

STATUTORY INSTRUMENTS

2003 No. 98.

THE COLLECTIVE INVESTMENT SCHEMES (FINANCIAL AND ACCOUNTING) REGULATIONS, 2003.

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STATUTORY INSTRUMENTS

2003 No. 98.

The Collective Investment Schemes (Financial and Accounting) Regulations, 2003.

(Under sections 30, 31 and 84 of the Collective Investment Schemes Act, Act No. 4 of 2003.)

IN EXERCISE of the powers conferred upon the Capital Markets Authority by sections 30, 31 and 84 of the Collective Investment Schemes Act, 2003, these Regulations are made this 19th day of November, 2003.

PART I—PRELIMINARY.

1. Citation

These Regulations may be cited as the Collective Investment Schemes (Financial and Accounting) Regulations, 2003.

2. Interpretation

(a) In these Regulations, unless the context otherwise requires—

“Act” means the Collective Investment Schemes Act, 2003;

“permitted third party” or “PTP” means a person whom a trustee or operator reasonably believes to be—

(i) a licensed person; or

(ii) an overseas person who carries on investment business but does not do so from a permanent place of business maintained in Uganda.

(b) any word, term or expression defined in the Act shall have the meaning assigned to it by the Act.

3. Application

These Regulations apply to a manager of a unit trust scheme and to an authorised corporate director (ACD) of an open ended investment company, each hereinafter referred to as “licensed person”.

PART II—FINANCIAL RESOURCES REQUIREMENTS.

4. Obligations of manager and ACD

A manager of a unit trust scheme and an ACD shall not be licensed or allowed to continue to operate unless, at the time of licensing and at all times after licensing, each of them meets the financial resources requirements prescribed by these Regulations.

5. Net capital requirement

A licensed person must ensure that he or she maintains at all times, a minimum net capital of Uganda Shillings two hundred million, determined in accordance with Schedule 1.

6. Liquid assets requirement

(1) A licensed person must ensure that he or she maintains at all times assets in a liquid form in Uganda that exceed the minimum net capital requirement specified in regulation 5.

(2) Assets in liquid form shall be determined in accordance with Schedule 1.

7. Exemptions

(1) The Authority may, for justifiable cause, exempt a licensed person from any or all the requirements of this Part and prescribe other capital requirements for that licensed person.

(2) The Authority may, for justifiable cause, exempt a licensed person from the requirements of this Part for a period not exceeding six months, and upon such conditions as may be prescribed in each case.

PART III—ACCOUNTING RECORDS.

8. Records and reporting

(1) A licensed person must ensure that it maintains adequate accounting records and must prepare and submit such reports as are required by the Authority, in a timely manner.

(2) A licensed person's records must—

(a) be kept in the English language;

(b) be up to date and must disclose, with reasonable accuracy at any time, the licensed person's financial position at that time;

(c) enable the licensed person to demonstrate his or her continuing compliance with the financial resources requirements of these Regulations;

(d) provide the information which—

(i) the licensed person needs to prepare, such as financial statements and periodical reports as may be required by the Authority; and

(ii) the licensed person's auditor needs in order to form an opinion on any statements of the licensed person on which the auditor requires a report.

9. Licensed person's own account transactions

A licensed person must ensure that proper accounting records are kept to show and explain the licensed person's own account transactions and distinguishing between trading book transactions and non-trading book transactions.

10. Customer's accounting records

A licensed person must ensure that proper accounting records are kept which—

- (a) record all purchases and sales of customer's assets effected by the licensed person;
- (b) record all payments of money belonging to customers and receipts which arise from transactions effected by the licensed person;
- (c) in relation to client money, have regard to the client money requirements under the Collective Investment Schemes (Conduct of Business and Miscellaneous Provisions) Regulations, 2003;
- (d) disclose the assets and liabilities of the licensed person's customers individually and collectively, to the extent that they are managed by the licensed person;
- (e) record all customer's assets (including customer's investments) in the possession of the licensed person or of another person who is holding those assets for, or to the order of, the licensed person, showing the location of the assets, their beneficial owner and the extent to which they are subject to any charge of which the licensed person has been notified.

11. Retention of accounting records

(1) All accounting records must be retained for a minimum period of seven years.

