

**THE CAPITAL MARKETS (DEMUTUALIZATION OF THE
NAIROBI SECURITIES EXCHANGE LIMITED) REGULATIONS**

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[Legal Notice 87 of 2012, Legal Notice 104 of 2013, Legal Notice 79 of 2014]

1. Citation

These Regulations may be cited as the Capital Markets (Demutualization of the Nairobi Securities Exchange) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"company limited by guarantee" has the meaning assigned to it, under the Companies Act (Cap. 486);

"company limited by shares" has the meaning assigned to it under the Companies Act;

"demutualization" means the separation of the ownership of the Exchange from the right to trade on such Exchange;

"demutualization application" means the application made under Regulation 4;

"demutualized exchange" means the Exchange following the completion of demutualization;

"Exchange" means the Nairobi Securities Exchange Limited registered under the Companies Act as a company limited by guarantee;

"member" means a person who is a member of the Exchange in accordance with its constitutive documents and rules;

"re-registration" means the re-registration of the Exchange from a company limited by guarantee to a company limited by shares in accordance with section 18 of the Companies Act;

"rights" means all rights, powers, privileges and immunities, whether present or future, actual or contingent or prospective, and whether enforceable in Kenya or elsewhere;

"Transitional board of directors" means the board of the demutualized exchange pending the appointment of a board in accordance with these Regulations.

3. Condition for demutualization

The Exchange shall not be considered to be a demutualized entity unless it has obtained a written approval of the authority in accordance with these Regulations.

4. Application for demutualization

(1) The Exchange shall make an application to the Authority for approval to operate as a demutualized entity.

(2) An application under paragraph (1) shall be accompanied by the following documents and information—

- (a) a valuation report of the Exchange;
- (b) the proposed authorized and paid-up share capital of the demutualized exchange with the number of shares to be issued;
- (c) the names of members of the Exchange proposed to be the initial shareholders of the demutualized exchange and the number of shares to be allotted to each shareholder;
- (d) the number of shares to be allotted to and held directly or indirectly in the public interest by—
 - (i) the Government at least five per cent; and

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- (ii) Capital Markets Investor Compensation Fund at least five percent;
- (e) the proposed memorandum and articles of association of the demutualized exchange;
- (f) the names of the Transitional board of directors;
- (g) the proposed time within which the board of the demutualised Exchange shall be appointed;
- (h) the proposed names of directors of the demutualized exchange to be appointed at the first general meeting following the re-registration of the Exchange;
- (i) the proposed plan for the independent management of the commercial and regulatory functions of the demutualized exchange and timelines for implementation of necessary structures to ensure the functional separation of commercial and regulatory functions;
- (j) a detailed five year business development plan for the demutualized exchange together with the capital expenditure estimates and the sources of finance for the five year period;
- (k) the manner in which the rights and liabilities of the existing members of the Exchange shall be treated in the demutualization;
- (l) the procedure for the allocation of shares to the shareholders identified under subparagraphs (c) and (d);
- (m) a written declaration that demutualization shall not affect any rights and obligations of the Exchange or render defective any legal proceedings by or against the Exchange;
- (n) the proposed timelines for the completion of operational manuals to guide the self-regulatory functions of the demutualized exchange detailing the scope of regulatory functions to be performed by the demutualized exchange;
- (o) the proposed rules of the demutualized exchange; and
- (p) the last audited financial statements of the Exchange.

(3) The Authority may, in writing, require the Exchange to provide any additional information which the Authority may require.

[L.N. 104/2013, r. 2, L.N. 79/2014, r. 2.]

5. Procedure by Authority upon receiving application

(1) The Authority may, if it considers necessary and in the interest of the capital markets, direct the Exchange to make appropriate amendments to the documents and information submitted under regulation 4.

(2) Where the Exchange does not comply with the requirements of Regulation 4 or a directive under paragraph (1), the Authority shall—

- (a) give the Exchange an opportunity to be heard; and
- (b) make a decision and communicate the decision, as the case may be, recommending the appropriate measures that for the Exchange may take in order to comply.

(3) Upon the receipt of all the information submitted under regulation 4, subject to any amendments under subparagraph (1), the Authority may approve the demutualization application with or without conditions and specify the term within which the entity shall stand demutualized:

Provided that the Authority may, upon the application of the Exchange, vary the term specified in the approval.

6. Resolutions of the demutualized exchange

The Exchange shall, within thirty days of obtaining approval or on such period as the Authority may approve in writing, ensure that—

- (a) the Exchange is re-registered as a company limited by shares under section 18 of the Companies Act (Cap. 486); and
- (b) it adopts the following resolutions, in addition to any other resolutions as may be required under regulation 5(3)—
 - (i) a special resolution approving the memorandum and articles of association of the demutualized exchange;
 - (ii) a resolution on the proposed allotment of shares to the initial shareholders of the demutualized exchange;
 - (iii) subject to regulation 5(3), a resolution appointing the directors as the board of the demutualized exchange; and
 - (iv) a resolution on the approved paid up share capital.

7. Demutualization

The Exchange shall, subject to the fulfillment of any conditions attaching thereto, stand demutualized upon the expiry of the period specified in the approval of the Authority in accordance with regulation 5(3).

8. Reduction in shareholdings

The trading participants who are shareholders of the Exchange shall with effect from the date of demutualization reduce their cumulative shareholding in the demutualized exchange to not more than forty percent within three years.

9. Implementation of Self-Regulatory functions

The demutualized exchange shall, within one year of an approval being granted implement the plan submitted under regulation 4(2)(h).
