

THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS

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THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS

[Legal Notice 65 of 2022]

PART I – PRELIMINARY**1. Citation.**

These Regulations may be cited as the Capital Markets (Whistleblower) Regulations.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act;

"Authority" has the meaning assigned to it under the Act;

"Compensation Fund" has the meaning assigned to it under the Act;

"new and timely information" means information that is not already known to the Authority from any other source and which the whistle-blower obtained from their independent knowledge, experience, communication or observation during in employment, business or social interactions,

"securities" has the meaning assigned to it under the Act; and

"whistleblower" means any person who provides to the Authority, either by himself or acting jointly with another person, new and timely information relating to misconduct or contravention of laws relating to securities leading to the recovery of penalties or illicit gains referred to in section 18(2A) of the Act.

PART II – REWARD OF WHISTLEBLOWERS**3. Eligibility**

A whistleblower shall be eligible for a reward under these Regulations where the whistleblower voluntarily provides information or evidence, to the Authority, that leads to the successful recovery of penalties or illicit gains within the capital markets.

4. Conditions for reward of whistleblower

(1) A whistleblower shall only be rewarded in accordance with these Regulations.

(2) A reward shall be payable to a whistleblower upon receipt, by the Authority, of the recovered sums of money.

(3) Any sums of money recovered under these Regulations shall be transferred into the Investor Compensation Fund net of the whistleblower reward.

PART III – REPORTABLE MISCONDUCT**5. Reportable misconduct**

(1) A whistleblower may confidentially report to the Authority any reportable misconduct, either anonymously or in person, through any of the Authority's communication channels.

(2) For purposes of this regulation, "reportable misconduct" includes—

- (a) failure to comply with legal and regulatory obligations as required under the Act and Regulations;
- (b) offences under the Act and Regulations thereunder;
- (c) capital markets fraud.

(3) A whistleblower shall report a misconduct or offence in good faith and must have reasonable grounds for believing the alleged reported misconduct has occurred or will occur.

[Subsidiary]**6. Information to be included in disclosure**

(1) A report made under regulation 5 shall provide substantial details of the alleged misconduct or offence and include any relevant evidence that may assist the Authority in investigating the misconduct or offence.

(2) The information reported under paragraph (1) shall be new and timely information, authentic, complete and relevant in that it makes a fact more probable than it would without it.

7. Affirmation by the whistleblower

A whistleblower shall certify to the best of their knowledge that the information provided is true and acknowledge awareness that it is an offence to submit false information.

PART IV – ACTION AFTER REPORTING**8. Action after reporting**

(1) The Authority may undertake an investigation or an inquiry into the alleged misconduct or offence in accordance with the Act.

(2) Upon conclusion of the investigation or inquiry under paragraph (1), the Authority may impose any sanctions, penalties or other appropriate administrative measures in accordance with the Act.

9. Confidentiality

(1) The Authority shall take reasonable steps to maintain the confidentiality of the whistleblower's identity.

(2) Any information provided to the Authority under these Regulations may be made available to—

- (a) the Office of the Director of Public Prosecutions; or
- (b) an appropriate regulatory authority.

Provided that the Authority shall exercise its discretion when determining the information necessary to accomplish the purposes of these Regulations and to protect investors.

(3) The information provided to the entities specified under paragraph (2) shall be maintained as confidential information in accordance with the requirements set out under this regulation.

10. Protection of a whistleblower

(1) A whistleblower's identity and such other confidential information of the whistleblower shall not be disclosed unless required by law or an order of the court and in accordance with the Witness Protection Act (Cap. 79).

(2) A confidentiality agreement in the whistleblower's employment contract shall not prevent the employee from reporting to the Authority any sensitive information obtained in the course of their employment.

(3) The Witness Protection Act shall apply to the protection of a whistleblower who qualifies for such protection as provided under Witness Protection Act (Cap. 79).

PART V – PAYMENT OF REWARDS**11. Application for a reward**

An application for a reward under these Regulations shall be made to the Authority—

- (a) in the form set out in the Schedule;
- (b) within ninety days of the date of conclusion of the enforcement action to which the claim relates; and
- (c) providing the justification for the reward sought.