(2) During the first three years, accounting records must be kept either at a place where the licensed person carries on business or in such manner that they can be produced at such place within twenty four hours of their being requested by the Authority.

PART IV—FINANCIAL RETURNS.

12. Annual, quarterly and monthly returns

A licensed person must prepare and submit to the Authority—

- (a) not later than ninety days after the close of its financial year, a copy of the licensed person's annual financial statements (accompanied by the auditor's report on the matters prescribed in Schedule 2) together with the financial statements of every portfolio managed;
- (b) not later than thirty days after the relevant quarter, quarterly financial statements together with the following statements—

- (i) financial statements of every portfolio managed under his or her scheme; and
- (ii) a report reviewing the investment activity and performance of the investment portfolios under the scheme since the last report date and containing proposals for the investment of the scheme fund during the period;
- (c) not later than fourteen days after the end of the relevant month, monthly capital position statement containing the information prescribed under Schedule 1.
- (d) on or before a date specified by the Authority, such further information and explanations in connection with the financial statements referred to in paragraphs (a), (b) and (c) of this Regulation and any other statements that the Authority may request.

13. Period of returns

The period covered by—

- (a) monthly financial returns must not exceed one calendar month;
- (b) quarterly financial returns must not exceed three calendar months;
- (c) annual financial returns may not exceed twelve months, without the prior written consent of the Authority.

14. Licensed person's financial year

All licensed persons must have as their financial year the twelve-month period ending 31st December of each year.

15. International financial reporting standards

(1) All the required financial statements must be prepared in accordance with international financial reporting standards.

(2) Where a licensed person cannot comply with the standards required by subregulation (1), the licensed person shall give the reasons for non compliance.

16. Value of investments in subsidiaries

Investments other than investments in subsidiary or related companies must be included in the balance sheet at the lower of either the cost, the market value, or the Director's estimates.

17. Statements not to be misleading

Financial statements must not be misleading as a result of the presentation, inclusion or omission of any material item.

PART V—CONTROLS AND SYSTEMS REQUIREMENTS.

18. Adequacy of controls and systems

(1) All licensed persons must ensure that their internal controls and systems are adequate for the size, nature and complexity of their activities.

(2) Systems of control must be such as to enable the licensed person to properly discharge the duties imposed on him or her by this Part of these Regulations.

19. Validity of system

system of control will be treated as established or maintained unless there is kept available, adequate records or statements in writing of the system of control in operation for the time being.

20. Use of permitted third parties

Where functions are delegated to a permitted third party, regulations 18 to 20 shall apply as if the functions delegated to the permitted third party are carried out by the licensed person.

PART VI—AUDIT REQUIREMENTS.

21. Audit arrangements

(1) All licensed persons must make available to their respective auditors, the information and explanations needed by their auditors to discharge their responsibilities as required by the Authority.

(2) An auditor referred to in sub-regulation (1) must, in addition to being a member and holder of a valid practising certificate issued by the Institute of Certified Public Accountants of Uganda, be approved by the Authority.

(3) A licensed person must not retain the same auditor for a period of more than four years.

22. Content of audit report

All licensed persons must require their respective auditors to report to the Authority whether any audits conducted by them have been conducted in accordance with such statements or other requirements in relation to auditing standards as are applicable and whether, in the auditors' opinion—

- (a) the annual financial statements give a true and fair view of the state of affairs of the licensed person's operations and of his or her income and expenditure position;
- (b) the annual statements have been properly prepared in accordance with the financial returns requirements in these Regulations;
- (c) the licensed person's financial resources requirements for the forthcoming year have been properly calculated in accordance with the financial resources requirements;

- (d) proper accounting records have been kept and adequate systems for their control maintained, as required by the accounting records requirements, the controls and systems requirements and the customer assets requirements during the period covered by the annual statements;
- (e) reconciliation of the customer's assets have been properly performed in accordance with the applicable regulations during the period covered by the annual financial statements;
- (f) based on review procedures performed, nothing has come to the auditor's attention that causes the auditor to believe that the licensed person held client money or customer's assets during the period covered by the annual financial statements;
- (g) the licensed person was in compliance with the customer asset requirements as specified in the Collective Investment Schemes (Conduct of Business and Miscellaneous Provisions) Regulations, 2003; and
- (h) all information and explanations necessary for the purpose of the audit have been obtained.

