

## CAPITAL MARKETS (PUBLIC OFFERS & LISTING OF SECURITIES) REGULATIONS, 2022

### ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY .....	6
1. Citation.....	6
2. Application of the Regulations .....	6
3. Interpretation.....	6
PART II- GUIDING PRINCIPLES AND PURPOSE OF THESE REGULATIONS .....	16
4. Guiding Principles.....	16
PART III- APPROVAL OF OFFERS OF SECURITIES AND LISTING.....	17
5. Application & Approval of Offers and Listing.....	17
PART IV- PUBLIC OFFERS, RESTRICTED PUBLIC OFFERS, ELIGIBILITY, DISCLOSURE AND GENERAL REQUIREMENTS FOR PUBLIC OFFERS.....	19
6. Meaning of Public Offers.....	20
7. Issue of Securities to the Public and Listing .....	20
8. Eligibility to issue securities.....	20
9. Issuers not seeking listing.....	21
10. Transfer to new market segment.....	22
11. Dealing with additional issues of securities .....	22
PART V-PRIVATE OFFERS.....	22
12. Private Offers.....	22
PART VI- REQUIREMENTS FOR PUBLISHING INFORMATION MEMORANDUM, SHORT FORM PROSPECTUS AND INFORMATION NOTICE	24
13. Requirement for Information Memorandum.....	25
14. Content of Information Memorandum.....	25
15. Signing of Information Memorandum and Listing Statement.....	26
16. Electronic offers.....	27
17. Allocation Policy .....	27
18. Form and Content of Information Memorandum .....	28
19. Additional information to be contained in an information memorandum.....	29
20. Supplementary Information Memorandum.....	29
21. Change of basis of approval of information memorandum.....	30
22. Omission of certain things from the Information Memorandum .....	31

23. Announcements of offer and abridged information memorandum .....	31
24. Short Form Prospectus .....	32
25. Information Notice .....	33
26. Persons responsible for the Information Memorandum.....	33
<b>PART VII- TRANSACTION ADVISERS AND PUBLIC OFFERS COMPLIANCE OFFICERS .....</b>	<b>35</b>
27. Transaction Advisers.....	35
28. Public Offer Compliance Officer.....	35
<b>PART VIII- UNDERWRITING &amp; VALUATION OF SECURITIES .....</b>	<b>37</b>
29. Underwriting of offers to the public.....	37
30. Valuation of Securities.....	37
<b>PART IX - GREEN SHOE OPTION.....</b>	<b>38</b>
31. Green Shoe Options .....	38
<b>PART X- SHELF PROSPECTUS.....</b>	<b>43</b>
32. Issuing of shelf prospectuses.....	43
33. Qualification to issue shelf prospectuses.....	44
<b>PART XI- SPECIAL PURPOSE ACQUISITION VEHICLE .....</b>	<b>45</b>
34. Qualitative and Quantitative criteria .....	45
35. SPAC IPO Proceeds and Escrow Requirements .....	46
36. Issuer of convertible securities.....	48
37. Additional Continuing Listing Requirements Prior to Completion of a Business Combination .....	48
38. Business Combinations .....	49
39. Liquidation of SPACS.....	52
40. Delisting of SPAC for failure to complete business combinations .....	53
41. Authority to consider whether continued listing is in the best interest of the authority and public.....	53
42. Authority to prescribe rules and guidelines for effective regulation of SPACS .....	53
43. Continuing Obligations for SPACS .....	54
<b>PART XII - SHARE BUYBACKS FOR LISTED COMPANIES .....</b>	<b>54</b>
44. Scope of Part XII.....	54
45. Power to Buy-back Shares.....	54
46. Shareholders Resolution .....	55
47. Shareholder Circular .....	55
48. Off-market Purchase .....	58
49. Publication of Notice.....	59

50. On-market purchase .....	59
51. Minimum capital and free float requirement.....	60
52. Class of Shares and Treatment of Treasury shares.....	60
53. Volume of shares to be purchased.....	60
54. Disclosure to the Securities Exchange .....	61
55. Duration of buy-back programme.....	61
56. Appointment of Stockbroker.....	61
57. Prohibition, cancellation or suspension of share buybacks. ....	62
58. Reporting and Disclosures.....	62
59. De-listings and conversion to private company to be approved by independent shareholders.....	63
60. Takeovers and Mergers.....	63
61. Listed company to comply with applicable laws and regulations. ....	63
<b>PART XIII- TRADING HALT, SUSPENSION AND DELISTING PROVISIONS ....</b>	<b>64</b>
62. Scope of this Part XIII .....	64
63. Trading Halt.....	64
64. Suspension .....	64
65. Delisting .....	65
66. Resumption Proposals .....	66
67. Exit offer in de-listing .....	66
68. Watch List.....	67
69. Recovery Board.....	68
<b>PART XIV- PUBLIC ANNOUNCEMENTS, CIRCULARS AND ELECTRONIC COMMUNICATION .....</b>	<b>68</b>
70. Circulars.....	69
71. Submission of circulars for Approval.....	69
72. Review of Circulars .....	69
73. Content of Circulars .....	69
74. Electronic Communication.....	70
75. e-IPO.....	70
<b>PART XV CONTINUING OBLIGATIONS.....</b>	<b>70</b>
76. Continuing Obligations.....	70
<b>PART XVI- LISTING FEES AND OTHER CHARGES .....</b>	<b>71</b>
77. Listing Fees.....	72
78. Waiver of Fees.....	72
<b>PART XVII- REPEAL AND TRANSITIONAL PROVISIONS .....</b>	<b>72</b>

79. Revocation of Regulations .....	72
80. Other Transitional Provisions .....	72
81. Fixed Income Securities Transition .....	72
82. Transition Period .....	72
SCHEDULES.....	73

**First Schedule** - Eligibility Requirements for Public Offering and Listing of Equities in the Main Investment Market Segment and the SME Market Segment

**Second Schedule** - Eligibility Requirements for Public Offering of Fixed Income Securities and Listing on the Main Fixed Income Securities Market Segment

**Third Schedule** - Eligibility Requirements FOR Public Offering OF Fixed Income Securities and Listing on the SME Fixed Income Securities Market Segment (SME FISMS)

**Fourth Schedule** - Requirements FOR Issuance of Regional Fixed Income

**Fifth Schedule** - Eligibility and other Requirements for Special Purpose Acquisition Company (SPACS)

**Sixth Schedule** -Main Investment Market Segment Disclosure Requirements for Public Offerings

**Seventh Schedule** -Disclosure Requirements for Listing by Introduction in the Main Investment Market Segment

**Eighth Schedule** - SME Market Segment Disclosure Requirements (Public Offers and Listing)

**Ninth Schedule**- SME Market Segment Disclosure Requirements (Listing By Introduction)

**Tenth Schedule** - Main Fixed Income Securities Market Segment Disclosure Requirements for Public Issues

**Eleventh Schedule** - SME Fixed Income Securities Market Segment Disclosure Requirements for Public Issues (Listed and Unlisted)

**Twelfth Schedule** - Disclosure and Other Requirements for Additional Issues (Rights, Scrip Dividend, Capitalization Issues and Open Offers)

**Thirteenth Schedule** - Continuing Obligations

**Fourteenth Schedule** - Short Form Prospectus for A Restricted Public Offer

**Fifteenth Schedule** - Information Notice

**Sixteenth Schedule** - Requirements for Offer of Securities Using a Book Building Process

**Seventeenth Schedule**- Listing Fees

DRAFT POLDS

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 (1) of the Capital Markets Act, the Cabinet Secretary to the National Treasury makes the following Regulations -

**[DRAFT] CAPITAL MARKETS (PUBLIC OFFERS AND LISTING OF SECURITIES) REGULATIONS, 2022**

	<b>PART I - PRELIMINARY</b>
<b>Citation</b>	1. These Regulations may be cited as the Capital Markets (Public Offers and Listing of Securities) Regulations, 2022.
<b>Application of the Regulations</b>	<p>2. (1) These Regulations shall apply to: -</p> <ul style="list-style-type: none"><li>(a) The offer or sale to the public of securities in Kenya, in any form, with or without listing;</li><li>(b) Listing of securities by introduction, including cross-listing;</li><li>(c) Offer, issue and/or listing of additional securities by issuers who have made public offers with or without listing; and</li><li>(d) Corporate actions by issuers of listed securities.</li></ul> <p>(2) These Regulations shall not apply to:</p> <ul style="list-style-type: none"><li>(a) The issue of fixed income securities by or on behalf of the National Government of Kenya or any County Government in Kenya, but shall apply to any issue of securities by any state corporation.</li><li>(b) Private Offers.</li><li>(3) Issue and listing of fixed income securities by the National Government of Kenya and County Governments in Kenya shall be subject to the Public Finance Management Act, 2011.</li></ul>
<b>Interpretation</b>	3. (1) In these Regulations, unless the context otherwise requires -

