorporation or establishment as the case may be.

(2) The name, registered or principal office of the issuer and a statement that it is set up for the sole purpose to issuing asset backed securities.

(3) A statement that the issuer is incorporated or otherwise established in Uganda and is subject to Ugandan laws.

(4) A summary description of the public offering or listing and of particulars dealt with in the document.

(5) A statement that the Authority has approved the public offering and listing of the securities at the fixed income securities market segment of a securities exchange.

(6) A statement that a copy of the information memorandum(s) has been delivered to the Registrar of Companies.

5. Identity of directors, advisors and auditors of the Issuer

Directors and shareholders of the issuer

(1) The full name, age, home or business address, nationality, professional experience and academic qualifications of the directors and other directorships.

(2) The names of the shareholders and the number of shares owned by each of them as of the most recent practicable date.

6. In cases where the issuer is constituted other than as a limited liability company

The full name, age, business address, nationality, professional experience and academic qualifications of the members of the governing body.

7. Advisers

The names and business addresses of the issuer's bankers, legal and financial advisers, auditors, reporting accountants and any other expert to whom a statement or report included in the information memorandum has been attributed.

8. The names and business addresses of all the parties involved in the issue.

Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the information memorandum, and has not withdrawn his consent.

9. Financial information and procedure for subscription and allotment

(1) The amount to be raised through the issue and the tenure of the security.

(2) A statement that the application forms shall be submitted to the selling agent together with the subscription amount.

(3) A statement that the receipt signed and issued by the selling agent shall contain the name of the subscriber, the address, and nationality, date of subscription, the number of securities subscribed and amount paid by the subscriber.

- (4) The nominal amount of the securities together with the issue and redemption prices and nominal interest rate.
- (5) The historic cash flows (for the preceding five years, where applicable) and projected cash flows in respect of the eligible assets.
- (6) An indication as to, where potential material liquidity shortfalls may occur, the availability and details of any liquidity support and plans to cover potential shortfalls.
- (7) Information regarding the accumulation of surpluses in the Issuer and an indication of the investment criteria for the investment of any liquidity surpluses.
- (8) The order of priority of payments made by the issuer.
- (9) Details of any other arrangements upon which payments of interest and principal to asset backed securities holders are dependent.
- (10) The nature, number and numbering of the debt securities and the denominations.
- (11) The procedures for the allocation and the procedure to be applied in case of over subscription.
- (12) Arrangements for the amortisation of any substantial loan that may impact repayment, including detailed repayment schedule of both the principal and interest.
- (13) The date from which interest becomes payable and the due dates for interest as well as the final repayment date and any earlier repayment dates.
- (14) The allotment policy.
- (15) The subscription procedure and process of facilitating subscription and payment.
- (16) The time limit on the validity of claims to interest and repayment of principal.
- (17) The period during which the offer will remain open.

(18) State the method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchases.

(19) Where applicable, a statement that the debt securities are dematerialised.

(20) State the manner in which results of the distribution of securities will be made public and when appropriate, the manner for refunding excess amounts paid by applicants.

(21) A statement that the securities will be freely transferable.

(22) A summary of the rights conferred upon the asset backed securities holders and particulars of the security, if any.

10. Details of the eligible assets

The sponsor shall disclose the following information regarding eligible assets and explanatory notes where applicable—

- (a) the legal jurisdiction where the eligible assets are located;
- (b) the nature of and title of the eligible assets;
- (c) the criteria for the selection of the eligible assets;
- (d) the number and value of the eligible assets in the pool;
- (e) rights of recourse against the originator to the extent allowed in law, including a list of material representations and warranties given to the Issuer relating to the eligible assets;
- (f) rights to substitute the eligible assets and the qualifying criteria;
- (g) the treatment of early amortization of the eligible assets;
- (h) level of concentration of the obligors in the asset pool, identifying obligors that account for twenty five percent or more of the eligible asset value;
- (i) where there is no concentration of obligors above twenty five percent, the general characteristics and descriptions of the obligors;

- (j) the payment methods and cash flows in respect of the eligible assets;
- (k) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;
- (l) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset backed securities being offered;
- (m) the amount of eligible assets in default;
- (n) the amount of eligible assets in default as a percentage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement;
- (o) explanatory notes where there is expected material difference between historic and projected cash flows and any actions being taken to correct the situation; and
- (p) a description of what constitutes a default.

11. Credit enhancement

- (1) A statement that the issue is credit enhanced.

(2) A description of the nature and scope of the guarantees, sureties and commitments intended to ensure that the asset backed securities will be duly serviced as regards both the repayment of the debt securities and the payment of interest.

(3) An explicit statement on and procedure for recourse by the asset backed securities holders or their duly appointed trustee to the credit enhancer.

