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THE COMMODITY EXCHANGES ACT, 2015

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
25th May, 2015

OMBENI Y. SEFUE
Secretary to the Cabinet

A BILL

for

An Act to make provisions to facilitate sound management of commodity exchanges, ensuring the proper management of the business of persons who accept consignment of commodities on commodity exchanges, setting out conditions for the organization of commodity exchanges, management of transactions on commodity markets and other matters, thereby contributing to the appropriate price discovery for commodities and management of the markets for agricultural produce and to the protection of investors in the transactions on commodity exchanges markets.

ENACTED by Parliament of the united Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

Short
Title
Application

1.-(1) This Act may be cited as the Commodity Exchanges Act, 2015 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

(2) This Act shall apply to Mainland Tanzania.

Interpretation
Cap. 79

- 2.-(1) In this Act, unless the context otherwise requires-
- “Authority” means the Capital Markets and Securities and securities Authority established by section 6 of the Capital Markets Act;
- “clearing facility” or “clearing house” has the meaning ascribed to it under the Capital Markets and Securities Act;
- “commodity” means-
- (a) agricultural, livestock, fishery, forestry, mining or energy goods, or any product that is manufactured or processed from any such goods;
 - (b) financial instruments;
 - (c) an index, right or interest in any such commodity;
 - (d) any other matter as may be determined by the Authority through official Gazette notification to be the subject of a commodity contract;
- “commodity broker” means a company which licensed by the Authority as an agent of investors to carry on the business of soliciting or accepting orders, for the purchase or sale of any commodity contracts by way of commodity trading, whether or not the business is part of, or is carried on in conjunction with, any other business;
- “commodity broker’s representative” means a person who acts for, or by arrangement with, a commodity broker (other than a person who is a director of a company holding a commodity broker’s licence or is a person who is in the direct employment of a commodity broker) and who performs any of the functions of that commodity broker in connection with trading in commodities whether his remuneration is by way of commission or otherwise;
- “commodity contract” includes a-
- (a) spot commodity contract;
 - (b) commodity futures contract; and
 - (c) such other contract or class of contracts as the Authority may prescribe by regulations under this Act;
- “commodity dealer” means a person who, is licensed by the Authority to deal in commodity contracts as principal or as an agent;
- “commodity dealer’s representative” means a natural person

licensed by the Authority to act for, or by arrangement, with a commodity dealer, to perform any of the functions of that commodity dealer in connection with dealing in commodity contracts (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“commodity exchange” means a market licensed by the Authority at which, or a facility, whether electronic or otherwise by means of which, offers or invitations to sell, purchase or exchange commodity contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange of commodity contracts but does not include-

- (a) the office or facilities of a commodity dealer or broker;
- (b) the office or facilities of a clearing house;
- (c) “commodity exchange business” means trading in, or advising on trading in commodity contracts on a commodity exchange;

“commodity forward contract” means a contract the effect of which is that one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at the time of entering the contract, but does not include a commodity futures contract;

“commodity futures contract” means a contract the effect of which is that-

- (a) one party agrees to deliver to the other party a specified commodity, or a specified quantity of a specified commodity, at a specified future time and at a specified price payable at that future time, pursuant to the terms and conditions of the rules of the commodity exchange at which the contract is made; or

(b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the rules of the commodity exchange at which the contract is made, and includes options on contracts of the nature described in paragraphs (a) or (b);

“commodity market” means-

- (a) a market, whether in Tanzania or elsewhere, at which commodity contracts are regularly traded; or
- (b) an electronic system, whether operating in Tanzania or elsewhere, through which trading in commodity contracts is carried out, but excludes an electronic facility which merely provides price or other information relating to commodity contracts (whether that facility is part of or carried on in conjunction with the provision of any other information not related to commodity contracts) and which does not permit users of the facility to channel orders for, execute transactions in, or make markets in, commodity contracts;

“commodity trading adviser” is a company which for compensation has been licensed by the Authority to engage in the business of advising others either directly or through publications or writings as to the value of commodities or derivatives or as to the advisability of investing in, purchasing or selling commodities contracts but does not include-

- (a) a licensed commodity dealer or broker whose provision of advice or issuance of analyses or reports is solely incidental to the conduct of his business as a commodity dealer or broker and who receives no special compensation therefor;
- (b) a person who gives such advice or issues such analyses or reports on:
 - (i) a newspaper, magazine, book or other publication which is made generally available to the public; or

- (ii) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

“commodity trading adviser’s representative” means a natural person in the employment of, or acting for, or by arrangement with a commodity trading adviser, who performs for that commodity trading adviser any of the functions of a commodity trading adviser other than work ordinarily performed by accountants, clerks or cashiers whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“commodity pool operator” means any person who carries on a business in the nature of a collective investment scheme and who, in connection therewith, accepts or receives from other persons funds, security or property, either directly or through capital contributions, the sale of shares or other forms of security or otherwise for the purpose of spot commodity trading;

“commodity pool operator’s representative” means a person in the direct employment of, or acting for, or by arrangement with, a spot commodity pool operator, who performs for that commodity pool operator any of the functions of a commodity pool operator;

“dealing in commodity contracts” mean, whether as principal or as agent-

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a commodity contracts; or

- (b) soliciting or accepting any order for, or otherwise dealing in, commodity contracts.

“financial instrument” includes any currency, currency index, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such financial instruments, and such other financial instruments as may be determined by the Authority through official gazette notification;

“leveraged commodity trading” means-

- (a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement on a margin basis (other than a commodity futures contract) whereby a person undertakes as determined by the terms and conditions of the contract or arrangement-
 - (i) to make an adjustment between himself and another person according to whether a commodity is worth more or less, at a specified point in time;
 - (ii) to pay an amount of money determined or to be determined by reference to the change in value of a commodity over a specified period of time; or
 - (iii) to deliver to another person at an agreed future time an agreed amount of commodities at an agreed price;
 - (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
 - (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description referred to in paragraph (a) or (b);
- “market contract” in relation to-
- (d) a clearing house” means-
 - (i) a contract subject to the rules of a clearing house entered into by the clearing house with a clearing member under a novation which is both in accordance with those rules and for the purpose of clearing and settlement of transactions using the clearing facility and subject to the rules of the clearing house whether before or after default

- (ii) proceedings have commenced; or
- (ii) a transaction which is being cleared or settled using the clearing facility and subject to the rules of a clearing house, whether or not a novation referred to in paragraph (a) is to take place.

“market intermediary” means a corporate body duly licensed under this Act to provide services in the commodities exchanges and shall include any other person who is prescribed by the Authority to be a market intermediary;

“member ” means a shareholder or any person who holds shares of any class or description in the share capital of a commodity exchange;

“Minister” means the Minister responsible for Finance;

“novation” in relation to clearing houses, means assigning or trading over to a clearing house the legal counterparty risk for the trade executed by two counterparties;

“principal”, in relation to a representative, means a person whom the representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any commodity exchange business;

“representative” means a commodity dealer’s representative or a commodity trading adviser’s representative;

“rules” in relation to a commodity exchange or clearing house, means the rules, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of-

(a) the commodity exchange or clearing house and its members or clearing members, as the case may be;

(b) other persons in relation to it,

whether or not those rules, by-Acts or similar body of statements are made by the commodity exchange or clearing house or are contained in its constituent documents;

“spot commodity contract” means a contract for the supply of a commodity which is traded on a commodity exchange the terms of which delivery is made within two trading days or a period approved by the Authority as the standard delivery period for a particular commodity;

“spot commodity trading” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity;

“trading member” means a company licensed by the Authority to deal in commodities trading activities and admitted by a commodity exchange to trade on commodities and contracts for that particular commodity exchange;

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“Tribunal” means the tribunal established under the Capital Markets and Securities Act to adjudicate disputes in the capital market and commodity exchanges industry;

“warehouse” means any building, structure or other protected enclosure duly licensed by the Tanzania Warehouse Licensing Board or any other relevant authority to be used for the storage or conditioning of commodities for the purposes of commodity exchange trading;

“warehouse inspector” means a person empowered to inspect warehouses and commodities kept therein to ensure that the warehouse operator complies with the law and the conditions of the operator’s licence;

“warehouse operator” means a person duly licensed to engage in the business of operating a warehouse for receiving, storing, shipping or handling commodities for the purposes of commodity exchange trading;

“warehouse receipt” means a receipt issued by a licensed warehouse operator in respect of the storage, handling or shipment of a commodity for the purposes of commodity exchange trading.