	<p><b>“Act”</b> means the Capital Markets Act, Chapter 485A, of the Laws of Kenya, as may be amended or modified from time to time;</p> <p><b>“Adequate working capital”</b> means an amount of working capital sufficient to meet operational requirements of the business concern under normal circumstances;</p> <p><b>“admission”</b> means admission of securities to the Official List of a Securities Exchange;</p> <p><b>“Authority”</b> means the Capital Markets Authority established under Section 5 of the Act;</p> <p><b>“book building”</b> means a process undertaken to elicit and assess demand and price of securities for purposes of the determination of the quantum or value or coupon of specified securities to be offered in accordance with these Regulations;</p> <p><b>“business combination”</b> in relation to a Special Purpose Acquisition Company (SPAC) means a merger or amalgamation or acquisition of shares or assets of one or more companies having business operations;</p> <p><b>“Central Bank”</b> means the Central Bank of Kenya established under the Central Bank of Kenya Act Cap 491 and any successor institution;</p> <p><b>"circular"</b> means an information document issued to holders of listed securities in connection with proposed corporate action or transaction;</p> <p><b>"Code"</b> means the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015, as from time to time amended, modified, replaced or supplemented;</p> <p><b>"company" or "corporation"</b> means a limited liability company wherever incorporated or otherwise established;</p> <p><b>“Companies Act”</b> means the Companies Act, No. 17 of 2015, and as may be amended or modified from time to time;</p>
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	<p><b>“Corporate Action”</b> means an action or transaction undertaken or to be undertaken by an issuer which may affect the numbers, price, characteristics, value, status, classes and categories of the security, and shall include but not be limited to dividend, merger or take-over, consolidations and split of securities, additional issues;</p> <p><b>“Cross listing”</b> means the listing on a Kenyan securities exchange of securities that are already listed on another securities exchange;</p> <p><b>“days”</b> means calendar days excluding Saturdays, Sundays and public holidays in the Republic of Kenya;</p> <p><b>“Directors Training Program”</b> means a training programme, approved by a Securities Exchange in consultation with the Authority, for training in relation to, among others, directors’ responsibilities, corporate governance, regulatory compliance and accountability, whether it is restricted to the Code or not;</p> <p><b>“distributable profits”</b> has the meaning assigned to it under section 423 of the Companies Act, 2015</p> <p><b>“East African Partner State capital markets regulator”</b> means the regulator or government entity/authority in an East African Community member state charged with the supervision of the capital markets;</p> <p><b>“East African Community member state”</b> means a state which is a member of the political and/or economic block known as the East African Community;</p> <p><b>“Electronic Offer”</b> means a public offer that is conducted on the internet or in other electronic or automated means or media, wholly or partially, where investors subscribe to the offer of securities by submitting applications electronically or the applications and allotments are processed and completed electronically, wholly or partially;</p> <p><b>“executive director”</b> means a member of a board of directors of a company who also serves as a manager in the company;</p>
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	<p><b>“founding shareholder”</b>, in relation to a SPAC, means persons who founded, initially financed or sponsored the establishment of a SPAC;</p> <p><b>“green shoe option”</b> or <b>“over-allotment option”</b> means, in relation to an offer, the right reserved by an issuer to allot up to a specified number of securities in excess of the number of the relevant securities declared as the securities on offer and available under the offer;</p> <p><b>“ISA”</b> means International Standards of Auditing;</p> <p><b>“IFRS”</b> means International Financial Reporting Standards;</p> <p><b>“independent director”</b> means a member of a board of directors who-</p> <ul style="list-style-type: none"><li>(a) is not an executive director;</li><li>(b) does not have a material or pecuniary relationship with the company or related persons;</li><li>(c) is compensated through sitting fees or allowances; and</li><li>(d) does not own shares in the company</li></ul> <p>Provided that after nine years of continuous service as such director, such person shall no longer be considered as an independent director.</p> <p><b>“information memorandum”</b> has the meaning assigned to it under the Act;</p> <p><b>“initial public offer”</b> means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer;</p> <p><b>“Insurance Regulatory Authority”</b> means the Insurance Regulatory Authority established under the Insurance Act, Cap 487 of the Laws of Kenya, and any successor regulator;</p> <p><b>“issuer”</b> in relation to any securities, means the person who has issued or is to issue securities to the public or a section thereof in Kenya, whether or not such securities are subject of</p>
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	<p>an application for listing on a securities exchange or have been admitted to listing;</p> <p><b>“legal entity”</b> means any entity established or recognized under the laws of Kenya including a limited liability company and a limited liability partnership;</p> <p><b>“key managerial personnel” or “management team”</b> means the officers or personnel of the issuer who are members of its core management team (excluding non-executive board members) and includes any other person whom the issuer may declare as a key managerial personnel;</p> <p><b>“listing”</b> means admission of a security to the Official List of a securities exchange and the terms “list” and “listed” shall be construed accordingly, and listing shall be deemed to occur, for purposes of determining whether purchase of securities in a public offering was of listed securities, when the securities exchange communicates in writing its admission of such security;</p> <p><b>“listing by introduction”</b> means the initial listing of securities that are publicly held other than as a result of an immediately preceding public offer;</p> <p><b>“listed issuer”</b> means an issuer any of whose securities are listed on a recognized securities exchange;</p> <p><b>“Main Fixed Income Securities Market Segment” or “MFISMS”</b> means a market segment for the listing of debt securities of issuers including but not limited to government and corporate bonds and debentures the initial offer size of which is over Kshs 250,000,000 or such higher amount as the Authority may set from time to time;</p> <p><b>“Main Investment Market Segment”</b> means a market segment for the listing of securities other than SMEMS, the MFISMS, the SME FISMS and any other segment for which a specific eligibility criterion is prescribed by a securities exchange with the approval of the Authority under Regulation 8(2);</p> <p><b>“market segment”</b> means a segment, defined in these</p>
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	<p>Regulations or established by a securities exchange with the approval of the Authority, for the listing of securities that meet, or the securities of an entity that meets, a respective prescribed criteria;</p> <p><b>“material information”</b> means any information relating to an issuer that may ordinarily affect the price of an issuer’s securities or influence investment decisions of investors and includes, without limitation, information on:</p> <ul style="list-style-type: none"><li>(a) a merger, acquisition or joint venture;</li><li>(b) the re-organization of the capital structure of the issuer;</li><li>(c) earnings and dividends, whether scrip or cash, of an unusual nature;</li><li>(d) the acquisition or loss of a significant contract;</li><li>(e) a significant new product or discovery;</li><li>(f) a change in control or significant change in management;</li><li>(g) a call of securities for redemption;</li><li>(h) a public or private sale of a significant amount of additional securities;</li><li>(i) the purchase or sale of a significant asset;</li><li>(j) a significant labour dispute;</li><li>(k) a significant dispute or determination thereof in respect of the issuer;</li><li>(l) establishment of a programme to make purchases of the issuer’s own shares;</li><li>(m) a tender offer for another issuer’s securities;</li><li>(n) significant alteration of the memorandum and articles</li></ul>
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	<p>of association of the issuer ; or</p> <p>(o) any other peculiar circumstances that may prevail with respect to the issuer or the relevant industry.</p> <p><b>“non-executive director”</b> means a member of a board of a company who is not an executive director and is not an executive director or employee of a related entity;</p> <p><b>“offer”</b> means an offer for subscription or purchase of securities in an issuer which, if accepted, would give rise to a contract for the issue or sale of the securities and, except where the context otherwise requires, “offer” and “offeror” shall be construed accordingly;</p> <p><b>“offer period”</b> means a period of up to ten working days, or such longer period as the Authority may approve, during which an offer to the public remains open;</p> <p><b>“Official List”</b> means the list of securities listed on a securities exchange as maintained by a securities exchange, and updated from time to time;</p> <p><b>“off-market purchase”</b> means the purchase of listed securities made outside the securities exchange, or on a securities exchange without having to comply with the trading rules of the exchange for exchange transactions;</p> <p><b>“on-market (exchange) purchase”</b> means the purchase of listed securities on a securities exchange in compliance with the trading rules of a securities exchange;</p> <p><b>“permitted investments”</b>, in relation to a SPAC, means investment in government bonds or treasury bills with maturity periods of not more than 18 months;</p> <p><b>“private company”</b> has the meaning ascribed to it under the Companies Act;</p> <p><b>“Private Offer”</b> means an offer of securities as defined in Regulation 13 of these Regulations.</p> <p><b>“Public offer compliance officer”</b> means a person engaged</p>
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by an issuer to ensure (exclusively or otherwise) the compliance of the issuer with the obligations of an issuer under these Regulations and the Act;

“**public**” means persons other than:-

- (a) the controlling shareholders, substantial shareholders, directors or employees of the issuer or its parent or subsidiary companies;
- (b) associates of the persons in paragraph (a); and
- (c) in relation to a SPAC, founding shareholders and management team of a SPAC, and their associates;

“**public company**” has the meaning ascribed to it under the Companies Act;

“**public offer**” means an offer which is not a private offer, as more specifically described in Regulation 6;

“**regional fixed income securities**” means fixed income securities issued under Regulation 6 (1) (e).

“**Registrar of Companies**” has the meaning assigned to it in the Companies Act;

“**related entity**” means in relation to a natural person, any person who is related to that person by marriage, affinity or consanguinity or who is a partner or employee of that person; and in relation to a company any entity which is its holding company subsidiary, subsidiary of its holding company or any person who controls that company whether alone or with such person’s related parties.

“**restricted public offer**” means a public offer restricted to sophisticated investors or directly communicated to not more than 250 specifically identified persons in accordance with section 30B (b) of the Act;

“**resulting issuer**”, in relation to a SPAC, means the resultant combined entity whose securities trade on a securities exchange upon the completion of a business combination;

	<p><b>“rights issuer”</b> means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the records date fixed for that purpose;</p> <p><b>“secondary issue”</b> or <b>“additional issue”</b> means the issuance of securities by an issuer restricted to existing shareholders or holders of renounced rights, other than transactions at the initial public offering, and includes capitalization, rights issue, scrip dividend or bonus issue.</p> <p><b>“securities”</b> has the meaning assigned to it in the Act;</p> <p><b>“Securities Exchange”</b> has the meaning ascribed to it in the Act;</p> <p><b>“Small and Medium-Sized Enterprise”</b> means, for purposes of these Regulations, an entity that would not meet the criteria to list its securities on the Main Investments Market Segment;</p> <p><b>“SME Fixed Income Securities Market Segment”</b> or <b>“SME FISMS”</b> means a market segment for the listing of debt securities the initial offer size of which is below Kshs 250,000,000 or such higher amount as the Authority may set from time to time;</p> <p><b>“SMEMS”</b> or <b>“Small and Medium Enterprises Market Segment”</b> means a market segment for the listing of non-debt securities issued by Small and Medium-Sized Enterprises.</p> <p><b>“share buyback”</b> means the purchase of its own shares from shareholders by a company;</p> <p><b>“shares registrar”</b> means the person appointed by an issuer to maintain a register of the securities holding records of the issuer as required under any written law or the issuer’s rules;</p> <p><b>“shelf prospectus”</b> means a prospectus in respect of securities or class of securities which are to be offered for subscription in one or more tranches over a specified period of time;</p> <p><b>“significant”</b> with regard to information means significant for the purpose of making an informed assessment of the matters</p>
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	<p>mentioned in these Regulations;</p> <p><b>“special purpose acquisition company” or “SPAC”</b> means a company with no prior operating history, no operating and revenue-generating business or asset at the point of the initial public offer, and which raises proceeds for the sole purpose of undertaking a business combination in accordance with the business strategy and acquisition mandate disclosed in the information memorandum issued in relation to the SPAC’s initial public offer;</p> <p><b>“SPAC IPO”</b> means SPAC Initial Public Offer;</p> <p><b>“sophisticated investor”</b> has the meaning assigned to it in the Act and also includes a person or combination of persons who, in an offer, subscribe for securities with an aggregate issue price of not more than Kenya Shillings one Million (Kshs 1,000,000) or such high amount as the Authority may determine from time to time;</p> <p><b>“substantial shareholder”</b> has the meaning ascribed to it under the Act;</p> <p><b>“supplementary information memorandum”</b> means the information memorandum referred to in Regulation 20;</p> <p><b>“supranational body”</b> means any global or regional body, institution or organization the members or constituents of which are governments, inter-governmental organizations or governmental organizations or agencies;</p> <p><b>“suspension”</b> with respect to securities listed on a securities exchange, means a trading stoppage of more than one trading session;</p> <p><b>“trading halt”</b> means a temporary suspension of trading of not more than one trading session at a time for a particular security or securities on a securities exchange.</p> <p><b>“transaction advisor”</b> means a person appointed to carry out the responsibilities set out under Regulation 27;</p> <p><b>“treasury shares”</b> means the shares of a listed company that</p>
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	<p>have been bought back by a listed company from the company’s shareholders and have not been cancelled or re-issued.</p> <p>“<b>valuation</b>” means the assessment and determination of the value of a security (including business combinations or assets of a business) by the relevant professionals in accordance with International Valuation Standards.</p>
	<b>PART II- GUIDING PRINCIPLES AND PURPOSE OF THESE REGULATIONS</b>
<b>Guiding Principles</b>	<p>4. The guiding principles and purpose of these Regulations are:</p> <ol style="list-style-type: none"><li>(1) establishing fair, efficient and transparent capital markets;</li><li>(2) encouraging and promoting the listing of securities on a securities exchange;</li><li>(3) promoting full, timely and accurate disclosure of information that is material to investors’ decisions;</li><li>(4) eliminating or minimizing the challenges and disadvantages of listing securities on a securities exchange;</li><li>(5) promoting good corporate governance in listed entities and issuers of securities to the public;</li><li>(6) promoting the protection of investors and improving investor confidence in the capital markets;</li><li>(7) promoting the fair and equitable treatment of issuers and investors;</li><li>(8) promoting the growth of the capital markets by encouraging and supporting the listing of new securities;</li><li>(9) leveraging on technology to improve the operations of the capital markets;</li><li>(10) eliminating or minimizing systemic risks in the capital markets;</li><li>(11) maximizing the use of capital markets to facilitate business growth and innovation by businesses at all stages and of all sizes including but not limited to small and medium-sized enterprises;</li></ol>



	<p>(12) facilitating compliance with disclosure requirements and continuing obligations.</p>
	<p><b>PART III - APPROVAL OF OFFERS OF SECURITIES AND LISTING</b></p>
<p><b>Application &amp; Approval of Offers and Listing</b></p>	<p>5. (1) Unless otherwise provided, these Regulations shall apply to all offers of securities to the public in Kenya whether or not the issuer is seeking a listing on any securities exchange in Kenya.</p> <p>(2) Save as expressly provided in these Regulations, the Authority shall be the competent authority to grant approval for all public offers of securities (including restricted public offers) and listing of securities on any securities exchange in Kenya.</p> <p>(3) The Authority may, in its absolute discretion, upon</p>

application by the securities exchange acting as a self-regulatory organization and if the Authority is satisfied that the securities exchange has the technical, human resource and financial capacity to carry out the delegated role to the Authority's satisfaction, in writing, delegate to a securities exchange the approval of:

- (a) The information memorandum for any offer of securities on the SMEMS of that securities exchange;
- (b) The public offer and listing of securities on the SMEMS of that securities exchange;
- (c) the additional and/or secondary issue and listing of securities of issuers on the SMEMS of that securities exchange;
- (d) The information memorandum for any offer of securities on the SME FISMS of that securities exchange;
- (e) The public offer and listing of securities on the SME FISMS of that securities exchange;
- (f) Share buy backs on the SMEMS of that securities exchange;
- (g) Any announcements and circulars and corporate actions in relation to securities listed on the SMEMS or SME FISMS of that securities exchange;
- (h) And other matter that the Authority may determine.

(4) A securities exchange shall promptly notify the Authority of any approvals granted by it under delegated authority.

(5) The Authority may, in writing, withdraw any of its powers delegated by it under Regulation 5 (3) but will give the securities exchange the opportunity to be heard before such withdrawal.

(6) A securities exchange shall maintain the Official List in respect of all securities listed on it.