12. Expenses of the issue

(1) An itemised statement of the major categories of allowable expenses incurred in connection with the issue and to whom expenses are payable. If the amounts of any items are not known, estimates shall be given.

(2) Where estimates are used in (1) above the rationale for the estimates should be disclosed and the final schedule provided to the Authority once available.

13. Details of servicing agent

The name, address, description and significant business activities of the servicing agent or equivalent, together with a summary of the servicing agent's responsibilities and a summary of the provisions relating to the appointment or removal of the servicing agent and alternative servicing agent and their details.

14. Legal opinion

A legal opinion confirming that the transferred eligible assets will not be subject to the claims of or available to the bankruptcy trustee, administrator, liquidator or receiver and manager of the sponsor and any originator in the case of bankruptcy, insolvency, liquidation or winding up of the sponsor or any originator.

15. Use of proceeds

The minimum amount which, in the opinion of the directors of the originator, must be raised by securitising the eligible assets in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

- (a) the purchase price for the eligible assets, purchased or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) any preliminary expenses payable by the Issuer, and any Authority payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting or guaranteeing any asset backed securities of the issuer;
- (c) the repayment of any moneys borrowed in respect of any of the forgoing matters;
- (d) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (e) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

16. Risk factors

Provide information on the risk factors headed “Risk factors” including financial, economic and sectoral risk factors as well as risks associated with or affecting the underlying eligible assets, the securitisation transaction, the issuer, the asset backed securities to be issued and the credit enhancer.

17. Information available for inspection

A statement that for a period of not less than five working days beginning on the date of the information memorandum until the final repayment date of the asset backed securities, the following documents shall be available for inspection at the registered office of the issuer or at the trustee's office—

- (a) the memorandum and articles of association of the originator and of the issuer or relevant documents of establishment where issuer is not a company limited by shares;
- (b) copies of the agreement between the issuer and the servicing agent and liquidity provider where relevant;
- (c) copies of the agreement the with credit enhancer
- (d) the trust deed which is referred to in the information memorandum;
- (e) documents of conveyance of the eligible assets under the securitisation transaction;
- (f) a statement of the originator's and issuer's board resolutions, shareholders approval and approval by existing debt holders where applicable;
- (g) all reports, letters, and other documents, valuations and statements by any expert any part of which is included or referred to in the information memorandum;
- (h) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the information memorandum, including particulars of dates, parties, terms and conditions, that may or may be deemed to have an impact on the eligible assets;
- (i) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the originator or any other member of the group; and

- (j) a copy of any contractual arrangement with a controlling shareholder, where any of the documents listed above are not in the English language, translations into English must also be available for inspection.

18. Interest of experts

(1) If any of the named experts owns an amount of shares in the originator or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the originator or that depends on the success of the offering, provide a brief description of the nature and terms of that contingency or interest.

(2) Shareholding of one percent or more in the originator shall be considered material.

19. Trustee

Details of trustees or of any other representation for the asset backed securities holders.

- (a) The name, function, description and head office of the trustee or other representative of the asset backed securities holders; and
- (b) The main terms of the document governing the trust arrangement and in particular the conditions under which a trustee or may be replaced.

20. Credit enhancer

(1) The names, addresses and descriptions of the persons underwriting the issue and where the credit enhancer is a company, the description must include—

- (a) the place and date of incorporation and registration number of the credit enhancer;
- (b) the names of the directors of the credit enhancer;
- (c) the name of the secretary of the credit enhancer;
- (d) the bankers to the credit enhancer where applicable;
- (e) the authorised and issued share capital of the credit enhancer; and
- (f) the credit rating of the credit enhancer.

(2) Where all of the issue is not underwritten or guaranteed, a statement of the portion not covered shall be made.

SCHEDULE II

Regulation 75

ASSET BACKED SECURITIES

CONTINUOUS REPORTING OBLIGATIONS

1. Issuer:

An issuer must publish, by way of a cautionary announcement, information, which could lead to material movements in the ruling price of its securities if at any time the necessary degree of confidentiality, cannot be maintained, or that confidentiality has or may have been breached, an issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available within twenty four hours to the market at all such securities exchange.

2. Annual financial statements

(1) Every issuer of asset backed securities to the public or section of the public shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

(2) A complete set of financial statements includes the following components—

- (a) statement of financial position;
- (b) statement of comprehensive income;
- (c) a statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) statement of cash flows; and
- (e) accounting policies and explanatory notes.

3. Reporting Requirements:

4. Quarterly, interim and annual reports and accounts

(1) An issuer shall include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report—

- (a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;
- (b) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence; and
- (c) the nature and amount of changes in estimates of amounts reported;
- (d) a brief report on any material developments including a quarterly report from the credit rating agency where applicable or where the asset backed securities is not rated, the issuer's assessment of the performance of the pool of assets securitized which report should also be made available for inspection by the public.
- (e) an overview of events that are not necessarily material.