Determination of “fit and proper”

3.-(1) For purposes of this Act in considering whether a person is a fit and proper person the Authority shall, in addition to any other matter that it may consider relevant, have regard to-

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which the person will perform, if the application is granted;
- (c) the ability to carry on the commodity exchange business competently, honestly and fairly; and the

reputation, character, financial integrity and reliability, of-

- (i) the individual himself where the applicant is an individual,; or
- (ii) the company, its directors, chief executive, management and all other key personnel, and any substantial shareholder of the company where the applicant is a company,.

(2) Without limiting the generality of subsection (1), the Authority may, in considering whether an applicant is a fit and proper person, have regard to-

- (a) whether the person has contravened the provision of any Act designed for the protection of investors against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in commodity trading;
- (b) whether the person was a director of a market intermediary that has been liquidated or is under liquidation or statutory management;
- (c) whether the person has taken part in any business practice that, in the opinion of the Authority, was fraudulent, prejudicial or otherwise improper, whether unlawful or not or which otherwise discredited the person's methods of conducting business;
- (d) whether the person has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;
- (e) any information in the possession of the Authority provided by the applicant relating to any person who is to be employed by, associated with, or who shall be acting for or on behalf of the applicant for the purposes of a commodity exchange business;
- (f) where the applicant is a company in a group of companies, any other company in the same group of companies or any substantial shareholder or officer of the company;

- (g) whether the person has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
 - (h) the state of affairs of any other business which the person carries on or proposes to carry on.
- (3) For the purpose of this section, “group of companies” means any two or more companies one of which is the holding company of the other or others, as the case may be.

PART II
ADMINISTRATION AND RESPONSIBILITIES OF THE AUTHORITY

Administration and enforcement **4.** The Authority shall be responsible for the regulation and supervision of commodity exchanges and administration and enforcement of this Act.

Regulatory objectives of Authority **5.** The regulatory objectives of the Authority in relation to commodity exchanges are to-

- (a) maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of commodity exchange;
- (b) provide an appropriate degree of protection for investors and participants in commodity exchange trading, having regard to the general principle that investors and participants shall take responsibility for their investment decisions; and
- (c) minimise crime and misconduct in commodity exchange markets.

Functions of the Authority
Cap. 79 **6.** The functions of the Authority under this Act are to-

- (a) advise the Minister on all matters relating to commodity exchanges and their development;
- (b) approve commodity contracts;
- (c) investigate and act upon violation of the laws concerning the regulation of commodity exchanges and related businesses;
- (d) take such steps as it considers appropriate to ensure

- that this Act and any other legislation administered by the Authority are complied with;
- (e) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of commodity exchanges business;
 - (f) license commodity exchanges, commodity exchanges market intermediaries, commodity market institutions to supervise, monitor and regulate the activities of all such persons;
 - (g) set standards of competence for commodity exchanges market intermediaries;
 - (h) approve the rules of commodity exchanges' depositories, and clearing houses;
 - (i) promote, encourage and enforce the proper conduct, competence and integrity of commodity market intermediaries;
 - (j) promote the awareness of the public with regard to commodity exchange business and markets;
 - (k) formulate principles for the guidance of the market;
 - (l) levy fees and charges as may be prescribed by the Authority in relation to the regulation of the commodity exchange, commodity exchange intermediaries and institutions;
 - (m) counter and suppress market abuses in commodity exchange markets;
 - (n) perform functions conferred or imposed on the Authority by this Act or under any other law relating to commodity exchanges;
 - (o) co-operate with and provide assistance to regulatory authorities, within and outside Tanzania in relation to exchange of information and assistance in investigation on matters relating to commodity exchanges trading.

PART III
LICENSING OF COMMODITY EXCHANGES

Prohibition
of operating
a commodity

7.-(1) No person shall establish, maintain or assist in establishing or maintaining or hold himself out as providing or

without a licence
exchange
etc.

maintaining a commodity exchange unless such commodity exchange, is licensed by the Authority in accordance with the requirements of subsection (4) of this section.

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(2) No licence shall be granted to any person to operate as a commodity exchange other than to a company incorporated under the Companies Act.

(3) A person who contravenes subsection (1), commits an offence and shall, on conviction, be liable-

(a) in the case of a natural person, to a fine of not less than fifty million shillings or imprisonment for a term of not less than five years or to both the fine and imprisonment ; and

(b) in the case of a company, to a fine of not less than one hundred million shillings.

(4) The Authority may, in writing and subject to any conditions or restrictions as it may consider fit to impose, grant a commodity exchange licence, if the Authority is satisfied that the interest of the public will be served by the granting of the licence, it shall be consistent with the Authority's objectives under the Act to license the commodity exchange and that the applicant-

(a) is a fit and proper person for the licence sought;

(b) has a board of directors which is constituted in accordance with the regulations prescribed by the Authority in relation to corporate governance;

(c) complies with the minimum prescribed capital requirements;

(d) shall operate fairly, transparently, efficiently and ethically in accordance with the requirements of the licence sought;

(e) shall manage any risks associated with its business and operations prudently;

(f) has rules that make satisfactory provision for matters set out in section 9; and

(g) complies with such other conditions as may be required by the Authority.

Application and
Grant of

8.-(1) An application to operate a commodity exchange, shall be-

licence

- (a) made by a company;
- (b) in the specified form;
- (c) in such manner as may be prescribed; and
- (d) accompanied by the prescribed fee.

(2) The Authority may, in relation to any application under this part, require an applicant and any other person associated with the applicant, to provide the Authority with such further information in such form or verified in such manner as the Authority may direct.

(3) A company which is licensed as a commodity exchange shall not appoint any person to the position of Chief Executive Officer or Managing Director, senior management or the Board of Directors, change a substantial shareholder or change the organization structure without obtaining prior confirmation of the Authority.

(4) Where the Authority imposes a condition or objects to a proposed change under subsection (3) of this section, the Authority shall give reasons for its decision and shall give the person concerned a right to be heard before a final decision is made.

(5) A commodity exchange licensed by the Authority shall engage exclusively in the licensed activity except in respect of such other matters as are ancillary or incidental thereto as may be expressly permitted by the Authority.

(6) Subject to the provisions of this Act, a license granted to a commodity exchange shall be perpetual unless revoked by the Authority and subject to payment of the prescribed annual license fee.