(7) The securities exchange shall add to the Official List

	<p>particulars of all securities approved by the Authority (or by the exchange under delegated authority) for listing subject only to the issue attaining:</p> <ul style="list-style-type: none"><li>(i) the total minimum subscription of shares as disclosed in the information memorandum approved by the Authority in respect of public offering and listing of securities; and</li><li>(ii) the minimum subscribers prescribed for the respective market segment under these Regulations.</li></ul> <p>(8) The Official List shall (without limitation) include the following minimum particulars in respect of each listed security (as applicable):</p> <ul style="list-style-type: none"><li>(a) Name of Issuer</li><li>(b) Name of security</li><li>(c) ISIN Number</li><li>(d) Total number listed</li><li>(e) Class of security</li><li>(f) Type of security</li><li>(g) Par value</li><li>(h) Listing Date</li><li>(i) Trading Commencement Date</li><li>(j) Redemption Date</li></ul> <p>(9) A person whose securities have been approved for a public offer or listing shall state that fact on all announcements of the offer or listing.</p> <p>(10) Securities offered to the public in the primary market of a securities exchange with approval for listing and admission to listing having been issued shall, for purposes of decisions to invest, be deemed to have been listed on the date the securities exchange communicates to the issuer its admission to listing following an approval of the issue and listing, without prejudice to any thresholds.</p>
	<p><b>PART IV - PUBLIC OFFERS, RESTRICTED PUBLIC OFFERS, ELIGIBILITY, DISCLOSURE</b></p>

	<b>AND GENERAL REQUIREMENTS FOR PUBLIC OFFERS</b>
<p><b>Meaning of Public Offers</b></p>	<p>6. (1) Subject to section 30A of the Act, a “public offer” includes initial offer or further or secondary or additional offer of securities to the public by an issuer, or an offer for sale of securities to the public by an existing shareholder or shareholders.</p> <p>(2) A person offers securities to the public in Kenya if such offer is not a private offer as more specifically defined under Regulation 12.</p> <p>(2) For the purposes of this Part there is an offer of securities to the public if there is a communication to any person which presents information on the transferable securities to be offered, and the terms on which they are offered to enable the offeree to decide whether or not to buy or subscribe for the securities in question and that communication is designed to or could in all circumstances and likelihood reach more than one hundred persons. The onus will be on the offeror to demonstrate that any offer said to not to be a public offer is a private offer.</p>
<p><b>Issue of Securities to the Public and Listing</b></p>	<p>7. (1) An issuer may seek listing of its securities in one of the following ways:</p> <p>(a) offer for subscription for new securities;</p> <p>(b) offer for sale of existing securities;</p> <p>(c) Listing by introduction;</p> <p>(d) Cross-listing;</p> <p>(e) a combination of any of the above.</p>
<p><b>Eligibility to issue securities</b></p>	<p>8. (1) No person shall be eligible to issue securities to the public or list at a securities exchange, unless –</p> <p>(a) with respect to securities to be listed on the MIMS, the issuer meets the eligibility requirements prescribed in <b>Part A of the First Schedule</b>;</p> <p>(b) with respect to securities to be listed on the SMEMS, the issuer meets the eligibility requirements as set out</p>

<p><b>Issuers not seeking listing</b></p>	<p>in <b>Part B of the First Schedule</b>;</p> <p>(c) with respect to securities to be listed on the MFISMS, the issuer meets the eligibility requirements set out in <b>Second Schedule</b>;</p> <p>(d) with respect to securities to be listed on the SME FISMS, the issuer meets the eligibility requirements set out in <b>the Third Schedule</b>;</p> <p>(e) with respect to regional fixed income securities to be issued within the East African Community, the issuer meets the eligibility requirements set out in the <b>Fourth Schedule</b>;</p> <p>(f) with respect to any other market segment and subject to Regulation 8 (2), the issuer meets the eligibility requirements prescribed by the securities exchange.</p> <p>(2) A securities exchange may, with the prior written approval of the Authority:</p> <p>(a) establish and operate other market segments other than the market segments set out in Regulation 8 (1), and</p> <p>(b) prescribe or alter the eligibility requirements for such market segments.</p> <p>9. (1) An issuer of securities to the public who does not wish to list the securities on a securities exchange shall meet the eligibility criteria and comply with the disclosure requirements, including continuing disclosure requirements, prescribed for SMEMS in the case of equities and SME FISMS in the case of debt securities.</p> <p>(2) An issuer who does not wish to list its securities on any market segment shall endeavour to put in place and maintain mechanisms for facilitating trading and price discovery of its securities.</p> <p>(3) An issuer who has made a public offer in accordance with subsection (1), may, after the expiry of one year since the securities in question ceased to be the subject</p>
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<p><b>Transfer to new market segment</b></p> <p><b>Dealing with additional issues of securities</b></p>	<p>of an offer to the public, list those securities by introduction.</p> <p>10. (1) An issuer whose securities are listed on any market segment of a securities exchange shall not be eligible to transfer such securities to another market segment before the expiry of one year from the date of listing on the first mentioned market segment.</p> <p>(2) A transfer of securities from or to any market segment of a securities exchange shall be subject to meeting the eligibility and complying with the disclosure requirements of the new segment and to the approval of the Authority.</p> <p>11. An issuer whose securities are listed at a securities exchange shall not issue, or authorize its share registrar to issue or register, by way of capitalization, scrip dividend, additional rights issue or additional shares of the class listed, to a greater amount than the number authorized for listing except in accordance with the disclosure requirements for additional listing prescribed in the <b>Twelfth Schedule</b>.</p>
	<p><b>PART V –PRIVATE OFFERS</b></p>
<p><b>Private Offers</b></p>	<p>12. (1) For purposes of these Regulations, an offer of securities shall be regarded as a private offer, and not a public offer to which these Regulations apply, if the offer is made to persons in Kenya under any one of the following conditions:</p> <p>(a) the securities are offered to not more than one hundred persons who are specifically identified and such offer shall not remain open for a continuous period of more than 12 months, and such offer is not repeated with wholly or partially different persons by the same entities or related parties, or ultimately for a common purpose, within a period of 24 months from the date of the first offer;</p>

	<p>(b) the securities are offered to the members of a club or association (whether or not incorporated) by or on behalf that club or association and the members can reasonably be regarded as having a common interest with each other and with the club or association in its affairs and in what is to be done with the proceeds of the offer provided that such club or association or interest under whatever legal structure is not created or designed to defeat the mandate of the Authority to oversee public offers;</p> <p>(c) the securities are offered in connection with a valid invitation to enter into an underwriting agreement with respect to them;</p> <p>(d) the securities are of a private company and are offered by that company to-</p> <ul style="list-style-type: none"><li>(i) members or/and employees of the company;</li><li>(ii) members of the families of any such members or employees; or</li><li>(iii) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer and the number of such persons does not exceed one hundred.</li></ul> <p>(e) the securities result from the conversion of convertible securities in respect of which convertible securities the Authority had already approved an information memorandum; or</p> <p>(f) the securities of a listed company are offered in connection with a take-over scheme approved by the Authority.</p> <p><b>(2)</b> For the purposes of regulation 12 (1)(d)(ii) the members of a person's family are the spouse, son, adopted son, step-son, son-in-law, daughter, adopted daughter, step-daughter, daughter-in-law, father, step-father,</p>
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	<p>father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister or step-sister, sister-in-law, grand child or spouse of a grandchild; of that individual , and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives.</p> <p>(3) All offers covered under this Regulation shall be made only to such persons whose names are recorded by the offeror prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offerees shall be kept by the company produced to the Authority in demanded.</p> <p>(4) No issuer offering securities under this Regulation 12 shall issue any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public, or capable of informing the public, at large about such an offer.</p> <p>(5) Any offer or invitation not in compliance with the provisions of this Part V shall be treated as a public offer (or a restricted public offer, as the case may be) and all provisions of these Regulations relating to public offers or restricted public offers shall be required to be complied with.</p> <p>(6) Notwithstanding the provisions of this Regulation, any listed issuer that offers by way of Private Offer securities of the same class as those listed, shall comply with all requirements of these Regulations with regard to listing.</p>
	<p><b>PART VI - REQUIREMENTS FOR PUBLISHING INFORMATION MEMORANDUM, SHORT FORM PROSPECTUS AND INFORMATION NOTICE</b></p>



<p><b>Requirement for Information Memorandum</b></p>	<p>13. (1) Subject to Regulation 15, a person shall not make an offer of securities to the public unless that person publishes an Information Memorandum in respect of such offer duly approved by the Authority, or as delegated by the Authority.</p> <p>(2) The issuer shall comply with any requirements of any law, including the Companies Act, the Limited Liability Partnerships Act and any other applicable law, as regards registration of an Information Memorandum.</p> <p>(3) The issuer shall during the offer period and for such additional period as may be prescribed by the Authority make the information memorandum available to the public or to the section of the public to whom the offer is made, free of charge.</p> <p>(4) The issuer shall be deemed to comply with the requirements of sub-regulations (3) above if it publishes the information memorandum on its official website, or publishes it in a newspaper of national circulation or delivers it to the respective electronic mail addresses of the offerees, or publishes it in such other digital platform as may be approved by the Authority, or in any other manner as may be prescribed or approved by the Authority.</p> <p>(5) An issuer shall deliver a copy of the approved and published Information Memorandum to the Authority and the securities exchange no later than on the first day of the offer.</p>
<p><b>Content of Information Memorandum</b></p>	<p>14. (1) The information memorandum - shall include -</p> <p>(a) an accountant’s report (which shall not have prepared by the current auditor of the issuer) confirming compliance by the issuer with the financial disclosures prescribed under these Regulations with respect to the relevant market segment; and</p> <p>(b) a legal opinion which shall include but not be limited</p>

<p><b>Signing of Information Memorandum and Listing Statement</b></p>	<p>to the following -</p> <ul style="list-style-type: none"><li>(i) the legal status of the issuer;</li><li>(ii) whether all licences and consents required to perform the business or proposed business of the issuer have been duly obtained;</li><li>(iii) the validity of evidence of ownership of land, plant and equipment and other important and relevant assets of the issuer;</li><li>(iv) any agreements or contracts with respect to the proposed issue of securities, including underwriting contracts, agreements or contracts with any securities exchange, registrar and trustees of bonds, debentures or other credit securities;</li><li>(v) any material litigation, prosecution or other civil or criminal legal action in which the issuer or any of its directors is involved;</li><li>(vi) whether the existing capital of the issuer and any proposed changes thereto is in conformity with applicable laws and has received all necessary authorizations; and</li><li>(vii) any other material items with regard to the legal status of the issuer and the proposed issue.</li></ul> <p>15. (1) An information memorandum under Regulations 13 shall, before publication, be signed-</p> <ul style="list-style-type: none"><li>(a) in the case of an issuer which is a corporation, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer;</li><li>(b) In a case where the issuer is the government, a parastatal or an entity duly existing in Kenya, by an official(s) of the government, parastatal or duly existing entity who are duly authorized to sign the</li></ul>
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<p><b>Electronic offers</b></p>          <p><b>Allocation Policy</b></p>	<p>information memorandum;</p> <p>(c) in a case where the person making the offer is an individual and is not the issuer, by that person.</p> <p>(2) The information memorandum shall be published in the English language<sup>1</sup>.</p> <p>16. (1) An issuer may, when obtaining approval of an offer, notify the Authority and the Exchange that the offer shall be made electronically and include that fact in the Information Memorandum.</p> <p>(2) The Authority and the Exchange may approve electronic offering where they are satisfied that the technology to be used for such offer affords sufficient opportunity for applications to be treated fairly or equitably.</p> <p>(3) The issuer in an electronic offer shall ensure that the Information Memorandum is disclosed in the same form and content as approved.</p> <p>(4) The results of an electronic offer shall be published in the same manner as an Information Memorandum may be published.</p> <p>17. (1) An issuer of securities shall put in place and disclose in the information memorandum a fair and equitable allocation policy to govern the allocation of its securities in a public offer.</p> <p>(2) An Issuer of securities shall put in place mechanisms for sensitization of local investors to invest in the issue of its securities.</p> <p>(3) An issuer shall notify the Authority and (where there is a listing) the Securities Exchange, at least twenty four hours prior to the publication of the result of the offer.</p>
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<sup>1</sup> Removed provision requiring the Information Memorandum to be in black and white. Restriction serves no legal purpose.

