

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 64, Volume CXVI, dated 29th September, 2023

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

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

2023 No. 83.

**THE CAPITAL MARKETS AUTHORITY (INVESTOR
COMPENSATION FUND) REGULATIONS, 2023**

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STATUTORY INSTRUMENTS

2023 No. 83.

The Capital Markets Authority (Investor Compensation Fund) Regulations, 2023

*(Under section 81 and 101 of the Capital Markets Authority Act,
Cap. 84)*

IN EXERCISE of the powers conferred upon the Capital Markets Authority by section 101 of the Capital Markets Authority Act, these Regulations are made this 22nd day of June, 2023.

PART I—PRELIMINARY

1. Title

These Regulations may be cited as the Capital Markets Authority (Investor Compensation Fund) Regulations, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Capital Markets Authority Act, Cap. 84;

“Authority” means the Capital Markets Authority established by section 4 of the Act;

“Board” means the Board of Directors established by section 22E of the Act;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 7 of the Act;

“Fund” means the Investor Compensation Fund established by section 81 of the Act;

“General Fund” means the General Fund established by section 8 of the Act.

3. Purpose of Fund

The purpose of the Fund is to compensate investors who suffer pecuniary loss resulting from the failure of a licenced broker or dealer to meet his or her contractual obligations.

PART II—ADMINISTRATION OF THE FUND

4. Monies of the Fund

(1) The Fund shall consist of monies received by the Authority from the following sources—

- (a) contributions by the Authority from the General Fund;
- (b) monies required to be paid into the compensation fund by licenced persons;
- (c) monies paid under section 89 as ill-gotten gains where those harmed are not specifically identifiable;
- (d) monies accrued from interest and profits from investing monies from the compensation fund;
- (e) monies received by the Authority by way of fines or penalty under section 99A of the Act;
- (f) monies recovered by or on behalf of the Authority from entities whose failure to meet their obligations to investors results in payments from the compensation fund; and
- (g) monies received for purposes of the compensation fund from any other source approved by the Board.

(1) the monies of the Fund may be invested by the Authority in a manner determined by the Authority.

5. Accounts

(1) The Authority shall open and operate a separate account for the Fund.

(2) The Authority shall not withdraw money from the account of the Fund except for purposes of—

- (a) paying compensation to investors; and
- (b) defraying expenses relating to the management and investment of the monies of the Fund.

6. Status reports

The Authority shall, on a quarterly basis, present to the Board a report on the status of the Fund.

7. Records

The Authority shall cause proper records in respect of the Fund to be kept and shall ensure—

- (a) that the records disclose with reasonable accuracy, the financial position of the Fund;
- (b) that the records explain in detail, all the transactions relating to the Fund; and
- (c) that the records are kept for a period of ten years from the date the records are generated or obtained.

PART III—CLAIMS FOR COMPENSATION

8. Claim for compensation

(1) A claim for compensation out of the Fund shall be submitted to the Authority by an investor or a lawfully appointed

representative of the investor, who has suffered pecuniary loss as a result of the failure of a licenced broker or dealer to meet his or her contractual obligations.

(2) A person making a claim for compensation shall furnish the Authority with evidence of having made a claim against a licenced broker or dealer and that the broker or dealer has refused, failed or neglected to respond to that claim.

(3) A claim for compensation shall contain—

- (a) the name, address, age in case of an individual and occupation of the investor;
- (b) particulars of the transaction in which the investor suffered loss, including—
 - (i) the nature of the transaction;
 - (ii) the amount of money involved in the transaction;
- (c) the particulars of the licenced broker or dealer;
- (d) the contract between the investor and the licenced broker or dealer; and
- (e) any other relevant information required by the Authority from the licenced broker or dealer.

9. Compensatory claims

A claim is compensatory if that claim—

- (a) relates to a properly documented transaction between an investor and a licenced broker or dealer;

- (b) has not been extinguished by operation of law; and
- (c) has not been settled by another scheme or policy; including one operated by an approved securities exchange.