(2) An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements.

(3) The minimum disclosures in the quarterly, interim and annual financial statements of the Issuer includes:

Income and Expenditure Account

Income:

- 1. Cash collected
- 2. Interest received
- 3. Other incomes received
- 4. Surplus or deficit

5. Expenses

1. Allowable expenses

In cases where there is a deficit, a disclosure on how the shortfall was met is required.

Statement of Financial Position

6. Assets:

1. Eligible Assets (portion yet to mature)
2. Investments (Government securities)
3. Bank balance

7. Capital and Liabilities:

1. Share capital
2. Surplus or Deficit
3. Borrowings (asset backed securities outstanding)
4. Accrued interest

(1) An issuer of asset backed securities should disclose the following if not disclosed elsewhere in information published with the financial statements—

- (a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);
- (b) a description of the nature of the issuer's operations and its principal activities.

(2) An issuer of asset-backed securities shall notify the Authority and the securities exchange of its annual results within twenty-four hours following approval by the Issuer's directors.

(3) An issuer of asset backed securities shall at the end of each calendar quarter, submit to the Authority and securities exchange the following information—

- (a) A register of asset backed security holders in the format prescribed below—
 - (i) Investor's Name;
 - (ii) Date of purchase;
 - (iii) Maturity date;
 - (iv) Face value;
 - (v) Yield;

- (vi) Redeemed value;
 - (vii) Outstanding balance;
 - (viii) Percentage of the outstanding amount;
 - (ix) Banks;
 - (x) Insurance Companies;
 - (xi) Fund Managers;
 - (xii) Investment advisers;
 - (xiii) Individuals;
 - (xiv) Others; and
 - (xv) Total.
- (b) a schedule of the obligations maturing in the next quarter against amounts already collected to date and amounts expected to be collected by the end of the next quarter and where there is material difference between the preceding quarter's collections and the anticipated collections in the next quarter, an explanation should be given;
- (c) the following information regarding eligible assets—
- (i) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;
 - (ii) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset backed securities being offered;
 - (iii) an aging schedule of the receivables or assets being securitized for the last three years or less where they have been in existence for a shorter period;
 - (iv) a description of what constitutes a default;
 - (v) the amount of eligible assets in default;
 - (vi) the amount of eligible assets in default as a percentage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement.

- (vii) the rate of interest of the asset backed securities, the interval of payment of interest and the entitlement period; and
 - (viii) explanatory notes where there is expected material difference between actual and projected cash flows and any actions being taken to correct the situation.
- (d) name, address telephone number, registered office at which the register of the security holders is kept;

(4) An issuer of asset backed securities shall provide the Authority and the securities exchange details of its asset backed security holders, which may be required by the Authority or the securities exchange.

(5) An issuer shall submit interim reports to the Authority and publish extracts of the annual report in at least two daily newspapers of national circulation in Uganda.

8. Communication with asset backed security holders

(1) An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall—

- (a) inform holders of securities of the holding of meetings which they are entitled to attend;
- (b) publish notices or distribute circulars giving information on—
 - (i) the allocation and payment of interest; and
 - (ii) the redemption or repayment of the securities.

(2) An issuer must forward to the Authority and securities exchange at which the asset backed securities are listed copies of—

- (a) all circulars, notices, reports, announcements or other documents at the same time as they are issued; and
- (b) all resolutions passed by the issuer, where applicable, at any meeting of holders of listed securities within ten days after the relevant general meeting.

9. Credit rating renewals

(1) An issuer of asset backed securities shall ensure that the credit rating of the issue is reviewed and updated every year from the date of the last credit rating report.

(2) A trustee shall ensure that each credit rating report is delivered to the Authority within seventy two hours of the date of the report and the results of the same are published in two newspapers of national circulation within seven days of the date of the report.

10. Corporate governance

There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related parties, which may result in a conflict of interest situation.

11. Miscellaneous obligations

(1) An issuer shall disclose and make a public announcement of all material information including but not limited to—

- (a) any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;
- (b) any change in the directors, registrar, servicing agent or auditors of the issuer;
- (c) any proposed significant alteration of the memorandum and articles of association of the issuer or the trust documents;
- (d) any application filed in a court of competent jurisdiction to wind up the originator or issuer;
- (e) details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange where the asset backed securities are listed; and the appointment or imminent appointment of receiver or receiver and manager or liquidator of the originator or issuer; and
- (f) any “cash inflow” warning, where there is a material discrepancy between the projected cash inflows for the current financial year and the level of cash inflows in the previous financial year.

(2) For the purposes of subparagraph (1) (f), the expression “material discrepancy” in relation to projected cash flows for a financial year means that such cash inflows are at least five percent lower than the level of cash inflows in the previous financial year.

GRACE JETHRO KAVUMA,
Chairman Capital Markets Authority Board.