**Form and Content of  
Information  
Memorandum**

18. (1) The form and content of an information memorandum shall comply with -

- (a) **Sixth Schedule**, where the issuer seeks to raise capital and list in the MIMS;
- (b) **Seventh Schedule**, where the issuer seeks to list on the MIMS by way of Introduction.
- (c) **Eighth Schedule**, where the issuer seeks to list and raise capital on the SMEMS.
- (d) **Ninth Schedule**, where the issuer seeks to list on the SMEMS by introduction.
- (e) [ **Tenth Schedule** where the issuer seeks to list in the MFISMS.
- (f) **Eleventh Schedule**, where the issuer seeks to list securities on the SME FISMS.

(2) Notwithstanding sub-regulation (1), the Authority may prescribe different disclosure requirements for entities listed on a foreign securities exchange recognized by the Authority that are seeking to cross-list on a securities exchange in Kenya.

(3) Every information memorandum shall -

(a) contain the following statement on its front page -

*“As a matter of policy, the Capital Markets Authority [and the Securities Exchange] assumes no responsibility for the correctness of any statements or opinions made or reports contained in this information memorandum. Approval of the issue and/or listing is not to be taken as an indication of the merits of the issuer or of the securities”; and*

(b) state the allotment procedure to be applied in case of an over subscription.

<p><b>Additional information to be contained in an information memorandum</b></p>	<p>19. (1) In addition to the information specifically required to be disclosed by virtue of these Regulations, an information memorandum shall contain all such information as investors would reasonably require, and reasonably expect to find therein, for the purpose of making an informed assessment of-</p> <ul style="list-style-type: none"><li>(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and</li><li>(b) the rights attaching to those securities.</li></ul> <p>(2) The additional information to be included by virtue of this Regulation shall be such information as is within the knowledge of any person responsible for the information memorandum, or which it would be reasonable for him to obtain by making diligent enquiries.</p> <p>(3) In determining what information is required to be included in an information memorandum by virtue of these Regulations, regard shall be had to the nature of the securities and of the offeror of the securities.</p> <p>(4) The Authority and the securities exchange may require additional information to be included in an information memorandum if it deems it in the interests of investors for such information to be in the information memorandum.</p>
<p><b>Supplementary Information Memorandum</b></p>	<p>20. (1) Where an information memorandum has been approved under these Regulations in respect of a public offer of securities and, at any time between the approval date thereof and the closing date of the offer, -</p> <ul style="list-style-type: none"><li>(a) there is a significant change affecting any matter contained in the information memorandum the inclusion of which was required by these Regulations; or</li><li>(b) a significant new matter arises the inclusion of</li></ul>

<p><b>Change of basis of approval of information memorandum</b></p>	<p>information in respect of which would have been so required if it had arisen when the information memorandum was prepared; or</p> <p>(c) there is discovered a significant inaccuracy in the information memorandum,</p> <p>the offeror shall, of its own motion, with prior consent of the Authority or the Securities Exchange (as applicable), or if required by the Authority or Securities Exchange, publish a supplementary information memorandum containing particulars of the change or new matter or, in the case of an inaccuracy, correcting it, and deliver (if applicable) the supplementary information memorandum to the Registrar for registration.</p> <p>(2) Where a supplementary information memorandum has been approved in respect of a public offer of securities, the preceding paragraphs of these Regulations shall have effect as if any reference to an information memorandum were a reference to the information memorandum originally published and that supplementary information memorandum, taken together.</p> <p>The provisions of Regulation 23 shall apply to a supplementary information memorandum.</p> <p><b>21.</b> Where, in the opinion of the Authority (or the Securities Exchange as the case may be), circumstances have occurred or new information has emerged that fundamentally alters the basis of approval of a public offer before the allotment date in the case of an offer or date of trading in the case of an introduction which renders the information memorandum inadequate, the Authority may require the issuer –</p> <p>(a) to issue a supplementary information memorandum disclosing such additional information; or</p> <p>(b) extend the offer period to allow investors to make an informed decision in light of the new disclosure; or</p>
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<p><b>Omission of certain things from the Information Memorandum</b></p> <p><b>Announcements of offer and abridged information memorandum</b></p>	<p>(c) to re-open the offer for such period as shall be determined by the Authority (or the Securities Exchange, as the case may be) to allow investors either to re-confirm their applications for subscription or withdraw their applications; or</p> <p>(d) to cancel the offer or proposed listing.</p> <p>22. The Authority, or the securities exchange as the case may be, may authorize the omission from an information memorandum of information whose inclusion would otherwise be required by these Regulations if it considers that the disclosure of that information would be prejudicial to the interest of the offeror but does not prejudice the interest of investors.</p> <p>23. (1) An advertisement, notice, poster or documents including an abridged information memorandum announcing a public offer or listing of securities for which an information memorandum is or will be required under these Regulations shall not be issued to or caused to be issued to the public in Kenya unless it states that an information memorandum is or will be published, as the case may be, and gives a website or other electronic location or an address in Kenya where it can be obtained.</p> <p>(2) The advertisements, notices, posters or documents referred to in paragraph (1) shall be submitted to the Authority or Securities Exchange, as the case may be, not later than forty-eight hours prior to proposed publication, and the Authority or the Securities Exchange may require such amendments to be made as they may consider necessary.</p> <p>(3) Every application form for subscription of the securities offered in an information memorandum shall state, in a conspicuous position, where the information memorandum may be obtained, and the issuer shall disclose to the Authority the number, if applicable, of physical copies of the information memorandum printed.</p>
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<p><b>Short Form Prospectus</b></p>	<p>(4) Every issuer shall publish an abridged information memorandum in the same manner as it publishes the information memorandum. An abridged information memorandum shall disclose basic information on the issuer, including –</p> <ul style="list-style-type: none"><li>(a) a summary of the balance sheet and profit and loss accounts for the three years immediately preceding the issue or such shorter period as may apply with respect to a particular market segment;</li><li>(b) the broad ownership structure prior to the issue and the anticipated structure after the issue;</li><li>(c) important highlights of the issue; and</li><li>(d) any other information on the issue considered essential by the issuer.</li></ul> <p><b>24.</b> (1) A person who intends to make a restricted public offer shall submit a short-form prospectus to the Authority for approval.</p> <p>(2) The Short-form prospectus contemplated in Regulation 24(1) shall be in the form set out in <b>the Fourteenth Schedule</b> and shall, <i>inter alia</i>, contain the following:</p> <ul style="list-style-type: none"><li>(a) Name of issuer;</li><li>(b) Summary of description of business;</li><li>(c) Summary description of issue;</li><li>(d) Disclosure of documents incorporated by reference in relation to the financial affairs of the company or any significant matter as required for a full prospectus;</li><li>(e) Number, price and type of securities;</li><li>(f) Conditions of the issue (if any);</li><li>(g) Use of proceeds;</li><li>(h) Description of securities and rights appurtenant thereto;</li><li>(i) Recently completed and probable acquisitions;</li><li>(j) Description of any underwriting arrangement and if the underwriter has any conflict of interest;</li></ul>
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<p><b>Information Notice</b></p>	<p>(k) Any other material information; and (l) Any other information that the Authority may direct.</p> <p>25. (1) A person who intends to issue securities-</p> <p>(a) in the case of any issue or offer (other than a private offer) exempted from issuing an information memorandum or a short-form prospectus under the Act and these Regulations; or</p> <p>(b) in respect of a restricted public offer of securities -</p> <p>(i) where the maximum amount which may be raised under the offer of securities is not more than KES 500,000,000/= or such other amounts as may be set by the Authority from time to time; or</p> <p>(ii) where the securities are denominated in such an amount or currency as the Authority may prescribe from time to time;</p> <p>shall in lieu of an information memorandum deliver to the Authority and the securities exchange prior to the opening of such offer an information notice.</p> <p>(2) The information notice contemplated in Regulation 25(1) shall be in the form set out in the <b>Fifteenth Schedule</b>.</p>
<p><b>Persons responsible for the Information Memorandum</b></p>	<p>26. (1) Subject to sub-Regulations (2) and (3), the persons who, for the purposes of these Regulations are responsible for an information memorandum are -</p> <p>(a) the issuer of the securities to which the information memorandum relates;</p> <p>(b) where the issuer is a legal entity, each person who is a director or a member of the governing organ of that legal entity at the time when the information memorandum is published;</p> <p>(c) where the issuer is a legal entity, each person who has</p>

	<p>given his consent to be named and is so named in the information memorandum as a director or member of the governing organ of that legal entity at the date of the information memorandum or at a specified time in the future;</p> <p>(d) each person who accepts, and is stated in the information memorandum as accepting, responsibility for any part of the information memorandum;</p> <p>(e) the offeror of the securities, where the offeror is not the issuer;</p> <p>(f) where the offeror is a body corporate, but is not the issuer and whether or not making the offer in association with the issuer, each person who is a director or member of the governing organ of that body corporate at the time when the information memorandum is published; and</p> <p>(g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the information memorandum.</p> <p><b>(2)</b> Notwithstanding the provisions of paragraph (1), a person shall not be responsible for an information memorandum –</p> <p>(a) under subparagraphs (1)(a), (b) or (c), unless the issuer has made or authorized the offer in relation to which the information memorandum is published; or</p> <p>(b) under subparagraph(1)(b), if such information memorandum is published without his knowledge or consent and on becoming aware of its publication, he forthwith gives reasonable notice to the public and to the Authority that the information memorandum was published without his knowledge or consent.</p> <p><b>(3)</b> Where a person has accepted responsibility for, or authorised, only part of the contents of any information memorandum he shall be responsible under paragraph (1)(d) or (g) only for that part and only if it is included</p>
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	<p>substantially in the form and context to which he has agreed.</p>
	<p><b>PART VII – TRANSACTION ADVISERS AND PUBLIC OFFERS COMPLIANCE OFFICERS</b></p>
<p><b>Transaction Advisers</b></p>	<p><b>27.</b> (1) Any entity proposing to offer its securities to the public or to list its securities in any market segment including the <b>SMEMS</b> and SME FISMS shall appoint a transaction adviser.</p> <p>(2) A transaction adviser appointed under paragraph (1) shall be responsible for ensuring that the offer of securities and the listing is made in accordance with the Act and these regulations.</p> <p>(3) A person shall not be eligible for appointment as a transaction advisor unless such a person is:</p> <ul style="list-style-type: none"><li>(a) a duly licensed investment bank; or</li><li>(b) a duly licensed fund manager or investment adviser; or</li><li>(c) a competent person or individual approved by the Authority to act as such transaction advisor for the particular offer of securities.</li></ul>
<p><b>Public Offer Compliance Officer</b></p>	<p><b>28.</b> (1) An issuer shall appoint a public offer compliance officer after the issuance and/or listing of its securities to the public. The role of the public offer compliance officer shall be to support the issuer in its compliance with the Act and these Regulations. An issuer may outsource the services of a public offer compliance officer.</p>

	<p>(2) A public offer compliance officer shall –</p> <ul style="list-style-type: none"><li>(a) support the issuer in its compliance with the Act and these Regulations for so long as the issuer is listed;</li><li>(b) review, prior to publication, all periodic financial information announcements, and any other documentation to ensure that they accurately disclose all material information to shareholders and the market;</li><li>(c) submit all such documents as may be required to be submitted to the Securities Exchange and ensure that such documents are in compliance with the continuing disclosure obligations;</li><li>(d) take all reasonable steps to brief all members of the board of directors of the issuer as to the nature of their responsibilities under the continuing disclosure obligations, other applicable regulations and the general nature of their obligations in relation to securities holders and to ensure that all new appointments to the board of directors of the issuer complete, if they have not already done so, the Directors Training Programme within six months of appointment;</li><li>(e) attend all board audit committee meetings of the issuer in an advisory capacity to ensure that the issuer conducts its meetings in compliance with the continuing listing obligations; and</li><li>(f) carry out any activities relating to the issuer as may be requested by the Securities Exchange, from time to time.</li></ul> <p>(2) A transaction advisor and a public offer compliance officer shall, in the discharge of their responsibilities under these Regulations, observe due care and skill and ensure that they observe the highest possible level of integrity in their conduct or judgment.</p>
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	<b>PART VIII - UNDERWRITING &amp; VALUATION OF SECURITIES</b>
<b>Underwriting of offers to the public</b>	<p>29. (1) An issuer may decide to have its public offer underwritten.</p> <p>(2) An underwriting arrangement shall be subject to the prior disclosure to the Authority</p> <p>(3) The fact and particulars of the underwriting shall be disclosed in the information memorandum.</p> <p>(4) Where the underwriter is a person related or associated to the issuer, the underwriter shall undertake to the Authority to dispose of any securities arising from the underwriting agreement within a period predetermined by the issuer and approved by the Authority.</p> <p>(5) The Authority may extend the period referred to in sub-paragraph (4) if satisfied that such extension would be in the best interest of the holders of the securities of the issuer, having regard to the prevailing market conditions and any other factors that are relevant in the circumstances.</p> <p>(6) Where the Authority extends the period referred to in sub paragraph (4) in accordance with sub paragraph (5), the issuer shall make a public announcement disclosing the period of such extension, any conditions attached to the extension and the circumstances necessitating the extension, in the same manner as an information memorandum may be published.</p>
<b>Valuation of Securities</b>	<p>30. (1) A person proposing to make a public offer may use a book building process in accordance with the requirements set out in the <b>Sixteenth Schedule</b> to these Regulations to determine the price of the securities.</p> <p>(2) A person may also determine the price of the securities in accordance with International Valuation Standards.</p> <p>(3) The issuer shall justify the valuation method used to</p>