23. Second audit

(1) If the Authority so requires, a licensed person must, at the licensed person's own expense, appoint a second auditor to examine the licensed person's financial statements and any other information reported on or verified by the licensed person's auditor, and report to the Authority.

(2) A second auditor must have the same facilities, rights, duties and powers as the auditor to the licensed person.

PART VII—NOTIFICATION EVENTS.

24. Obligation to notify the Authority in certain cases

(1) A licensed person must give written notice to the Authority of the occurrence of certain events or circumstances designated as notification events in Schedule 3.

(2) The notification referred to in subregulation (1) must be made within the time specified in Schedule 3 and must contain such particulars and information as may be prescribed by the Authority.

PART VIII—NON COMPLIANCE.

25. Non-compliance

(1) A licensed person must, in the conduct of the licensed person's business, comply with the Act and these Regulations.

(2) Where a licensed person fails to comply with any of these Regulations or any requirement under the Act, the Authority may, as appropriate, exercise its powers of intervention under section 40 of the Act.

SCHEDULES.

SCHEDULE I.

Regulation 5,6, 12(c)

CAPITAL REQUIREMENTS.

The capital to be maintained by a licensed person shall be calculated in accordance with this Schedule.

1. Net capital.

Net capital means the shareholders' funds or the proprietor's capital investment for carrying out the business of the licensed person and subordinated loans accepted for the purpose by the Authority less—

- (a) non-current assets and pre-paid expenses;
- (b) unsecured loans and advances included under current assets;
- (c) amounts due from a director or associate included under current assets;
- (d) excess of the book value of securities carried in the licensed person's own account over market value; and
- (e) deficits in clients accounts, less any provisions for bad or doubtful debts already made, the amount being computed in such detail as is satisfactory to the Authority.

2. Eligible capital.

Eligible capital must consist of—

- (a) paid up share capital;
- (b) non-redeemable preference shares, not redeemable within a period of one year and not redeemable at the option of the holder;
- (c) share premium account;
- (d) non-distributable and audited reserves;
- (e) retained income (if audited 100% may be included, otherwise include 50%);
- (f) loans (only if properly subordinated in favor of the licensed person);
- (g) guarantees, not being guarantees from a connected person and only if exercisable on demand by the manager.

(h) Total:

(i) Less adjustment for non-liquid assets consisting of—

- (i) all liabilities including loans not included under paragraph 2 (f);
- (ii) contingent liabilities;
- (iii) debtors and other current assets which are not convertible into cash within fourteen business days;
- (iv) guarantees provided by the licensed person;
- (v) amount of investment in other business;
- (vi) total:

3. Adjusted liquid capital.

Adjusted liquid capital specified in paragraph 2(h) minus items specified in paragraph (i)(vi) less required capital to be maintained which consists of—

- (i) basic capital, which must be the greater of an amount of Uganda shillings two hundred million or a sum equivalent to 13 weeks of fixed expenditure for the whole business of the licensed person or such other amount as the Authority may determine in a particular case; plus,
- (ii) position risk capital of a sum equivalent to the percentage of the amount paid for units in a portfolio;
- (iii) total;
- (iv) liquid resources specified in paragraph 4 minus item 5(d).

4. Liquid resources.

Liquid resources must be as specified in paragraph 3 minus the items specified in paragraph 4(d).

Note: In determining fixed cost amounts, the following principles must be applied—

- (a) depreciation and profits or losses on sales of fixed assets are non-cash items and must be taken into account;
- (b) charges relating to active trading must be excluded; fixed charges must be included;
- (c) non-contractual payments by way of profit shares or performance related bonuses must be excluded;
- (d) exceptional or extraordinary items may be excluded;
- (e) payments to directors must only be included to the extent that they are made irrespective of profitability;
- (f) interest paid to counter parties which is trade related may be excluded; and
- (g) loss arising from conversion of foreign currency balances may be excluded.

5. Fixed expenditure.

The thirteen weeks fixed expenditure must be calculated as the previous financial year's fixed expenditure divided by four, or if no financial year is completed, this amount must be budgeted for to the satisfaction of the Authority.