12. Amount of reward

(1) Pursuant to section 18(2A) of the Act, the reward payable to a whistleblower under these Regulations shall be three percent of the amount recovered subject to a maximum of five million shillings.

(2) A reward payable under these Regulations shall be subject to tax deductions as may be applicable.

(3) A reward shall be payable to a whistleblower where the information provided is new and timely, and leads to the recovery of the sums lost.

13. Denial of reward

A reward shall not be payable to a whistleblower who—

- (a) at the time he acquired the original information submitted to the Authority, is or was a member, officer, or employee of any governmental or self-regulatory entity that is under an obligation to report any such misconduct or offence including—
 - (i) an appropriate regulatory agency;
 - (ii) Judicial administration; or
 - (iii) a law enforcement organization;
- (b) is convicted of a criminal misconduct or offence related to the Judicial or administrative action for which the whistleblower otherwise could receive a reward under this regulation; or
- (c) gains the information through the performance of an audit of financial statements required under the capital markets laws.

14. Disclosure of identity

Prior to the payment of a reward, a whistleblower shall disclose his identity and provide such other information as the Authority may require:

Provided that despite this disclosure, the Authority shall maintain the confidentiality of the whistleblower and not release any information that may lead to the discovery of the whistleblower's identity.

PART VI – GENERAL PROVISIONS

15. Appeals

(1) Any determination made under these Regulations on the compensation of a whistleblower, shall be at the discretion of the Authority.

(2) Any person aggrieved by the decision of the Authority relating to a reward may within thirty days from the date of such decision, appeal, to the Capital Markets Tribunal.

16. Submission of false information

A person who submits false information to the Authority shall commit an offence and shall be liable upon conviction to the penalty provided under section 34A of the Act.

SCHEDULE

[r. 11(a)]

APPLICATION FOR A REWARD

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)

Last Name:	Middle Name:	First Name:
P.O. Box:	Postal Code	Physical Address:
Primary Phone No:	Alternative phone No:	

Capital Markets

[Subsidiary]

Email Address:

B. TIP/COMPLAINT DETAILS

1) Manner in which original information was submitted to the Authority.

CMA Website ☐ Email ☐ Letter ☐ Other ☐

2) Tip/Complaint reference number

3) Date Tip/Complaint referred to in (2) above was submitted to the Authority

4) Subject of the Tip/complaint:

C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION1) Are you or were you at the time you acquired the original Information you submitted to us a member, officer or employee of the Capital Markets Authority (the Authority), any regulatory agency, department of Justice, a self-regulatory organization or any law enforcement organization? Yes ☐ No ☐2) Did you obtain the information provided to us through the performance of an engagement required under the capital markets laws by an independent public accountant? Yes ☐ No ☐

3) Are you a spouse, parent, child or sibling of a member or employee of the Authority or do you reside in the same household as a member or employee of the Authority?

Yes ☐ No ☐

4) Did you acquire the information you have provided to us from any person described in questions (1) through (3) above?

Yes ☐ No ☐

5) Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based?

Yes ☐ No ☐

6) If you answered "yes" in response to any of the above five questions, please provide a detailed response explaining your answer. Use additional sheets of paper if necessary.

D. ENTITLEMENT TO AWARD

Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us. Include any supporting documents in your possession or control and attach additional sheets if necessary.

**E. PAYMENT METHOD
AND ACCOUNT DETAILS**

Preferred mode of payment:

Bank Account details:

F. DECLARATION

I declare that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a Whistleblower reward if, in my submission of information, my other dealings with the Authority, or my dealings with another regulator in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Signature:

Date:

G. GENERAL

1) If you are filing your claim in connection with information that you provided to the Authority, then your form and any attachments thereto must be received by the Authority within ninety (90) days of the date of the Enforcement Action to which the claim relates.

2) You must submit your Form to us in one of the following two ways:

a) By Email sent to: ceoffice@cma.or.ke

b) By mailing or delivering the signed form to the Capital Markets Authority Office, Embankment Plaza, 3rd Floor, Upper Hill -Nairobi, P.O. Box 74800-00200, Nairobi.

FOR OFFICIAL USE

Received by: Verified by: _____

Date: _____

Date: _____ Signature: _____

Signature: _____