	<p>determine the price of securities in a public offer at the time of making the application to the Authority to issue the securities.</p>
	<p><b>PART IX GREEN SHOE OPTION</b></p>
<p><b>Green Shoe Options</b></p>	<p><b>31.</b> (1) An issuer making a public offer of securities may provide a green shoe option for purposes of benefitting from the demand for the securities of the issuer (in the event of an oversubscription) or for purposes of stabilizing the post listing price of its securities, subject to the following:</p> <ul style="list-style-type: none"><li>(a) the issuer has been authorized to include the green shoe option by a resolution passed in a general meeting of members of the issuer which resolution shall specify the purpose for the green shoe option;</li><li>(b) the information memorandum shall contain all material disclosures about the green shoe option including the securities to be offered in the green shoe option which shall not exceed 30% of the specified offer amount and the use of the proceeds of the green shoe option. In particular, the information memorandum shall contain the following additional disclosures (as applicable):<ul style="list-style-type: none"><li>(i) The maximum number of securities, in number and as a percentage of the proposed issue size, proposed to be over-allotted by the issuer.</li><li>(ii) The maximum increase in the equity share capital of the issuer and the shareholding pattern, post-issue, in case the issuer is required to allot further equity shares to the extent of over-allotment in the issue.</li><li>(iii) The maximum amount of funds to be received by the issuer in case of further allotment and the use of these additional funds shall be disclosed in the offer document.</li><li>(iv) The name of the stabilizing agent</li><li>(v) The period for which the issuer proposes to avail of the stabilization mechanism.</li></ul></li></ul>

	<p>(vi) The details of the agreement or arrangement entered into by the stabilizing agent with the promoters or shareholders to borrow equity shares from the latter. The details shall, inter-alia, include the name of the promoters or shareholders, their existing shareholding in the issuer, the number and percentage of equity shares to be lent by them and other important terms and conditions including rights and obligations of each party.</p> <p>(vii) The exact number of equity shares to be allotted pursuant to the public issue, stating separately the number of equity shares to be borrowed from the promoters or shareholders and over-allotted by the stabilizing agent and the percentage of such equity shares in relation to the total issue size.</p> <p>(c) with respect to a green shoe option being for purposes of stabilizing the price:</p> <p>(i) the issuer has appointed an investment bank or an underwriter as a stabilizing agent, who shall be responsible for the price stabilization process;</p> <p>(ii) prior to lodging the offer documents with the Authority, the issuer and the stabilizing agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilizing agent for discharging its responsibilities, and such agreement is delivered to the Authority;</p> <p>(iii) prior to lodging the offer documents with the Authority, the stabilizing agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified securities from them in accordance with paragraph (v) below of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (over-allotment), which shall not be in excess of thirty (30) per cent. of the issue size;</p>
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	<p>(iv) subject to paragraph (iii) above, the transaction advisor, in consultation with the stabilizing agent, shall determine the amount of specified securities to be over-allotted in the public issue;</p> <p>(v) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per cent. specified securities and promoters, may lend specified securities to the extent of the proposed over-allotment;</p> <p>(vi) the specified securities borrowed shall be in dematerialized form and allocation of these securities shall be made pro-rata to all successful applicants.</p> <p>(4) For the purpose of stabilization of post-listing price of the securities, the stabilizing agent shall determine the relevant aspects including the timing of buying or selling such securities, quantity to be bought or sold and the price at which such securities may be bought or sold from the market.</p> <p>(5) The stabilization process shall be available for a period not exceeding sixty days from the date on which trading in the securities on the secondary market of the Securities Exchange commences.</p> <p>(6) The stabilizing agent shall open a special account with a licensed bank for crediting the monies received for the over-allotment (i.e. the green shoe securities) and a special account with a central depository agent for crediting specified securities to be bought from the market during the stabilization period out of the monies credited in the special bank account.</p> <p>(7) On expiry of the stabilization period, if the stabilizing agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price to the extent of the shortfall to the special account with the central depository agent, within five days of the closure of the stabilization period and such specified securities</p>
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shall be returned to the promoters or pre-issue shareholders by the stabilizing agent in lieu of the specified securities borrowed from them and the account with the central depository agent shall be closed thereafter.

- (8) The issuer shall make a listing application in respect of the further specified securities allotted under sub-regulation (7), to the relevant security exchange where the specified securities allotted in the public issue are listed.
- (9) The stabilizing agent shall remit the monies with respect to the specified securities allotted under sub-regulation (7) to the issuer from the special bank account.
- (10) Any monies left in the special bank account after remittance of monies to the issuer under sub regulation (9) and deduction of expenses incurred by the stabilizing agent for the stabilization process shall be transferred to the Investor Compensation Fund established under the Act and the special bank account shall be closed soon thereafter.
- (11) The stabilizing agent shall submit a report to the securities exchange on a daily basis during the stabilization period and a final report to the Authority containing the following particulars:

  - (a) Name of the issuer
  - (b) Name of the Stabilizing Agent
  - (c) Issue size (number of equity shares)
  - (d) Issue open date
  - (e) Issue closure date
  - (f) Over-allotment in issue (%)
  - (g) Date of commencement of trading

	<p>(h) Amount in the 'Green Shoe Option Bank Account (in Kshs)'</p> <p>(i) Details of promoter(s) from whom shares borrowed (name &amp; number of shares borrowed)</p> <p>(j) Date on which the stabilization period ended</p> <p>(k) Number of shares bought during the stabilization period</p> <p>(l) Date on which issuer allotted further shares to the extent of shortfall</p> <p>(m) Date when the shares were returned to the promoter(s)</p> <p>(n) Date when the money in the Green Shoe Option Bank Account was remitted to the issuer</p> <p>(o) Details of the Depository account (Special account for Green Shoe Option securities) where shares purchased from the market were kept inter-alia the following:</p> <ul style="list-style-type: none"><li>(i) Central depository agent</li><li>(ii) Account number.</li><li>(iii) Number of shares purchased, date wise.</li><li>(iv) Number of shares taken out, date wise.</li></ul> <p>(p) Details of amount transferred to the Investor Compensation Fund <b>(in KES)</b></p> <p>(q) Such other information as the Authority may reasonably require to be included in the report.</p> <p><b>(12)</b> The stabilizing agent shall maintain a register for a period of at least two years from the date of the end of the stabilization period containing particulars such as the price, date and time in respect of each transaction effected in the course of the stabilization process, the details of allotment made by the issuer on expiry of the stabilization process, and any other information that the Authority may prescribe.</p> <p><b>(13)</b> The Authority may prescribe such other rules and</p>
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	<p>guidelines for the effective regulation of green shoe options.</p>
	<p><b>PART X - SHELF PROSPECTUS</b></p>
<p><b>Issuing of shelf prospectuses</b></p>	<p>32. (1) An issuer who satisfies the criteria set out in Regulation 33 may file a shelf prospectus for approval with the Authority which shall indicate a period not exceeding two years as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under the Prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus shall be required.</p> <p>(2) An issuer filing a shelf prospectus shall be required to publish a supplementary offering note containing all material facts relating to any material changes in the business and financial position of the issuer occurring between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:</p> <p><b>Provided</b> that where an issuer or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the issuer or other person shall notify the changes to such applicants and if they express a desire to withdraw their application, the issuer or other person shall refund all the monies received as subscription within fifteen days thereof.</p> <p>(3) Where a supplementary offering note is published, every time an offer of securities is made under this Regulation, such supplementary offering note together with the shelf prospectus shall be deemed to be the shelf prospectus.</p>

<p><b>Qualification to issue shelf prospectuses</b></p>	<p><b>33.</b> (1) Shelf prospectuses under Regulation 32 may only be issued and published by-</p> <ul style="list-style-type: none"><li>(a) Licensed institutions under the Banking Act Cap 488 of the Laws of Kenya;</li><li>(b) Licensed insurance and reinsurance companies under the Insurance Act Cap 487 of the Laws of Kenya;</li><li>(c) Listed entities:-<ul style="list-style-type: none"><li>(i) whose equity or debt securities have been listed on a Securities Exchange for a period of at least three years immediately preceding the issue and have been complying with the continuing listing obligations; and</li><li>(ii) having a net worth of at least Kenya Shillings One Billion (Kshs. 1,000,000,000), as at the date of the last audited balance sheet; and</li><li>(iii) having a consistent track record of distributable profit for the previous three years; and</li><li>(iv) whose debt securities (where applicable) have been rated by a credit rating agency licensed or recognized by the Authority; and</li><li>(v) who have no regulatory action pending against them before any regulatory authority including but not limited to the Authority, the Central Bank or the Insurance Regulatory Authority; and</li><li>(vi) are not in current default of any material obligation including but not limited to payment of debts as they fall due, payment of dividends or repayment of any loans and have not been in such default in the last three financial years.</li></ul></li></ul> <p>(2) The shelf prospectus shall comply with the disclosure requirements for public offers of securities for the relevant market segment under these Regulations.</p> <p>(3) Not more than four issuances of securities shall be</p>
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	made through a single shelf prospectus.
	<b>PART XI - SPECIAL PURPOSE ACQUISITION VEHICLE</b>
<b>Qualitative and Quantitative criteria</b>	<p><b>34. (1)</b> An issuer applying for listing of its equity securities on the Main Investment Market Segment as a Special Purpose Acquisition Vehicle (SPAC) must meet all of the following criteria:</p> <p>(a) must be suitable for listing and is not permitted to adopt a dual class share structure at an initial public offer. In assessing the suitability of the SPAC, the Authority may take into account any factor it considers relevant including -</p> <ul style="list-style-type: none"><li>(i) the business objective and strategy of the issuer;</li><li>(ii) the profile including the track record and repute of the founding shareholders, the experience and expertise of the management team of the issuer;</li><li>(iii) the alignment of interests of the founding shareholders and the management team with the interests of other shareholders, including potential losses and returns to the founding shareholders and the management team, and other shareholders;</li><li>(iv) the sufficiency of gross proceeds to be raised from the SPAC IPO to undertake a business combination which will (i) enable the resulting issuer to have an identifiable core business with sufficient size and scale; and (ii) offer reasonable returns to shareholders based on equity capital employed;</li><li>(v) the proportion of rewards to be enjoyed by the founding shareholders and the management team as compared to the expected and timing of shareholder value creation;</li><li>(vi) the quantum of discount to the SPAC IPO issue price at which securities of the issuer are issued to the founding shareholders and the management team, if any. For avoidance of</li></ul>