Rules
of a
commodity
exchange

9.-(1) Subject to approval of the Authority, the rules of the commodity exchange shall provide for-

- (a) powers and functions of the governing body of the commodity exchange;
- (b) the appointment of directors and a fair representation of persons in the selection of members of the governing body and administration of its affairs including the professions relevant to commodities industry;
- (c) the terms and conditions of the Chief Executive

- Officer of the exchange, including a term that such Chief Executive Officer shall not be liable to appointment, dismissal or removal from his office without the prior approval of the Authority;
- (d) the qualifications for membership;
 - (e) the exclusion from membership of persons who are not of good character and high integrity;
 - (f) the expulsion, suspension or disciplinary action against members for conduct inconsistent with just and equitable principles relating to trading in commodities, or for a contravention of the rules of the commodities exchange;
 - (g) specify qualifications for applicants for membership and provisions for accepting applicants as trading participants, imposing conduct and other requirements on them;
 - (h) provide for the governance of the conduct activity of participants, including their responsibility to act with integrity and in the interests of maintaining a proper market, paying such fees and charges as may be applicable and abiding by the rules of the clearing house;
 - (i) prohibit market abuse practices;
 - (j) provide mechanisms for effectively investigating breaches of the rules, enforcing the rules and allowing for appeals to the Tribunal;
 - (k) make default provisions, to the satisfaction of the Authority, for the taking of proceedings or other action if a clearing member has failed, or appears to be unable, or likely to become unable, to meet his obligations for any unsettled or open market contracts to which he is a party;
 - (l) specify qualifications for trading membership, imposing conduct and other requirements on them and, where appropriate, for the procedure for their removal as trading members;
 - (m) the making of a report to the Authority by the exchange whenever it rejects any application for membership, where it suspends or expels a member or where it suspends trading in particular commodity

- of, or made available by the exchange;
- (n) procedures for developing commodity contract to be traded on the exchange;
- (o) with respect to the terms and conditions under which commodities or contracts may be traded;
- (p) an audit system relating to proprietary trading by members;
- (q) the classes or types of commodities that may be traded by members and the terms and conditions governing trading in securities by members;
- (r) fair and properly supervised trading practices;
- (s) measures to market abuses in its commodities market;
- (t) preventing the excessive use of credit by way of initial or maintenance margin in respect of the purchase or carrying of any commodities;
- (u) the recording and publishing of details of trading;
- (v) clearing and other arrangements made;
- (w) the financial condition of the commodity exchange, and the members of the commodity exchange such as to provide reasonable assurance that all obligations arising out of the trading in commodities on the commodities market of that commodity exchange will be met;
- (x) dues, fees and other charges levied by the exchange;
- (y) internal procedures to ensure the proper handling of complaints and to ensure that any appropriate remedial action on those complaints is promptly taken; and
- (z) the carrying on the business of the commodity exchange generally with due regard to the interests and protection of investors.

(2) The rules of a commodity exchange shall apply to the officers of the exchange, members and employees of the members of the exchange and the member shall be responsible to ensure their employees' compliance with the rules.

Appointment
of a representative
of the public

10.-(1) The Authority shall, through a competitive selection procedure, appoint any person who is knowledgeable about the commodity exchange operations and who is not

associated with any member of the exchange, to be on the Council of any commodity exchange to represent the public interest.

(2) The person appointed under subsection (1) shall have the same rights, powers duties and obligations, liberties and privileges as any other member of the governing body of the commodity exchange.

Amendment,
alterations etc
of the rules

11.- (1) A commodity exchange shall not issue or amend its rules, unless it has obtained the prior written approval of the Authority.

(2) For the purpose of subsection (1), “amendment” includes rescission, substitution, alteration, addition or deletion of the rules.

(3) The Authority shall, approve or decline to approve the rules in writing to the commodity exchange.

(4) The Authority may subject to any conditions as it deems necessary grant its approval under subsection (3) and the commodity exchange shall comply with the said conditions.

(5) The Authority may, by notice in writing, require a commodity exchange to promulgate or otherwise amend its rules within a specified time.

(6) The Authority may, at a cost to be borne by the commodity exchange, assist in the promulgation or amendment of rules of the commodity exchange.

(7) A commodity exchange that fails to comply with the Authority’s direction under subsection (5) shall be liable to administrative sanctions under this Act.

Compliance
with the rules
by members
of the
commodity
exchange

12.-(1) The rules of a commodity exchange shall require that, as a condition of membership, trading members shall comply with the rules of that of the commodity exchange and the trading members shall be responsible to ensure that its officers and employees comply.

(2) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules fails in performing the duty, the Authority may, after giving that person, an opportunity of being heard, direct that person to perform the duty.

(3) For the purpose of subsection (2)-

- (a) a company that has been admitted as a member and has not been removed from that list of members;
 - (b) a person associated with a member that has been admitted to membership of the commodity exchange and has not been removed from that list of members,
- is under an obligation to comply with, observe and give effect to the rules of that commodity exchange to the extent to which the rules apply in relation to it or to him.

**PART IV
RESPONSIBILITIES OF A LICENSED COMMODITY
EXCHANGE**

Fairness,
transparency,
prudence and public
interest

13. It shall be the duty of a commodity exchange licensed under this Part of the Act to ensure –

- (a) fairness, transparency and efficiency in the business that it carries out;
- (b) that risks associated with its business and operations are managed prudently; and
- (c) compliance with the law including this Act, the Companies Act, the Anti-Money Laundering Act, Warehouse Receipt Act, the Prevention of Terrorism Act and other relevant laws.

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Cap. 19
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Preserving public
interest and
compliance
of the laws
and rules

14.-(1) In discharging its duties under section 13, a commodity exchange shall-

- (a) have particular regard to the interests of market participants and of the public; and
- (b) ensure that the interests of market participants prevail where they conflict with the interest of the commodity exchange, its members, shareholders and management.

(2) A commodity exchange shall operate its activities in accordance with the rules made under section 8 and approved by the Authority.

Standards of
practice, disclosure,
confidentiality etc

15. A company licensed as a commodity exchange shall-

- (a) regulate the operations, standards of practice and

business conduct of its members and their employees in accordance with the rules approved by the Authority;

- (b) ensure compliance with continuous disclosure requirements in accordance with the rules, policies, procedures and practices of the exchange;
- (c) preserve confidentiality with regard to all information in its possession concerning its trading members and their clients, except that such information may be disclosed by the commodity exchange when required by the Authority or if it is ordered to do so by the court;
- (d) publish its rules, fees and charges;
- (e) give equitable treatment to trading members and potential members;
- (f) identify and manage conflicts of interest;
- (g) monitor market activity;
- (h) provide a means for the resolution of disputes; and
- (i) provide a robust mechanism for access to the service it provides.

Duty to
Notify
the Authority
on irregularity

16.- A commodity exchange shall immediately notify the Authority if it becomes aware of any irregularity or other matter which in its opinion, may indicate that the integrity, whether financial or otherwise of a trading member is in question, or that a trading member may not be able to meet its legal obligations.

Duty to
notify
the Authority
on action
taken

17. A commodity exchange shall immediately notify the Authority of any action taken against a member or a client.

Duty to
Maintain
Premises,
Personnel,
Systems etc.

18. A commodity exchange shall at all times provide and maintain-

- (a) premises with proper equipment;
- (b) competent personnel; and
- (c) appropriate systems approved by the Authority with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical

support,
for the conduct of its business.

Duty to
notify
the Authority
on changes
of premises,
equipment, etc

19. Subject to section 18, any proposed changes to be made of the premises or the infrastructure shall be communicated to the Authority for approval prior to such change being implemented.

PART V
ASSISTANCE TO THE AUTHORITY AND DIRECTIVES
OF THE AUTHORITY

Assistance
to the Authority

20. A commodity exchange shall provide such assistance as the Authority may reasonably require, including the furnishing of returns and the provision of information, documents or reports relating to the business of the company or any other specified information for the proper administration of this Act.