10. Time limitation

(1) A claim for compensation shall be submitted to the Authority at least six months after an investor has submitted a claim to a licenced broker or dealer and the licenced broker or dealer has not met his or her contractual obligations.

(2) Where a licenced broker or dealer is unable to meet his or her contractual obligations due to suspension or revocation of his or her licence by the Authority, the Authority shall publish a notice inviting members of the public to submit to the Authority any claims against a broker or dealer whose licence is revoked or suspended, within sixty days from the date of the notice.

(3) The notice under sub regulation (2) shall be published in at least two newspapers of nationwide circulation.

(4) The Authority shall only consider a claim for compensation if it is brought within six years of the failure of the broker or dealer to pay the outstanding amount.

11. Waiver of time limitation

The Authority may, where an investor shows exceptional circumstances, allow the investor to submit a claim for compensation prior to or beyond the time referred to in Regulation 10.

PART IV—PROCESSING OF CLAIMS

12. Investigations

(1) Where the Authority receives a claim, it shall investigate the claim to determine—

- (a) whether there has been a breach of contractual obligation by a licensed broker or dealer;
- (b) whether the investor has suffered loss;
- (c) whether the investor has been settled under any other scheme or policy; and
- (d) whether the investor is entitled to compensation.

(2) Where the Authority has not received sufficient information from the investor to make a determination under subregulation (1), the Authority shall request the investor to submit further information as sufficient proof of the transaction between the licenced broker or dealer and the loss suffered by the investor.

(3) The proof referred to in sub regulation (2) shall include-

- (a) contracts entered into with the licenced broker or dealer;
- (b) receipts for any monies paid to the licenced broker or dealer; and
- (c) any other relevant evidence.

(4) The Authority shall conclude the investigations and make a determination within sixty days from the commencement of the investigations.

(5) Where the Authority is unable to determine a claim within sixty days, it shall give notice to the investor stating the reasons for the delay in determining the claim.

13. Summons to licenced broker or dealer

(1) The Authority shall, in writing, require the licenced broker or dealer against whom a claim is made, to respond to the allegations in the claim within fourteen days of receipt of the letter.

(2) Where a licenced broker or dealer fails to respond to the allegations in the claim within the time prescribed in subregulation (1), the Authority shall proceed to determine the merits of the claim in the absence of the licenced broker or dealer.

14. Payment of compensation

(1) Where the Authority determines that there has been a default by a licenced broker or dealer in meeting his or her contractual obligations and that the investor is entitled to compensation, the Authority shall exercise its discretion to determine the amount of compensation payable to the investor, taking into account—

- (a) the loss suffered by the investor;
- (b) any attempts by the investor to recover the money from the licensed broker or dealer; and
- (c) the availability of funds in the Fund.

(2) In determining the total amount of compensation to be paid to an investor, the Authority may combine separate claims for compensation or parts of those claims, where a claimant has more than one claim.

(3) The Authority shall issue to the licenced broker or dealer against whom a claim is made, a notice of compensation payable to an investor, specifying the amount of compensation determined by the Authority.

(4) The broker or dealer shall pay the amount of compensation determined by the Authority within fourteen days from the date of notification from the Authority failure of which, the Authority shall pay the investor from the Fund and shall recover the amount paid and any attendant costs from the broker or dealer without due recourse to court.

15. Authority of Board

Compensation shall not be paid to an investor without the approval of the Board of the Authority.

16. Rejection of claim

(1) The Authority may reject a claim for compensation, if the claim is found to be lacking in any material particular or where the investor refuses or neglects to provide sufficient information in respect of the claim to the Authority.

(2) The Authority shall, before rejecting a claim for compensation, write to the claimant requesting for additional information where additional information is required.

17. Right of appeal

A person aggrieved by the decision of the Authority in relation to compensation under these Regulations, may, within thirty days after he or she is notified of a compensation under regulation 14 (3), appeal to the Capital Markets Tribunal.

SAUL SSEREMBA,
Chairperson, Capital Markets Authority.