<p><b>SPAC IPO Proceeds and Escrow Requirements</b></p>	<p>doubt, the discount should not result in a price lower than the nominal value of the securities;</p> <p>(vii) the intended use of SPAC IPO proceeds not placed in the escrow account;</p> <p>(viii) the dilutive features and events which impact shareholders, and whether there are any mitigants for such dilution; and</p> <p>(ix) the escrow arrangements governing the funds in the escrow account.</p> <p>(b) Must have a market capitalization of not less than Kenya Shillings One Billion (Kshs. 1,000,000,000) based on the issue price and post-invitation issued share capital;</p> <p>(c) At least 25% of its total number of issued shares (post issue) excluding treasury shares must be held by at least 100 shareholders;</p> <p>(d) must be incorporated in Kenya;</p> <p>(e) The issuer’s founding shareholders and management team, must in aggregate, subscribe for and hold at least 20% of the total post-invitation issued share capital;</p> <p>(f) The majority of each of the committees performing the functions of an audit committee, a nominating committee and a remuneration committee, including the respective chairpersons must be independent; and</p> <p>(g) Any other eligibility requirement as set out in the <b>Fifth Schedule</b> and as may be prescribed by the Authority.</p> <p>(2) Following the completion of the business combination, the entire shareholdings of (A) the founding shareholders and the management team of the issuer, and their associates; and (B) the controlling shareholders of the resulting issuer and their associates, and executive directors of the resulting issuer will be subject to moratorium (lock-in of its shares) for a period of at least 12 months from the date of completion of the business combination.</p> <p>35. (1) Immediately upon listing on the Securities Exchange, the issuer must place at least 90% of the gross funds raised from its initial public offer in an escrow account opened with and operated by an independent escrow agent which is part of a financial institution licensed and approved by</p>
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	<p>the Central Bank. The amount placed in the escrow account cannot be drawn down except for the purpose of the business combination, or liquidation of the issuer or such other circumstances set out in these Regulations.</p> <p>(2) The escrow agent appointed by the issuer must be independent of the founding shareholders, the management team, and their associates.</p> <p>(3) The issuer must secure and maintain the escrow arrangement(s) at all times over the funds in the escrow account until the termination of the escrow account in accordance with Regulation 35 (5).</p> <p>(4) The issuer shall only be permitted to hold its assets in permitted investments until completion of a business combination that meets the Authority’s requirements.</p> <p>(5) The issuer may invest the escrowed funds in permitted investments in accordance with Regulation 35 (4) and the escrow agreement governing the escrowed funds must provide for:</p> <ul style="list-style-type: none"><li>(i) The termination of the escrow account and release of the escrowed funds on a pro rata basis to shareholders who exercise their redemption rights in accordance with Regulation 38 (9) and the remaining escrowed funds to the issuer, if the issuer completes a business combination within the permitted time frame; and</li><li>(ii) The termination of the escrow account and the distribution of the escrowed funds to shareholders (other than the founding shareholders, the management team, and their associates in respect of all equity securities owned or acquired by them prior to or pursuant to the SPAC IPO) in accordance with the terms of Regulation 39 (1) to (5).</li></ul> <p>(6) The SPAC IPO proceeds that are not placed in the escrow account, and interest or other income earned on</p>
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<p><b>Issuer of convertible securities</b></p> <p><b>Additional Continuing Listing Requirements Prior to Completion of a Business Combination</b></p>	<p>the escrowed funds from permitted investments, may be applied as payment for administrative expenses incurred by the issuer in connection with the initial public offer, for general working capital expenses and for the purpose of identifying and completing a business combination.</p> <p>36. Where any convertible securities are issued in connection with the SPAC IPO, these convertible securities must comply with the following requirements:</p> <ul style="list-style-type: none"><li>(a) only one class of convertible securities will be permitted and the conversion price of convertible securities must not be lower than the price of the ordinary shares offered for the SPAC IPO;</li><li>(b) the convertible securities are non-detachable from the ordinary shares and must not be exercisable prior to the completion of the business combination;</li><li>(c) the convertible securities must not have an entitlement to the funds held in the escrow account upon liquidation of the issuer or redemption of the ordinary shares by shareholders who have voted against the business combination; and</li><li>(d) the tenure of the convertible securities must expire on the earlier of the (A) maximum tenure under the issuance terms as stated in the prospectus issued in connection with the issuer’s SPAC IPO; or (B) permitted time frame for completion of a business combination where no business combination is completed within such time period.</li></ul> <p>37. (1) Prior to the completion of a business combination, the Authority may permit the issuer to raise additional funds through the issue of securities where:-</p> <ul style="list-style-type: none"><li>a) the issuance is made on a pro rata basis and in accordance with the requirements in this Part XI;</li><li>b) at least 90% of the gross proceeds raised are placed in escrow in accordance Regulation 35 (1) and</li><li>c) the proceeds raised are for the purpose of financing</li></ul>
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<p><b>Business Combinations</b></p>	<p>the business combination and/or related administrative expenses.</p> <p>Provided that the SPAC's intention to raise additional funds shall be disclosed in the Information Memorandum at the time of listing or, if not disclosed, the SPAC obtains approval from its shareholders to raise additional funds.</p> <p>(2) The issuer shall not be permitted to obtain any form of debt financing (excluding short term trade or accounts payables in the ordinary course of business) other than those simultaneous with or after, completion of its business combination provided that the-</p> <ul style="list-style-type: none"><li>a) funds in the escrow account must not be used as collateral or subject to encumbrance for the debt financing; and</li><li>b) funds drawn down from the debt financing must be applied towards the financing of the business combination and/or related expenses. A credit facility may be entered into prior to completion of a business combination, but should be drawn down simultaneously with, or after completion of a business combination.</li></ul> <p>(3) The issuer shall not be permitted by the Authority to adopt any security-based compensation arrangement prior to the completion of a business combination.</p> <p><b>38.</b> (1) Subject to Regulation 38(3), the issuer must complete a business combination within 24 months from the date of listing of its SPAC IPO. Where the business combination comprises of more than one acquisition, the issuer must complete each of the acquisitions simultaneously on or around the same day, and each of the acquisitions must be in separate and inter-conditional resolutions.</p> <p>(2) The business combination may be in the form of a merger, share exchange, asset acquisition, share purchase, reorganization, or such other similar business combination methods, in accordance with the business strategy and acquisition mandate disclosed in</p>
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the prospectus issued in relation to the SPAC's initial public offer.

- (3) The issuer may apply to the Authority for an extension of time, up to a maximum of 12 months, to complete the business combination and specifically obtain the approval of a majority of at least 75% of the votes cast by independent shareholders at a general meeting to be convened. Such extension of time is permitted under exceptional circumstances and any application for extension of time must be submitted to the Authority at least 1 month before expiry of the permitted time frame.

For the purpose of voting on the extension of time to complete the business combination, the founding shareholders, the management team, and their associates, are not considered independent. The Authority retains the discretion to reject an application for extension of time if the Authority is of the opinion that there is no reasonable justification for the time extension and/or it is in the interests of the public to do so.

- (4) The initial business or asset acquired pursuant to the business combination must have a fair market value of at least 80% of the amount in the escrow account at the time of entry into the binding agreement for the business combination transaction, excluding any amount held in the escrow account representing deferred underwriting fees and any taxes payable on the income earned on the escrowed funds.

Where the SPAC concludes multiple concurrent acquisitions or mergers as part of the business combination, there must be at least one initial acquisition which satisfies the requirement of having a fair market value constituting at least 80% of the amount held in the escrow account at the time of entry into the binding agreements for the business combination transactions, and such concurrent transactions must be inter-conditional and completed simultaneously within the permitted time frame.

	<p>(5) The issuer must appoint</p> <ul style="list-style-type: none"><li>a) a transaction adviser, who is an issue manager, to advise on the business combination; and</li><li>b) a competent and independent valuer to value the business(es) or asset(s) to be acquired under the business combination such valuation to be conducted in accordance with International Valuation Standards. A summary valuation report must be included in the shareholders' circular in relation to the business combination.</li></ul> <p>(6) The business combination must result in the issuer having an identifiable core business of which it has a majority ownership and/or management control. The Authority may consider a business combination involving an acquisition of a minority stake in the business(es) or asset(s), where the issuer can demonstrate that it has management control of such business(es) or asset(s).</p> <p>(7) The business combination must be respectively approved by a simple majority of independent directors, and an ordinary resolution passed by independent shareholders at a general meeting to be convened. For the purpose of voting on the business combination, the founding shareholders, the management team, and their associates, are not considered as independent.</p> <p>(8) The shareholders' circular in relation to the business combination must contain an opinion from an independent financial adviser and the issuer's audit committee stating that the terms of the transaction are on normal commercial terms and are not prejudicial to the interest of the issuer and its minority shareholders.</p> <p>(9) Each independent shareholder (other than (A) the founding shareholders, the management team, and their respective associates; and (B) the independent shareholders who vote for the business combination) voting against the business combination shall be entitled to redeem their ordinary shares, on a pro rata basis, of the amount in the escrow account at the time</p>
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<p><b>Liquidation of SPACS</b></p>	<p>of the business combination vote, provided that the business combination is approved and completed within the permitted time frame.</p> <p>(10) The redemption amounts with respect to the shares to be redeemed pursuant to paragraph (9) above shall be paid to the electing independent shareholder as soon as practicable upon completion of the business combination, and shares tendered in exchange for cash must be cancelled. Any convertible securities attached to the redeemed shares shall cease and become null and void.</p> <p><b>39. (1)</b> Prior to completion of the business combination, in the event a material change occurs in relation to the profile of the founding shareholders and/or the management team which may be critical to the successful founding of the issuer and/or successful completion of the business combination, the issuer shall seek approval of a majority of at least 75% of the votes cast by independent shareholders at a general meeting to be convened for the continued listing of the issuer on the Securities Exchange. For the purpose of voting on the continued listing of the issuer, the founding shareholders, the management team, and their associates, are not considered as independent.</p> <p><b>(2)</b> The Authority retains discretion to declare a circumstance to be a material change under this regulation.</p> <p><b>(3)</b> Where the issuer</p> <ul style="list-style-type: none"><li>a) fails to complete a business combination within the permitted time frame;</li><li>b) fails to obtain specific shareholders' approval in Regulation 39(1); or</li><li>c) is directed to delist by the Authority before the completion of a business combination in accordance with Regulation 40;</li></ul> <p>the issuer shall be liquidated. The amount held in the escrow account at the time of the liquidation distribution (and such other accounts held by the issuer), net of taxes payable and direct expenses</p>
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<p><b>Delisting of SPAC for failure to complete business combinations</b></p> <p><b>Authority to consider whether continued listing is in the best interest of the authority and public</b></p> <p><b>Authority to prescribe</b></p>	<p>related to the liquidation distribution, shall be distributed to shareholders on a pro rata basis as soon as practicable, as permissible by the relevant laws and regulations. Any interest, income derived and deferred underwriting commissions accrued in the escrow account will form part of the liquidation distribution.</p> <p>(4) The founding shareholders, the management team, and their associates shall waive their right to participate equally in the liquidation distribution in respect of all equity securities owned or acquired by them prior to or pursuant to the SPAC IPO and shall only be entitled to participate in such distribution only after the other shareholders have received their relevant share of the liquidation proceed.</p> <p>(5) The underwriters of the SPAC IPO must waive their rights to any deferred underwriting commissions deposited in the escrow account in the event the issuer liquidates prior to completion of the business combination.</p> <p>40. If the issuer fails to</p> <ul style="list-style-type: none"><li>a) complete a business combination within the permitted time frame; or</li><li>b) obtain specific shareholders’ approvals in Regulations 38 (3) and 39(1),</li></ul> <p>the Authority will order the delisting of the issuer’s securities on or about the date on which the liquidation distribution is completed.</p> <p>41. The Authority will consider whether the continued listing of the resulting issuer after completion of the business combination will be in the best interests of the Authority, the Securities Exchange and the public, and will have the discretion to suspend, direct the commencement of the liquidation distribution in accordance with Regulation 39 (1) to (5) and delist the issuer’s securities prior to completion of the business combination.</p> <p>42. (1) Where a SPAC is seeking a listing on a Securities</p>
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<p><b>rules and guidelines for effective regulation of SPACS</b></p> <p><b>Continuing Obligations for SPACS</b></p>	<p>Exchange or is seeking shareholders' approval for a business combination, the offering memorandum or the introductory document or the shareholders' circular must comply with the disclosure requirements in as may be prescribed by the Authority.</p> <p>(2) The Authority may prescribe such other rules and guidelines for the effective regulation of the SPACs as it may determine from time to time, without prejudice to any accrued entitlements.</p> <p>43. The continuing obligations set out in the shall apply to a SPAC issuer post business combination.</p>
	<p><b>PART XII - SHARE BUYBACKS FOR LISTED COMPANIES</b></p>
<p><b>Scope of Part XII</b></p> <p><b>Power to Buy-back Shares</b></p>	<p>44. (1) This Part sets out the requirements that must be complied with by a listed Company that intends to undertake a share buyback.</p> <p>(2) A listed company that intends to buy back its shares shall comply in full with the provisions of the Companies Act, 2015, Capital Markets Act, and these Regulations.</p> <p>45. (1) A listed company may only buy back its shares if the Articles of Association of the listed company provide for share buybacks.</p> <p>(2) A proposal to buy back the shares of a listed company shall be recommended by a resolution of the Board of Directors and approved by a resolution of shareholders of the company in a general meeting of shareholders before the share buyback is undertaken.</p> <p>(3) A proposal to the Company's Shareholders pursuant to (2) above shall be through a circular which sets out in detail the terms and conditions of the Share Buy-</p>