Directives
of the
Authority
to a
commodity
exchange

21. The Authority may, if it considers it necessary or expedient-

- (a) for ensuring fairness, transparency and efficiency of transactions under this Act;
- (b) for ensuring the integrity of, and proper management of systemic risks in the commodity exchanges trading;
- (c) for ensuring a fair and proper governance structure of the intermediaries and participants;
- (d) for the protection of investors, or
- (e) to meet its objectives under the Act,

by notice in writing, issue directives of a general or specific nature to a commodity exchange, and the commodity exchange shall comply with any such directives.

Types of the
directives to be
issued by
the Authority

22. The directives issued under section 21 may relate to-

- (a) the trading, settlement, or clearing or the termination of trading, settlement or clearing on or through the facilities of the commodity exchange as the case may be;
- (b) any commodity contracts deposited or settled through the facilities of the commodity exchange as the case

may be;

- (c) the manner in which a commodity exchange carries on its business, including the manner of reporting transactions carried out by the commodity exchange;
- (d) the removal of the Chief Executive or officer from an office of, or employment by a commodity exchange; or
- (e) any other matter that the Authority considers necessary for the effective administration of this Act.

Censure or
Removal of
officers of a
commodity
exchange for
contraventions

23. The Authority may if it is satisfied that an officer of a commodity exchange-

- (a) has knowingly contravened this Act or any regulations made thereunder or the rules of the commodity exchange; or
- (b) has without reasonable justification or excuse, failed to enforce compliance with such provisions by its member or clients or a person associated with that member or client, as the case may be,

and if it deems it necessary in the public interest or for the protection of investors, and after giving such officer, an opportunity of being heard, censure the officer of a commodity exchange or direct by notice in writing that the commodity exchange remove from office or employment, the officer, and the commodity exchange shall comply with the directive.

Penalty for
failure
to comply
with the
directive of
the Authority

24. A commodity exchange which, without reasonable excuse, fails or refuses to comply with a direction given under section 21, commits an offence and upon conviction is liable to a fine of not less than five million Tanzania shillings and in addition, every director and every officer of the commodity exchange who is in such contravention is liable to a fine of not less than one million or imprisonment for a term of not less than one year, unless such director or officer proves that such contravention occurred without his knowledge or consent, except that such defence shall not be available, if having regard to the duties of his office, the director or officer ought to have known of the contravention.

Appeals
against
Authority's
directive

25. A commodity exchange that is aggrieved by any direction of the Authority under section 21 may appeal to the Tribunal within thirty days of the date of the direction.

PART VI
COMMODITY EXCHANGES DISCIPLINARY MEASURES AND
ADMINISTRATIVE AND EMERGENCY POWERS OF THE AUTHORITY

Notification
of disciplinary
action to
the Authority

26.- Where a commodity exchange takes any disciplinary action in accordance with its rules, it shall within seven days of taking such action, inform the Authority in writing of the nature , reasons and measures for the action taken.

Review,
affirmation etc
of a
disciplinary
action
by Authority

27. The Authority shall review any disciplinary action taken under section 26 and may affirm, modify or set aside the decision after giving the parties concerned in the dispute an opportunity of being heard.

Authority's
intervention
where disciplinary
action is not taken

28. Nothing in this Part shall preclude the Authority, in any case where the commodity exchange fails to act against a trading member, from suspending, expelling or otherwise disciplining a member, but before doing so the Authority shall give the member and the commodity exchange an opportunity to be heard.

Action by
Commodity
exchange not
to prejudice
power of
the Authority

29. Any action taken by a commodity exchange under section 26 shall be without prejudice to the power of the Authority to take such further action as it deems fit with regard to the member or the licence of the commodity exchange.

Appeals for
disciplinary
actions of the
commodity
exchange
Cap. 79

30. Any person who is aggrieved by the decision of a commodity exchange under this section may, within thirty days after the notification of the decision, appeal to the Authority and where the decision is made by the Authority, the appeal shall lie to the Tribunal established under the Capital Markets and Securities Act.

Emergency
powers of
the Authority

31.-(1) Where the Authority has reason to believe that an emergency exists, or where the Authority considers it necessary or expedient for the protection of market participants or to meet

its objectives under the Act and maintain or restore fairness, transparency and efficiency in the transaction carried out by a commodity exchange the Authority may, by notice in writing, direct the commodity exchange to take such action as it considers necessary to-

- (a) liquidate any position in respect of any commodity contracts;
- (b) maintain or restore fairness, transparency and efficiency in the transactions carried out by the company; or
- (c) liquidate any position in respect of any commodity contracts, including but not limited to-
 - (i) terminating or suspending any transaction;
 - (ii) confining trading to liquidation of commodity contract positions;
 - (iii) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in securities or any class thereof;
- (i) requiring margins or additional margins for any commodity contract or any class thereof; and
- (j) modifying or suspending any of the rules of the company,

and the commodity exchange shall comply with that direction.

(2) In this Part, “emergency” means-

- (a) an act of government affecting commodity contracts;
- (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand of commodity contracts;
- (c) a threatened or actual market manipulation; or
- (d) any other situation or practice which in the opinion of the Authority constitutes an emergency.

(3) Where the Authority suspends trading under

subsection (c)(i), the suspension shall be for a period not exceeding three months.

(4) Where a commodity exchange fails to comply with a direction of the Authority under subsection (1), within such time as is specified by the Authority the Authority may-

- (a) set emergency margin levels in any contract or any class of thereof;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the Authority's direction; or
- (c) take such other action as the Authority considers necessary to maintain or restore orderly trading in any contract or any class thereof.

Penalty for non-compliance with Authority's emergency directives

32.-(1) A commodity exchange that fails to comply with the direction of the Authority issued under section 31 commits an offence and the Authority may, depending on the gravity or the consequence of such failure, impose any of the following administrative sanctions-

- (a) warning or caution not to repeat the conduct which led to non-compliance;
- (b) a reprimand;
- (c) directive to take remedial action or to make specific arrangement to remedy the default;
- (d) restrict or suspend certain business activities;
- (e) suspend a license; or
- (f) suspend or remove from office any member of staff who caused the failure to comply.

(2) Before imposing an administrative sanction, the Authority shall give the defaulting person a notice in writing of the-

- (a) nature of the alleged non-compliance;
- (b) intention to impose administrative sanction; and
- (c) amount or particulars of the intended administrative sanction.

(3) The defaulting person may, in writing, within a period specified in the notice, make representations as to why the administrative sanctions should not be imposed.

(4) When determining an appropriate administrative sanction, the Authority shall consider the following:

- (a) the nature, duration, seriousness and extent of the default;
 - (b) whether the defaulting person has previously failed to comply with any written laws; and
 - (c) any remedial steps taken against by the defaulting person to prevent a recurrence.
- (5) Where the Authority has imposed sanctions under this section, and the defaulting person fails to comply with such sanctions, the Authority shall impose a fine not exceeding five hundred thousand shillings per day for which a default continues to be committed
- (6) Where an offence under this Act or under any regulation made by the Authority under this Act is proved to have been committed by a commodity exchange with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the commodity exchange, that officer as well as the commodity exchange shall be liable for that offence.
- (7) In this section “officer” means a director, shadow director, member of the committee or management, chief executive, manager, secretary, or any person who was purporting to act in any such capacity.