6. Submission of budgets.

(1) The Authority may, where it has reason to believe that the size of the operations of the licensed person has been or is likely to be expanded during any financial period, call upon the licensed person to submit a budget based on the expanded operations.

(2) Where a licensed person has reason to believe that its operations in any financial period will decline from that of the previous year, it may submit a revised budget for approval.

7. Submission of capital position.

The calculation of the capital position of the licensed person must be submitted to the Authority as at the last business day of each calendar month, within fourteen days after the end of such calendar month.

8. Auditor's Remuneration depreciation insurance.

For purposes of computing fixed costs under paragraph 4(a) the following must be taken into consideration—

<i>Expense category</i>	<i>Treat as fixed cost</i>	<i>Treat as trading cost and non- cash item</i>	<i>Expenses per income statement</i>
Accounting, secretarial and other services	X		
Auditor's remuneration	X		
Depreciation		X(a)	
Insurance	X		
Interest paid other than to directors	X	X (f)	
Other finance	X	X (f)	
Motor vehicle expenses	X		
Net loss on realisation of fixed assets		X(f)	
Office rental	X		
Machine and other leasing charges	X		
Printing and stationery	X		
Salary and wages	X		
Telephone, telex and postages	X		
Other expenses	X	X (d)+ (g)	
Salaries and directors fees	X	X (e)	

Interest	X	X (e)
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SCHEDULE 2.
AUDITOR'S REPORT

Regulation 12

An auditor's report submitted to the Authority must state whether in the Auditor's opinion—

- (a) the annual financial statements submitted to the Authority together with the report give a true and fair view of the state of affairs of the licensed person;
- (b) the annual financial statements have been prepared in accordance with International Financial Reporting Standards;
- (c) the annual financial statements have been prepared in accordance with these Regulations;
- (d) that the financial statements have been properly calculated and exceed the requirements stipulated under these Regulations;
- (e) that proper accounting records have been kept and adequate systems for their control have been maintained in accordance with the Collective Investment Schemes (Conduct of Business and Miscellaneous Provisions) Regulations, 2003 during the relevant period;
- (f) the reconciliation of customer assets have been properly performed in accordance with the Collective Investment Schemes (Conduct of Business and Miscellaneous Provisions) Regulations, 2003;
- (g) that based on review procedures performed, nothing has come to the auditor's attention that leads the auditor to believe that the licensed person held client money or customer's assets during the period covered under review;
- (h) that all information and explanations necessary for the purpose of the audit have been obtained.

SCHEDULE 3.
NOTIFICATION EVENTS

Regulation 24

For which written notice is required to be given to the Authority.

<i>Event</i>	<i>Time within which notice should be given</i>	<i>Particulars to be included in the notice</i>	
1. The occurrence of any of the following in relation to the licensed person's auditor:			
(a) Appointment occurred.	Within 24 hours	The fact that the event	has

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|---|------------------|---|-------------------|
| (b) A decision to secure a change occurred and | Within 24 hours | The fact that the event | has |
| | | reasons for it. | |
| (c) Resignation, removal or | Within 24 hours | The fact that the event | non-reappointment |
| | has occurred and | | reasons for it. |
| (d) The expiry of a period of two weeks without an auditor in office | Within 24 hours | The fact that the event | |
| | reasons for it. | has occurred and | |
| 2. When the financial resources of the licensed person do not exceed its financial resources requirements. | Within 24 hours | A statement that its financial resources do not exceed its financial resources requirements and a description of the steps which it is taking, or has taken to remedy the position. | |
| 3. When the licensed person is not able to: | | | |
| (a) Submit an annual or quarterly financial return or a statement of representation by the due date | Within 24 hours | An explanation why the the return or statement will not be submitted by the due date and when it will be submitted. | |
| (b) Comply with, or demonstrate compliance with the requirements relating to financial returns, financial resources and | Within 24 hours | The fact that the event has occurred and reasons for it. | |
| (c) Make any payment to an approved event | Within 24 hours | The fact that the | |
| stock exchange or recognised clearinghouse or make any other significant payment by the due date. | | has occurred and reasons for it. | |

LEO KIBIRANGO,

Chairman, Capital Markets Authority.