<p><b>Shareholders Resolution</b></p>	<p>back proposal.</p> <p>(4) Circular to the Shareholders with respect to the share buy-back Proposal must first:</p> <ul style="list-style-type: none"><li>(a) Be approved by the Authority pursuant to these Regulations; and</li><li>(b) shall have been submitted to the securities exchange on which the share buyback transactions shall be undertaken by the listed company.</li></ul> <p><b>46. Shareholder Resolution with respect to a share buy-back shall contain:</b></p> <ul style="list-style-type: none"><li>(a) The total number or percentage and description and classes of the shares which the listed company is authorised to purchase on the Securities Exchange;</li><li>(b) The dates on which the authority conferred by the resolution will commence and determine;</li><li>(c) The maximum funds to be allocated by the listed company for the purpose of purchasing its own shares or a basis, other than reference to any person’s discretion or opinion, or a formula to determine the maximum funds that are to be allocated.</li><li>(d) Whether the shares are proposed to be cancelled or retained as treasury shares, or both and, if available, information as to percentage or number of shares purchased which are to be retained and/or cancelled.</li></ul>
<p><b>Shareholder Circular</b></p>	<p><b>47. (1)</b> The circular contemplated in Regulation 45(3) shall disclose all material information that the shareholders of the listed company and the shareholders’ professional advisors would reasonably require or expect to be informed about in order to make an informed decision on</p>

	<p>the proposed share buyback transaction.</p> <p>(2) Despite the generality of subparagraph (1), the circular shall contain the following information:</p> <ul style="list-style-type: none"><li>(a) A heading drawing attention to the importance of the circular and advising holders of shares who are in any doubt as to what action to take to consult appropriate independent advisers.</li><li>(b) A statement that the Authority or the Securities Exchange as the case may be takes no responsibility for the contents of the Share Buy-back circular, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the Share Buy-back circular.</li><li>(c) the reasons for the share buyback;</li><li>(d) the class and number of shares of the listed company that are intended to be bought back;</li><li>(e) the method of undertaking the share buyback including whether or not the buyback shall be undertaken:<ul style="list-style-type: none"><li>i. through open market repurchase programmes executed through tender offers or over a period of time; or</li><li>ii. through on -market (exchange) or off-market purchases.</li></ul></li><li>(f) the treatment by the listed company of the shares to be bought back including:<ul style="list-style-type: none"><li>i. whether or not the shares bought back shall be held in treasury or cancelled; and</li><li>ii. where the shares that have been bought</li></ul></li></ul>
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	<p>back are intended to be held in treasury, the listed company shall disclose the current and future treatment of those treasury shares;</p> <p>(g) the price-per-share intended to be paid by the listed company specifying the maximum and minimum prices of the shares and a detailed explanation supporting the prescribed price including valuation reports;</p> <p>(h) the mode of financing the share buyback either being the proceeds from a fresh issue of shares or out of distributable profits of the listed company;</p> <p>(i) whether or not consent for the share buyback has been obtained from other relevant parties including bondholders, regulators and creditors;</p> <p>(j) a declaration by the directors of the listed company of the company's solvency or liquidity based on the company's last audited financial statements that is sufficient to undertake the share buyback including a statement that on the date of the shareholder circular:</p> <ul style="list-style-type: none"><li>i. the assets of the listed company are fairly valued;</li><li>ii. the assets of the listed company are equal to or exceed the liabilities of the listed company; and</li><li>iii. the listed company shall be able to pay its debts as they come due in the ordinary course of business for a period of twelve months following the share buyback;</li></ul> <p>(k) the potential impact of the proposed share</p>
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<p><b>Off-market Purchase</b></p>	<p>buyback on the shareholding structure of the listed company;</p> <ul style="list-style-type: none"><li>(l) the risk factors and assumptions of the share buyback transaction;</li><li>(m) any related party transaction or director's interest in the share buyback transaction;</li><li>(n) the impact of the share buyback on the listed company's financial position;</li><li>(o) The number of shares held directly and indirectly by the directors and substantial shareholders;;</li><li>(p) The direct and indirect interests of the directors and major shareholders and any person connected with the directors or major shareholders, or both, in the proposed purchase of shares or resale of treasury shares;</li><li>(q) Both the potential advantages and disadvantages of the proposed purchase to the listed company and its shareholders respectively;;</li><li>(r) A statement by the board of directors that the proposal is in the best interest of the listed company and why;;</li><li>(s) the period during which the shareholders' approval for the share buyback shall be valid; and</li><li>(t) any other relevant information regarding the proposed share buyback transaction.</li></ul> <p><b>48.</b> If a listed company intends to buy back its shares through off-market purchases, that company shall submit the draft share buyback contract to the Authority for approval in line with the requirements for private transactions in</p>
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<p><b>Publication of Notice</b></p>	<p>addition to the shareholders' circular contemplated under Regulation 45 (3).</p> <p>49. (1) A listed company that intends to buy back its shares shall publish, within twenty-four hours of the board's resolution approving the share buyback, and with the approval of the Authority, a public announcement of the intended share buyback in at least one newspaper of nationwide circulation and on the company's website.</p> <p>(2) The listed company shall submit the published public announcement to the securities exchange and the exchange shall publish the announcement on its website.</p> <p>(3) The announcement shall contain material information on the share buyback including the following:</p> <ul style="list-style-type: none"><li>(a) the method of effecting the share buyback (on-market (exchange) purchase or off-market purchase);</li><li>(b) the minimum and maximum prices of the shares to be bought back;</li><li>(c) the treatment of shares by the listed company after they are bought back;</li><li>(d) the percentage of the shares to be bought as a proportion of the issued share capital of the listed company; and</li><li>(e) the transaction advisors advising the listed company in the share buyback transaction.</li></ul> <p>(4) The announcement shall contain a statement that the listed company shall provide the shareholders with a circular on the proposed share buyback seeking the shareholders' approval after the circular on the share buyback has been approved by the Authority.</p>
<p><b>On-market purchase</b></p>	<p>50. If a listed company intends to buy back its shares through on-market (exchange) purchases:</p>

<p><b>Minimum capital and free float requirement</b></p>	<p>(a) the maximum share buyback price of the shares to be purchased shall be ten per cent above the weighted price average of the shares during the period of thirty days before the day of the board resolution approving the share buyback; and</p> <p>(b) the minimum share buyback price of the shares to be purchased shall be the nominal price of the shares or the prevailing market price, whichever is lower, on the date of the board resolution approving the share buyback.</p> <p>51. A proposal by a listed company to buy back its shares shall not reduce or contravene the minimum capital and free float requirement for continued listing of the company in the respective market segment under these Regulations and any other additional free float requirements that may be introduced by the Authority.</p>
<p><b>Class of Shares and Treatment of Treasury shares</b></p>	<p>52. (1) If a proposal to buy back shares relates to a class of shares of the listed company, the shares to be bought back by the company shall not exceed ten per cent of the total issued shares of that class in a given financial year: Provided that the Authority may consider waiving this limit on the written application of the listed company.</p> <p>(2) If a listed company opts to keep the shares bought back in treasury, the treasury shares shall not exceed ten per cent of the total issued shares of that class.</p> <p>(3) Where a listed company proposes to reissue treasury shares, including any reissue to employee share ownership schemes of the company, the company shall seek the approval of the company's shareholders and Authority pursuant to the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, before reissuing the treasury shares.</p>
<p><b>Volume of shares to be purchased</b></p>	<p>53. (1) The volume of the shares purchased by a listed company on any single day may not exceed twenty-five per cent or the limit prescribed by the Authority.</p> <p>(2) The limit under subparagraph (1):</p>

<p><b>Disclosure to the Securities Exchange</b></p>	<ul style="list-style-type: none"><li>(a) shall be based on the liquidity of the shares in the market of the average daily trading volume for the four calendar weeks preceding the week of the purchase; and</li><li>(b) shall not be executed as to significantly adversely affect the liquidity of the shares in question.</li><li>(c) The share buyback shall not be effected during pre-open session of trading of the shares of the listed company.</li></ul>
<p><b>Duration of buy-back programme</b></p>	<p>54. (1) A listed company that undertakes a share buyback shall disclose to the securities exchange the details of the buyback transaction immediately after the buying back of the shares and the disclosure shall be published on the security exchange’s website.</p> <p>(2) The disclosure under subparagraph (1) shall include information on the listed company, the number of shares that have been bought back, the price per share of the shares that have been bought back, and the percentage of the free float after the shares have been bought back.</p>
<p><b>Appointment of Stockbroker</b></p>	<p>55. A listed company shall:</p> <ul style="list-style-type: none"><li>(a) complete the share buyback within a period not exceeding eighteen months from the date of the shareholder resolution approving the share buyback proposal; and</li><li>(b) separate share buyback programmes by a period of three hundred and sixty-five days.</li></ul>
	<p>56. (1) A listed company intending to purchase its own shares or resell treasury shares on the Exchange may appoint one or more stockbroker for that purpose. The listed company must ensure that all dealing(s) in its own shares or treasury shares are made through the said stockbrokers only.</p> <p>(2) A listed company must lodge a notice of the</p>

<p><b>Prohibition, cancellation or suspension of share buybacks.</b></p>	<p>appointment of the stockbrokers concerned with the Exchange immediately and the listed company must open one securities account in its own name with such stockbrokers designated as “Share Buy-Back Account” which must solely be used for the purchase of its own shares or resale of treasury shares.</p> <p>57. (1) A listed company shall not undertake a share buyback transaction:</p> <ul style="list-style-type: none"><li>(a) during the period of fourteen days before the publication of the company’s half-yearly or annual financial statements; or</li><li>(b) after it has become aware of any material information which has not been made public which, if disclosed, could affect the price of the company’s shares.</li></ul> <p>(2) A share buyback may be cancelled or suspended if:</p> <ul style="list-style-type: none"><li>(a) material information is announced within fourteen days before the buyback being conducted; or</li><li>(b) if the listed company deems it fit in the circumstances:</li></ul> <p>Provided that the cancellation or suspension is done within a reasonable time before the effective date of the buyback transaction.</p>
<p><b>Reporting and Disclosures</b></p>	<p>58. (1) A listed company that undertakes a share buyback transaction shall submit to the Authority or Securities Exchange as the case may be daily reports on the share buyback transaction undertaken and the treatment of the shares acquired by the listed company including reports on the price and volume of shares bought back and any treasury shares sold by the company and cancellation of the shares where applicable.</p> <p>(2) A listed company that undertakes share buyback transactions shall disclose in its annual report any share buyback transactions undertaken in the year to which the report relates and the treatment by the</p>

<p><b>De-listings and conversion to private company to be approved by independent shareholders.</b></p>	<p>company of the shares bought back.</p> <p>59. If, after a share buyback, the listed company that buys back its shares proposes to de-list its shares from the securities exchange or the company is converted to a private company:</p> <ul style="list-style-type: none"><li>(a) the directors of the listed company and any person acting in concert with the directors shall not be considered to be independent and shall not be entitled to vote at the meeting of shareholders convened to approve the share buyback proposal; and</li><li>(b) the share buyback proposal shall be require to be approved by:<ul style="list-style-type: none"><li>(i) at least seventy-five per cent of the votes attached to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and</li><li>(ii) the number of votes cast against the resolution shall not be more than ten per cent of the votes attached to the shares owned by independent shareholders.</li></ul></li></ul>
<p><b>Takeovers and Mergers</b></p> <p><b>Listed company to comply with applicable laws and regulations.</b></p>	<p>60. If a share buyback transaction triggers the percentage shareholding limits that may lead to a takeover of the listed company, the Capital Markets (Takeovers and Mergers) Regulations, 2002, as amended from time to time shall apply.</p> <p>61. (1) A listed company shall comply with the corporate governance requirements, listing obligations and all relevant written laws and Regulations of Kenya as may be applicable during the share buyback process.</p> <p>(2) A listed company undertaking share buyback shall ensure that it, its directors, shareholders, connected persons, and persons acting in concert with the company or its directors, do not commit any offences</p>

	relating to market abuse or insider dealing during the share buyback.
	<b>PART XIII – TRADING HALT, SUSPENSION AND DELISTING PROVISIONS</b>
<b>Scope of this Part XIII</b>	<b>62.</b> This Part sets out –  (a) The requirements relating to trading halt, suspension and delisting of an issuer from a Securities Exchange; and (b) The powers of the Authority with regard to trading halt, suspension and delisting of an issuer by a Securities Exchange.
<b>Trading Halt</b>	<b>63.</b> (1) A Securities Exchange may, at any time, in concurrence with the Authority, grant a trading halt to enable the issuer to disclose material information or suspend trading of the listed securities of an issuer at the request of the issuer. A Securities Exchange is not obligated to act on the request.  (2) The trading halt shall not exceed one trading session at any one time  (3) A trading halt may be changed to a suspension by the Exchange (in concurrence with the Authority) at any time.
<b>Suspension</b>	<b>64.</b> (1) No security shall be suspended or de-listed by a securities exchange without the prior approval of the Authority.  (2) The Authority may require a securities exchange to suspend the trading in a listed security where:  (a) a decision has been made or is imminent that will lead to the placing of the issuer of such securities under statutory management, receivership, liquidation or voluntary winding up; (b) there is a significant restructuring involving the listed