PART VII REVOCATION OF COMMODITY EXCHANGE’S LICENCES

Written Notice
of revocation

- 33.-(1)** The Authority may, by notice in writing served on a commodity exchange, revoke a licence granted under this Act if the commodity exchange-
- (a) fails to operate in accordance with the conditions of the licence;
 - (b) ceases to operate the business for which the licence was granted;
 - (c) ceases to have in place satisfactory facilities for the business of commodity exchange operations;
 - (d) is being wound up;
 - (e) fails to comply with a directive of the Authority;
 - (f) fails to provide the Authority with information required or provides false or misleading information;
 - (g) is operating in a manner detrimental to the interests of

commodity market; or
(h) requests the Authority to do so.

Deemed
Cession of
operations of
a commodity
exchange

34.-(1) For the purpose of this Part a commodity exchange shall be deemed to have ceased to operate if-

- (a) it has ceased to operate its business for more than thirty days unless it has obtained the prior written approval of the Authority to do so; or
- (b) it has ceased to operate under a direction issued by the Authority.

(2) The Authority may by the notice served under subsection (1) permit a commodity exchange to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Authority may specify in the notice for the purpose of-

- (a) closing down the operations of the commodity exchange; and
- (b) protecting the interests of investors.

(3) The Authority shall, before revoking a licence, afford the commodity exchange an opportunity of being heard.

(3) The provisions of subsection (3) of this section, shall not apply to a commodity exchange revoked in accordance with 30 (1)(h).

(6) Where the Authority revokes the license of a commodity exchange under this section, it shall cause notice of the revocation to be published in a newspaper of wide circulation.

Effect
of
revocation
on transactions,
agreements
etc.

35. A revocation of licence pursuant to the provisions of this Part, shall not affect the execution of any agreement, transaction or arrangement relating to trading in commodity contracts entered into by the commodity exchange where the agreement, transaction or arrangement was entered into before or after the revocation of the licence, and includes any right, obligation or liability arising under such agreement, transaction or arrangement.

PART VIII
APPROVAL OF COMMODITY CONTRACT, WITHDRAWAL
AND FIXING OF POSITIONS AND TRADING LIMITS

Approval of the
contracts by
the Authority

36.-(1) No commodity exchange shall permit the trading of any commodity contract on a commodity market established or operated by the commodity exchange unless the contract has been approved by the Authority.

(2) The Authority shall not approve a contract unless-

(a) it contains all information as investors and their advisors and their professional advisors would reasonably expect to find for the purpose of making an informed assessment of the commodity and the right and liabilities;

(b) it contains such other information and particulars as may be prescribed by regulations made under this Act.

(3) The Authority may require an application for approval of a commodity contract to be accompanied by an expert opinion regarding any of the information contained in the contract.

(4) The Authority may take into account any other matter that it deems relevant in approving a contract.

(5) The Authority may grant approval for the trading of any commodity contract on the commodity market established or operated by the commodity exchange subject to such conditions or restrictions as the Authority may consider appropriate.

(6) The Authority may, by notice in writing served on the commodity exchange, withdraw its permission given under subsection (1) with effect from the date specified in the notice where-

(a) the commodity exchange fails to comply with a condition or restriction imposed under subsection (5);
or

(b) the Authority considers it would be contrary to the interests of the investing public to permit trading in that commodity contract to continue.

(7) The Authority shall not withdraw its permission under subsection (3) without first giving the commodity exchange an opportunity of being heard.

Fixing of
position

37.-(1) For the purpose of diminishing, eliminating or

and trading
limits in
commodity
contracts

preventing excessive speculation in any commodity under a commodity contract, the Authority may, by notice in writing fix limits as it considers necessary on the amount of trading or positions which may be held by any person, generally or specifically, under a commodity contract traded on a commodity exchange.

(2) Any limits upon positions and trading shall apply to positions held by, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

(3) No person shall, directly or indirectly-

(a) buy or sell or agree to buy or sell a commodity contract, or any number of such contracts, on a commodity exchange, in excess of the trading limits fixed for one business day, or any other stated period set by the Authority, or by a commodity exchange with the approval of the Authority; or

(b) hold or control a net buy or sell position under a commodity contract traded on the commodity market of or subject to the rules of a commodity exchange in excess of any position limit fixed by the Authority, or by a commodity exchange with the approval of the Authority.

(3) Nothing in this section shall preclude the Authority from-

(a) fixing different trading or position limits for different commodity contracts, different delivery months, or for different days remaining until the last day of trading in a commodity contract; or

(b) exempting transactions under this section.

PART IX

LICENSING OF COMMODITY MARKET INTERMEDIARIES

Licensing
requirement

38.-(1) No person, whether as principal or agent, shall carry on commodity exchange business as a commodity dealer or commodity broker, or hold himself out as carrying on such a business, except under and in accordance with a commodity dealer's license or commodity broker licence granted by the

Authority under this Part.

(2) No person shall carry on commodity exchange business as a commodity trading adviser, or hold himself out as carrying on such a business, except under and in accordance with a commodity trading adviser's license granted by the Authority under this Part.

(3) No person shall act as, or hold himself out as, a representative of a commodity dealer or commodity broker except under and in accordance with a commodity dealer's representative's or commodity broker representative license granted by the Authority under this Part.

(4) No person shall act as, or hold himself out as, a representative of a commodity trading adviser except under and in accordance with a commodity trading adviser's representative's license granted by the Authority under this Part.

(5) A commodity dealer's license or commodity brokers may be granted only to a company.

(6) A representative's license may be granted only to an individual.

(7) A representative shall not be licensed unless he is accredited to a principal.

(8) A company which is licensed under this Part as a commodity dealer or commodity trading adviser shall at all times employ at least one individual who is licensed as a representative under this Part.

(9) A company that is licensed under this Part as a commodity dealer or commodity trading adviser shall be exclusively engaged in that commodity business except only in respect of such other matters as are ancillary or incidental to its commodity business or otherwise may be expressly permitted by the Authority.

(10) In the case of a bank, a commodity dealer's license shall be granted only to a subsidiary incorporated by the bank for such purpose.

Accreditation
of representatives

39.-(1) A representative is accredited to a principal for the purposes of this Act only if the license of the representative states that he is accredited to the principal.

(2) The Authority shall not issue a representative's license unless both the representative and the principal have notified the

Authority in writing that he is, or is to be, accredited.

(3) Where the accreditation of the representative has been terminated (whether by the principal or the representative)-

- (a) the principal shall immediately notify the Authority in writing of such termination;
- (b) the principal shall publish in a daily newspaper a notice advising of such termination;
- (c) the representative shall return his licence to the Authority within 7 days from the date of termination; and
- (d) the Authority shall amend its register of market intermediaries accordingly.

Application
for a
licence

40.-(1) An application for a licence under this Part shall-

be made to the Authority in the prescribed form and manner

- (a) be accompanied by the prescribed fee;
- (b) provide the Authority with sufficient information about the:
 - (i) services which the applicant will hold himself out as being able to provide if the licence is granted;
 - (ii) business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;
 - (iii) applicant's shareholders and governance structure;
 - (iv) applicant's internal organization structure and operational systems;
 - (v) individuals whom the applicant proposes to direct
 - (vi) individuals whom the applicant proposes to direct and manage the business or whom the applicant otherwise intends to be associated with in the course of carrying on its business; and

(vii) location of all premises at which the records or other documents of the business in respect of which the application is made are to be kept, so as to enable the Authority to consider the applicant's fitness and properness.

(2) The Authority may require an applicant, and any other person associated with the application, to provide further information as the Authority considers necessary.

Grant or
refusal
of
licence

41.-(1) The Authority may, on an application duly made in accordance with section 40, approve or decline to grant a licence.