<p><b>Delisting</b></p>	<p>securities such as in the process of acquisition, mergers or takeovers; or</p> <p>(c) a recommendation has been made by the directors to the shareholders to have the securities suspended and where the holders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed suspension from at least 10% of the holders of securities resolve to have the securities suspended;</p> <p>(d) The issuer is in material default of its continuing listing obligations;</p> <p>(3) The suspension of securities shall be for such time as the Authority may approve or direct.</p> <p>(4) During the period of the suspension, the issuer shall continue to comply with all continuous listing obligations, and with the provisions of the relevant rules of the securities exchange on which the issuer is listed.</p> <p>65. (1) The Authority may require a securities exchange to de-list a security where -</p> <p>(a) the issuer of such securities has been placed under statutory management, receivership or liquidation or voluntary winding up;</p> <p>(b) the issuer of such securities has continued to be in material default of continuing listing obligations for at least one year following suspension from trading of its securities;</p> <p>(c) as a result of restructuring involving the listed securities, the issuer ceases to exist; or</p> <p>(d) a recommendation has been made by the directors to the shareholders to have the securities de-listed and where the shareholders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed de-listing from at least 10% of the holders of securities resolve to have the securities de-listed.</p> <p>(2) In spite of the provisions of paragraphs 64(2) and 65 (1),</p>
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<p><b>Resumption Proposals</b></p>	<p>the Authority may require the suspension or de-listing of an issuer in any other circumstances, which in the opinion of the Authority, serves to protect the interest of the investors.</p> <p>(3) Where a security has been suspended or de-listed, the securities exchange shall publish such information in such manner as issuers are authorized to publish information to the public.</p> <p>(4) The suspension or de-listing of a security shall not absolve an issuer, its directors and officers from any liability for any default which may have led to such suspension or delisting nor shall such suspension or de-listing terminate any proceedings against such issuer, directors or officers commenced prior thereto.</p> <p>66. (1) If the trading of the listed securities of an issuer is suspended under Regulation 64(2), it must: –</p> <p>(a) submit a proposal (or proposals) to the Authority with a view to resuming trading in its securities ("resumption proposals") within 12 months of the date of suspension. If no resumption proposals are received to enable trading to resume within 12 months of the date of suspension, a Securities Exchange may delist the issuer; and</p> <p>(b) implement the resumption proposals within 3 months from the date the Authority indicates that it has no objection to the resumption proposals. If the resumption proposals have not been implemented within the 6 months, a Securities Exchange may delist the issuer.</p>
<p><b>Exit offer in de-listing</b></p>	<p>67. (1) If an issuer is seeking to delist its securities from a Securities Exchange: –</p> <p>(a) an exit offer must be made to the issuer's minority shareholders and holders of any other classes of listed securities to be de-listed to ensure that investors who purchased and held securities on the basis of the listing are not prejudiced by being compelled to hold unlisted securities. The exit offer must:</p>

<p><b>Watch List</b></p>	<ul style="list-style-type: none"><li>(i) be fair and reasonable; and</li><li>(ii) include a cash alternative as the default alternative; and</li></ul> <p>(b) the issuer must appoint an independent transaction adviser to advise on the exit offer and the independent transaction adviser must opine that the exit offer is fair and reasonable.</p> <p>68. (1) The Authority may place an issuer on the watch-list, upon depletion of shareholder funds resulting in a net liability position in the 3 most recently completed consecutive financial years (based on audited full year consolidated accounts),</p> <p>(2) The issuer shall be given the right to be heard by the Authority and the Securities Exchange on which it is listed prior to being placed on the watch list.</p> <p>(3) Upon depletion of shareholder funds resulting in a net liability position for the third and subsequent consecutive financial year (based on audited full year consolidated accounts), an issuer must immediately announce the fact through its website and in at least one newspaper with national circulation. The announcement must provide such information as may be prescribed by the Authority. This Rule does not apply to an issuer that is already placed on the watch-list.</p> <p>(4) If an issuer is placed on the watch-list, it must: –</p> <ul style="list-style-type: none"><li>(a) immediately announce the fact through its website and in a daily newspaper with national circulation;</li><li>(b) within the prescribed time of being placed on the watch list, provide a restructuring plan approved by its members to the Authority and the Securities Exchange on which it is listed;</li><li>(c) implement the restructuring plan within the prescribed time following the submission to the Authority and the Securities Exchange; and</li><li>(d) for the period in which it remains on the watch-list, provide the market (including the Authority and the Exchange on which it is listed) with a quarterly</li></ul>
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<p><b>Recovery Board</b></p>	<p>update on its efforts and the progress made in meeting the exit criteria of the watch-list, including its financial situation, its future direction, or other material development that may have a significant impact on its financial position. If any material development occurs between the quarterly updates, it must be announced immediately.</p> <p>(5) An issuer on the watch-list may apply to the Authority to be removed from the watch-list if it complies with the net assets and solvency requirements or such other requirements as may have been imposed by the Authority for the most recently completed financial year (based on audited full year consolidated accounts).</p> <p>(6) An issuer must take active steps to meet the requirements of Regulation 68(6). If the issuer fails to comply with Regulation 68(6) within 36 months of the date on which it was placed on the watch-list, the Exchange may either delist the issuer, or suspend trading of the listed securities of the issuer with a view to delisting the issuer.</p> <p>(7) While the issuer remains on the watch-list, trading in its securities will continue, unless a trading halt or a suspension is, or has been, effected.</p> <p>69. (1) Notwithstanding anything contained in this Part, the Authority may, in place of the watch list, permit a Securities Exchange to establish an alternative board to be called a recovery board where securities of an issuer that qualifies to be placed on the watch list pursuant to this Part will be traded for a specific period of time to allow the affected Issuer to regularize its compliance, solvency and capital position.</p> <p>(2) A securities exchange shall prepare and submit for approval to the Authority the rules for the administration of the recovery board established for the purposes of Regulation 69 (1) above and other incidental matters.</p>
	<p><b>PART XIV - PUBLIC ANNOUNCEMENTS,</b></p>

	<b>CIRCULARS AND ELECTRONIC COMMUNICATION</b>
<b>Circulars</b>	<b>70.</b> This Part sets out the requirements that apply to circulars and annual reports issued to the holders of listed securities as well as public announcements and advertisements to the public. It also applies to e-IPOs.
<b>Submission of circulars for Approval</b>	<b>71.</b> Where an issuer proposes to issue a circular to its shareholders or to the public in relation to an issue of securities or in relation to a transaction where a circular is required to be issued under these Regulations, the issuer must submit a draft of the circular to the Authority for review and approval.
<b>Review of Circulars</b>	<b>72.</b> (1) No circular submitted to the Authority or the Securities Exchange for its review may be circulated or made available publicly until the Authority or the Securities Exchange advises that it has no objection to the issuance of the circular. <b>(2)</b> All public announcements and advertisements to securities holders or to the public shall be submitted to the Authority for approval prior to distribution or publication, provided that the Authority may require the inclusion of such additional information which in its opinion is relevant to the shareholders, investors or to the public. <b>(3)</b> The Authority, in lieu of the approval required pursuant to Regulations 72 (1) and (2), prescribe a form to be substantially adopted by an Issuer for purposes of any relevant circular, public announcement or advertisement to be made to the shareholders and/or the public.
<b>Content of Circulars</b>	<b>73.</b> Any circular sent by an issuer to its securities holders or to the public must - (a) contain all information necessary to allow securities holders to make an informed decision or to be properly informed; (b) advise securities holders that if they are in any doubt

<p><b>Electronic Communication</b></p> <p><b>e-IPO</b></p>	<p>as to any action they should take, they should consult independent advisers;</p> <p>(c) state that the Authority and the Securities Exchange take no responsibility for the accuracy of any statements or opinions made or reports contained in the circular;</p> <p>(d) comply with specific circular requirements in these Regulations.</p> <p>74. An issuer may send documents, including notices, circulars and annual reports, using electronic communications to a securities holder, if there is express consent from that securities holder or if the Articles of Association or the constitution or issue documents of an issuer permit. The expression “electronic communications” includes the transmission of any communication through an electronic and telecommunication media including websites or email or text messaging.</p> <p>75. The Authority may permit the issuance by an issuer and the subscription of securities in a public offer through electronic means. This may include the issuance of electronic information memorandum and subscription of securities through electronic means whether or not on a first-come first-served basis of subscription and allocation until the available securities are fully subscribed or purchased. The Authority may prescribe regulations, rules or guidelines for the effective regulation of e-IPOs.</p>
	<p><b>PART XV CONTINUING OBLIGATIONS</b></p>
<p><b>Continuing Obligations</b></p>	<p>76. (1) Every issuer whose securities have been offered to the public including SPACS and/or listed on any market segment shall comply with the continuing obligations specified in the <b>Thirteenth Schedule</b>.</p> <p>(3) In relation to the continuing obligation to disclose information, an issuer shall make immediate public disclosure of information which might reasonably be expected to have a material effect on market activity</p>

	<p>and the price of its securities.</p> <p>(4) Regulation 76(2) above does not apply to information which would be a breach of law or contractual obligation not to disclose or meets any of the following conditions:</p> <ul style="list-style-type: none"><li>(a) No reasonable person would expect disclosure of such information;</li><li>(b) Information is of confidential nature;</li><li>(c) the information concerns an incomplete proposal or negotiation or matters of supposition or which is insufficiently definite to warrant disclosure;</li><li>(d) Information is for internal management purposes; or</li><li>(e) The information is a trade secret.</li></ul> <p>(5) The information required to be disclosed under these Regulations shall be disclosed within twenty-four hours of the event, simultaneously to the Authority, the securities exchange at which the issuer’s securities are listed, if applicable, and to the public during non-trading hours of the relevant market segment.</p> <p>(6) The announcement shall state whether the consent of the Authority or the securities exchange or other person is necessary and where necessary, the issuer shall apply for such consent within seven days of the announcement.</p> <p>(7) An issuer who fails to comply with any continuing obligation within the prescribed time shall be liable to pay a penalty at the rate prescribed by the Authority.</p>
	<p style="text-align: center;"><b>PART XVI LISTING FEES AND OTHER CHARGES</b></p>

<p><b>Listing Fees</b></p> <p><b>Waiver of Fees</b></p>	<p>77. Issuers shall pay such fees and charges as set out in Part A of the Seventeenth Schedule (such fees payable to the Authority) and Part B of the Seventeenth Schedule (such fees payable to a securities exchange), and as may be amended from time to time by the Authority.</p> <p>78. The Authority or a Securities Exchange may waive any fee or charges or part thereof.</p>
	<p><b>PART XVII – REPEAL AND TRANSITIONAL PROVISIONS</b></p>
<p><b>Revocation of Regulations</b></p> <p><b>Other Transitional Provisions</b></p> <p><b>Fixed Income Securities Transition</b></p> <p><b>Transition Period</b></p>	<p>79. The Capital Markets (Securities) (Public Offers and Listing Requirements) Regulations, 2002 are revoked.</p> <p>80. Securities listed on the Alternative Investment Market Segment of the Nairobi Securities Exchange at the date these Regulations become effective shall:</p> <ul style="list-style-type: none"> <li>(a) If the Issuers qualify to be listed on the MIMS, transition to the MIMS, or at their discretion to be communicated within 90 days to SMEMS;</li> <li>(b) If the Issuers do not qualify to be listed on the MIMS, transition to the SMEMS.</li> </ul> <p>81. Securities listed on the Fixed Income Securities Market Segment of the Nairobi Securities Exchange at the date these Regulations become effective shall:</p> <ul style="list-style-type: none"> <li>(a) If the issue value was more than Kshs 250,000,000 be listed on the MFISMS;</li> <li>(b) If the issue value was for less than Kshs 250,000,000 be listed on the SME FISMS</li> </ul> <p>82. The transition aforesaid, including the commencement of the 90-day period for exercise of discretion set out in 81 (a) above, shall be effective on the date following the day on which these Regulations become effective.</p>



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**SCHEDULES**

[see separate schedules]

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