(2) The Authority shall grant a licence where it is satisfied that the applicant-

- (a) is a fit and proper person to be licensed in respect of the regulated activity;
- (b) is duly incorporated as a company under the companies legislation of any East African Community member state or in the case of a foreign company, is in compliance with the registration requirements of foreign companies under the companies Act and the requirements set out in subsection 3 of this section;
- (c) will employ at least one representative who is fit and proper;
- (d) will establish adequate policies and procedures to ensure compliance by its managers and employees with the obligations under this Act;
- (e) will maintain and operate effective organisational and administrative requirements with a view to taking all reasonable steps to prevent conflicts of interest from adversely affecting the interests of its clients;
- (f) will take all reasonable steps to ensure continuity and regularity in the performance of its regulated activity and in particular will employ appropriate and proportionate systems, personnel, resources and procedures;
- (g) has sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;

- (h) has money laundering prevention and detection manuals and policies including, procedures for conducting customers due diligence and reporting of suspicious transactions to the Authority and to the Financial Intelligence Unit;
- (i) has arrangements for records to be kept of all services and transactions undertaken which shall be sufficient to enable the Authority to monitor compliance with the requirements of this Act, and in particular to ascertain that the regulated person has complied with all obligations with respect to clients and potential clients;
- (j) when holding clients' property, will make adequate arrangements to safeguard clients' ownership rights, especially in the event of its insolvency, and to prevent the use of a clients' property on own account except with the client's express consent;
- (k) when holding clients' funds, will make adequate arrangements to safeguard the client's rights and to prevent the use of clients' funds for its own use;
- (l) has, and is able to maintain, the minimum paid up capital prescribed having regard to the nature and type of regulated activity to be provided;
- (m) has specified premises under section 47 (1) (c) (iv) that are suitable for keeping records or other documents; and
- (n) satisfies such other conditions as may be imposed or prescribed by the Authority.

(3) Subject to the provisions of this Act, a license granted under this section shall be granted for a period of one year and shall be automatically renewable for further periods of one year provided that the market intermediary pays the prescribed annual license fee on or before the anniversary of the date of the grant of his license.

(4) Where the Authority declines to grant a licence, it shall provide reasons for its decision and shall afford the applicant concerned a right to be heard before a final decision is made.

42. The Authority may authorize a foreign registered company to carry out commodity exchange related activities if-

Criteria for
licensing
of foreign
companies

- (a) it establishes a subsidiary or a branch office in Tanzania and has sufficient capital in compliance with the requirements of the law to enable the company operate in Tanzania;
- (b) the Authority recognizes the law of the country of origin relating to the regulation of the activity for which a licence is being sought as being of similar import to the law in Tanzania;
- (c) the intermediary or the activity for which a licence is sought subject to effective licensing process as well as effective regulatory supervision and enforcement procedures in the country of origin and that the country of origin or the applicant is not listed on the Financial Action Task Force list of non-cooperative countries;
- (d) an agreement has been concluded on cooperation in information sharing, investigation and enforcement actions between the supervisory authorities of the country of origin and the Authority which at the minimum shall cover-
 - (i) mechanism for exchange of information between the Authority and the other regulators;
 - (ii) granting access to all information on the foreign company's approved services that is required by the Authority;
 - (iii) the process for immediate reporting to the Authority of all violations by the applicant in the country of origin;
 - (iv) the process for coordinating the supervision activities including on sight-inspections where necessary;
- (e) in the case of a foreign company which is a commodity exchange that the dealers or brokers of the said commodities exchange is connected to an investor compensation scheme.

Licensing
of
representatives

43.- (1) The Authority may, upon application by a natural person and on the payment of the prescribed fee, grant a

representative's licence to an individual to carry on one or more activity specified in the licence.

(2) The Authority shall grant a representative's licence where it is satisfied that the applicant-

- (a) is a fit and proper person for the licence applied for or which is the subject of the application;
- (b) has passed an examination or undertaken such training as may be required or recognized by the Authority; and
- (c) is appointed by the regulated person.

Authority
may impose
conditions

44.-(1) The Authority may grant a license under this Part subject to such conditions or restrictions as it considers necessary.

(2) The Authority may, by written notice served on the holder of the license, amend or revoke any of the conditions or attach new conditions.

Authority
may issue
directions

45.-(1) The Authority may, by notice in writing, give a licensed person a direction under this section where it appears to the Authority that-

- (a) it is desirable for the protection of commodity market participants;
- (b) the licensed person has contravened or is about to contravene, or has failed to comply with any provision or requirement under this Act or, in purported compliance with any such provision or requirement has furnished the Authority with information that is false, inaccurate or misleading; or
- (c) the licensed person has engaged in any activity contrary to the interests of the commodity market its participants and investors.

(2) A direction under this section may contain all or any of the following prohibitions or requirements-

- (a) cease and desist from the contravention of any activity;
- (b) removal of a person from office or employment of the licensed person;
- (c) from entering into transactions of a class or description specified in the notice or entering into them otherwise

than in circumstances so specified or to an extent so specified;

(d) from soliciting business from any specified person or a person of a class or description so specified or from persons other than persons of such a class or description;

(e) from carrying on business in a specified manner or otherwise than in a specified manner; and

(f) to comply with any matter as the Authority considers necessary for the protection of investors,

and the licensed person shall comply with such prohibition or requirement.

(3) A prohibition or requirement under this section shall be for a specified period as the Authority may consider necessary and the period may be extended by the Authority as the Authority deems fit.

(4) The Authority may, by written notice, either on its own motion or on the application of the licensed person on whom a prohibition or requirement has been imposed under this section, rescind or vary the prohibition or requirement if it appears to the Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

(5) Where the Authority proposes to give a direction under subsection (1), or refuses to vary or rescind the direction under subsection (4), the Authority shall give reasons for its decision and shall give the person concerned a right to be heard before a final decision is made.

(6) Subsection (5) shall not apply where the Authority determines that it is necessary or expedient to meet its objectives that the direction should take effect without delay, in which case, the reasons for the direction shall be furnished and the opportunity to be heard shall be afforded as soon as is reasonably practicable after the direction has taken effect.

Authority
may issue
directions to
licensed persons

46.-(1) The Authority may, by notice in writing, give a licensed person a direction under this section where it appears to the Authority that-

(a) it is desirable for the protection of commodity

exchange participants and investors;

- (b) the licensee has contravened or is about to contravene, or has failed to comply with any provision or requirement under this Act or, in purported compliance with any such provision or requirement has furnished the Authority with information that is false, inaccurate or misleading; or
- (c) the licensee has engaged in any activity contrary to the interests of investors.

(2) A direction under this section may contain all or any of the following prohibitions or requirements-

- (a) cease and desist from the contravention of any activity;
- (b) removal of a person from office or employment of the licensee;

47.-(1) The Authority may suspend or revoke a license under this part where-

- (a) it has reason to believe that the licensee, or any of its directors or employees has not performed his duties honestly and fairly;
- (b) the licensee fails to employ the minimum number of licensed representatives required;
- (c) the licensee contravenes or fails to comply with any condition of the license;
- (d) the licensee is in breach of this Act or Regulations made under this Act;
- (e) the licensee fails to comply with a direction of the Authority;
- (f) the licensee fails to pay the prescribed annual fee for a period of two consecutive months following the required date of payment;
- (g) the licensee submits a request in writing to the Authority;
- (h) the licensee fails to provide the Authority with information required, or provides false or misleading information; or

(2) Without prejudice to subsection (1), the Authority shall revoke a license where the licensee-

- (a) is no longer fit and proper to hold a licence.

- (b) goes into liquidation, is wound up or is subject to winding up;
- (c) fails to pay the prescribed annual fee for a period of thirty consecutive days following the specified date of payment;
- (d) ceases to carry on the business for which it is licensed;

(3) Where the Authority suspends a licence under this section, the suspension shall be for a period not exceeding three months and the Authority may, if it considers it necessary, extend the suspension for a further period not exceeding 3 months at the expiry of which the Authority shall either lift the suspension, or revoke the license as it deems appropriate.

(4) For the purposes of this Part, a person shall be deemed to have ceased to carry on the business for which the license is issued where he ceases to carry on the business for more than thirty days without the prior approval of the Authority.

(5) The Authority shall, where it suspends or revokes the license, cause a notice of the said suspension or revocation to be issued to the public through the media.

Effect of
revocation
or suspension

48.-(1) The revocation or suspension of a licence under this Act does not operate so as to-

- (a) avoid or affect an agreement, transaction or arrangement entered into by the licensee on any exchange where the agreement, transaction or arrangement was entered into before the revocation or suspension; and
- (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(2) Where a licence is revoked or suspended under this Part, the Authority may by notice in writing and subject to such conditions as the Authority may specify in the notice-

- (a) require the licensee to transfer to, or to the order of, its client such records relating to client property or to the affairs of the client held at any time for the client, in such manner, as the Authority may specify in the notice; or
- (b) permit the licensee to:
 - (i) in the case of a revocation, carry on business operations for the purpose of

closing down the business connected with the revocation; or

- (ii) in the case of a suspension, carry on only essential business operations for the protection of interests of clients during the period of suspension.

Statutory
management

49.-(1) The Authority may, subject to subsection (2), place a defaulting licensee under statutory management where-

- (a) the defaulting person's licence is suspended or revoked under this Act;
- (b) a petition is filed, or a resolution made, for the winding up of a licensee, or where any receiver or receiver manager or similar officer is appointed in respect of all or any part of its assets; or
- (c) the Authority discovers, whether on an inspection, investigation or otherwise any fact or circumstance which, in the opinion of the Authority, warrants placing of a licensee under statutory management.

(2) The Authority shall give the defaulting licensee an opportunity to be heard prior to the exercise of the powers under this section.

(3) Notwithstanding the provisions of any other written law, in any case to which this section applies, the Authority may-

- (a) appoint any competent person or persons in this Act referred to as "a statutory manager" to assume the management, control and conduct of the affairs and business of a defaulting licensee to exercise all the powers of a licensee to the exclusion of its board of directors, including the use of its corporate seal;
- (b) remove any officer or employee of the defaulting licensee who, in the opinion of the Authority, has caused or contributed to any contravention of any provision of this Act, or to any deterioration in the financial stability of the defaulting licensee or has been guilty of a conduct detrimental to the interests of commodity exchange participants or investors;
- (c) appoint a competent person familiar with the business of the defaulting licensee to its board of directors to

hold office as a director who shall not be capable of being removed from that office without the approval of the Authority;

- (d) by notice in the *gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the defaulting licensee in favour of any officer or employee or any other person.

(4) The appointment of a statutory manager shall be for such period as the Authority shall specify in the instrument of appointment save that, in any case, the period referred to in this subsection, shall not exceed six months and may be extended by the Tribunal upon the application of the Authority if such extension appears to the Tribunal to be justified, and any such extension, shall be notified to all interested parties.

(5) A statutory manager shall, upon assuming the management, control and conduct of the affairs and business of a licensee, discharge his duties with diligence and in accordance with sound investment and financial principles and in particular, with due regard to the interests of the defaulting licensee's customers or investors.

(6) The responsibilities of the statutory manager appointed by the Authority under this part in relation to a defaulting licensee shall include-

- (a) tracing and preserving all the property and assets of the said defaulting licensee or of its clients;
- (b) recovering all debts and other sums of money due to and owing to the defaulting licensee;
- (c) evaluating the capital structure and management of the licensee and recommending to the Authority any restructuring or re-organization which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the defaulting licensee;
- (d) entering into contracts in the ordinary course of the business of the defaulting licensee; and
- (e) obtaining from any officers or employees of the defaulting licensee, any documents, records, accounts, statements or information relating to its business.

(7) For the purposes of discharging its responsibilities, a statutory manager shall declare a moratorium on the payment by

the defaulting licensee to its creditors and the declaration of a moratorium shall-

- (a) be applied equally and without discrimination to all classes of creditors and the statutory manager may offset the liabilities owed by the defaulting licensee to any creditor against any debts owed by that creditor to the defaulting licensee; and
- (b) suspend the running of time for the purposes of any law of limitation of actions in respect of any claim by a creditor of the defaulting licensee.

(8) A moratorium shall cease to apply upon the termination of the statutory manager's appointment whereupon the rights and obligations of the defaulting licensee and its creditors shall, save to the extent provided in subsection (6)(b), be the same as if there had been no declaration under the provisions of that subsection.

(9) A moratorium declared by the statutory manager shall not exceed 6 months.

(10) The statutory manager shall, in every month, submit to the Authority and all interested parties a report of his activities undertaken during the preceding month, in such form as may be specified by the Authority.

(11) Any officer or employee of the defaulting licensee removed under the provisions of subsection (3) (b) may appeal to the Tribunal, and the Tribunal may confirm, reverse or modify the decision and make any other order in the circumstances as it deems just; and pending the determination of the appeal or any appeal on the decision of the Tribunal, the order of removal shall remain in effect.

(12) A statutory manager or any other person appointed, designated or approved by the Authority under this Act shall not be liable in respect of any act or omission done in good faith by such manager or person in the execution of the duties undertaken by him.

(13) Where it appears to the statutory manager that it is just and equitable to do so in the interest of all interested parties, the statutory manager may after consultation with the Authority, petition the High Court for the winding up of the defaulting licensee.

(14) All costs and expenses properly incurred by the

statutory manager shall be payable out of the assets of the defaulting licensee shall be given priority over all other claims.

Register
of
licensees

50.-(1) The Authority shall maintain a register of licensees in the form it considers appropriate.

- (2) The register shall, for each licensed person, record-
- (a) the name and address of the regulated person;
 - (b) the date on which the licence was granted;
 - (c) the type of regulated activity permitted by the licence;
 - (d) any conditions attached to the licence;
 - (e) the name and address of every director, manager and officer, secretary of the company, and the names and respective shareholdings of each shareholder;
 - (f) the name and address of every representative;
 - (g) the location of the premises at which the records or other documents of the regulated person are kept;
 - (h) any order of revocation or suspension; and
 - (i) such other particulars as the Authority considers necessary in the interest of the investors or general public.

(3) The register shall, for each licensee, contain a record of-

- (a) the name and address;
- (b) the date on which the licence was granted;
- (c) the name and address of the principal; and
- (d) such other particulars as the Authority may consider desirable.

(4) The register shall, subject to a prescribed fee, be open for inspection by members of the public, during usual office hours.

Notice of
cessation
or change
of business

51. A licensee shall as soon as practicable, but not later than seven days, give to the Authority notice in writing where-

- (a) he ceases to carry on the business to which he is licenced for; or
- (b) a change occurs in any matter particulars required under section 39.

PART X
CONDUCT OF BUSINESS

Standards
of
conduct

- 52.** A licensee shall at all times act according to the principles of best practice and, in particular, shall-
- (a) observe high standards of integrity and fair dealing;
 - (b) act with due skill, care and diligence;
 - (c) observe high standards of market conduct;
 - (d) seek from its clients information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil its responsibilities to the client;
 - (e) take reasonable steps to give every client that the licensee advises, any information needed in a comprehensible manner to enable the client to make an informed investment decision;
 - (f) avoid any conflict of interest with clients and, where such a conflict unavoidably arises, to ensure fair treatment to the client by complete disclosure or by declining to act; furthermore the interests of the market intermediary should never be unfairly placed above those of the client;
 - (g) protect properly, by way of segregation and identification, those client assets for which the licensee is responsible;
 - (h) maintain adequate financial resources to meet its commodity exchange business commitments and withstand the risks to which the business is subject;
 - (i) organise and control its internal affairs in a responsible manner;
 - (j) keep proper records;
 - (k) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and
 - (l) deal with the Authority in an open and co-operative manner and keep the Authority informed of anything concerning the licensee that might reasonably be expected to be disclosed.

Business
conduct
regulations

53.-(1) Without prejudice to section 52, the Authority may make regulations on the conduct of commodity exchange business requiring market intermediaries to comply with such practices and standards relating to their conduct in carrying on the commodity exchange business for which they are licensed.

(2) Without limiting the generality of subsection (1), the Authority may make regulations for or with respect to-

- (a) contract notes;
- (b) client agreements;
- (c) risk disclosure statements;
- (d) the use of misleading or deceptive advertisements by or on behalf of a market intermediary;
- (e) the disclosure to a client of the financial risks in respect of trading commodity contracts recommended by the market intermediary to the client;
- (f) the avoidance of any conflict of interest between the market intermediary and a client;
- (g) recommendations made;
- (h) the priority to be given to client's orders;
- (i) trading against a client;
- (j) cross trading; and
- (k) any other matter relating to the practices and standards of conduct required of a market intermediary in conducting the commodity business for which he is licensed.

Risk
disclosure

54. No commodity exchange broker or dealer shall open a commodity trading account for a client unless he-

- (a) furnishes the client with a separate written risk disclosure statement which shall be in such form and contain such information as may be prescribed; and
- (b) receives from the client an acknowledgement signed and dated by the client that he has received and understood the nature and contents of the risk disclosure statement.

Client
agreement

55. No licensee shall act for any client otherwise than in accordance with the terms of a client agreement" which shall contain such matters as may be prescribed in the regulations made by the Authority.

Issue of
contract
confirmation
note

56.-(1) A commodity exchange broker or dealer shall, not later than two business days after any commodity exchange transaction, furnish to its clients a written confirmation of each commodity contract executed on behalf of that client.

(2) A contract confirmation note shall include such information as may be prescribed in the regulations by the Authority.

PART XI
ACCOUNTS AND AUDIT

(a) Accounts And Audit of Commodity Exchanges

Maintenance
of books of
accounts
and record

57.-(1) A commodity exchange shall keep proper books of accounts and records of its income and expenditure, assets and liabilities and all other transactions of the commodity exchange.

(2) The commodity exchange shall, as soon as practicable after the end of each financial year, prepare a statement of the accounts of the commodity exchange for the financial year, including an income and expenditure account and balance sheet.

(3) The commodity exchange shall, within one month after the end of each of its financial years, submit the statement of accounts prepared for the financial year under subsection (2) to its auditors for audit.

(4) The auditors shall prepare a report on the accounts and send the report to the commodity exchange which shall forthwith after its receipt send a copy of the report and a copy of the statement of accounts to the Authority.

(5) The auditors shall include in their report-

(a) a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates gives a true and fair view of the commodity exchange's surplus or deficit;

(b) a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the commodity exchange's financial affairs at the end of that financial year.

(6) The auditors shall have a right of access at all

reasonable times to the books, accounts, vouchers and other records of the commodity exchange and are entitled to require from officers of the commodity exchange such information and explanations as they consider necessary for the performance of their duties as auditor.

Authority may
appoint auditor

58. Where the Authority is satisfied that it is in the public interest to do so, it may appoint in writing an auditor at the expense of the commodity exchange to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange.

Annual
Report

59.-(1) A Commodity exchange shall, within 3 months after the end of its financial year, give to the Authority an annual report that includes-

- (a) a description of the activities undertaken by the commodity exchange in the financial year;
- (b) the resources (including financial, technological and human resources) that the commodity exchange had available, and used, in order to ensure compliance with its obligations and, in particular, its obligation to ensure that the commodity market of the commodity exchange operates in a fair, orderly and transparent manner; and
- (c) an analysis of the extent to which the commodity exchange considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under this Act, regulations and the rules of the commodity exchange.

(2) The commodity exchange shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Authority.

(3) The annual report shall be accompanied by an audit report where required by the Authority under subsection (4).

(4) The Authority may, by giving written notice to a commodity exchange, require the commodity exchange to obtain an audit report (by a person to be approved by the Authority) on the annual report and on any information or statements accompanying it.

(b) Accounts and Audit of Market Intermediaries

Accounts
and records
to be kept

60.-(1) A market intermediary other than a representative, shall keep such accounting and other records as will sufficiently show and explain the transactions (whether effected on its own behalf or on behalf of others) and financial position of its commodity exchange business and shall be such as to-

- (a) disclose with reasonable accuracy, at any time, its financial position at that time;
- (b) enable it to prepare a true and fair balance sheet and profit and loss account and balance sheet as at any time; and
- (c) demonstrate whether it is maintaining in its commodity exchange business adequate financial resources to meet its exchange business requirements and withstand the risks to which its business is subject.

(2) Without limiting the generality of subsection (1), such accounts and other records shall be maintained as may be prescribed.

(3) The obligations under this Act are continuing obligations and continuous performance of them is required so as to ensure that records are periodically updated.

(4) Information required to be recorded by this Act shall-

- (a) be recorded in such a way as to enable a particular trade to be identified at any time and traced through from initiation to of the order to final settlement; and
- (b) be arranged, filed, indexed and cross-referenced so as to permit access to any particular record.

(5) The accounting and other records required to be maintained under this section shall be preserved by the market intermediary for a period of not less than five years from the date on which they are made, and shall at all reasonable times be open to inspection by the Authority or by an auditor appointed by the Authority.

Client
assets

61.-(1) For the purpose of this Act, “client assets” means money received or retained by, or any other property deposited with, a market intermediary in the course of his business for which he is liable to account to his client, and any money or other property accruing therefrom.

(2) A commodity exchange broker or dealer shall-

(a) treat and deal with all client assets received by him from a client to margin, guarantee or secure contracts in commodity exchange trading, or accruing to a client as a result of such trading, as belonging to that client; and

(b) deposit in a separate account, designated as a trust account or evidenced as such, for all the client assets received from the client or accruing to the client pursuant to subsection (a);

(c) and shall segregate those client assets from the funds of the commodity exchange broker or dealer.

(3) Without prejudice to section 54, the Authority may make regulations with respect to the segregation and safekeeping of client assets that a market intermediary holds on behalf of a client.

(4) Without limiting the generality of subsection (3), regulations may-

(a) require client money to be paid forthwith into segregated bank accounts established for client money and designated as trust accounts or client accounts;

(b) make provision with respect to the opening and keeping of bank accounts and specify when and how client money is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;

(c) require the maintenance of records in relation to such accounts in the specified manner;

(d) require the submission to the Authority, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Authority to ascertain readily whether

the regulations are being complied with; and

(e) provide for any other matter relating to client assets.

(5) Except as provided in the regulations, client assets held by a market intermediary on account of a client shall not be available for payment of the debts of the market intermediary or liable to be paid or taken in execution under the order or process of the Court against the market intermediary.

(6) A payment made in contravention of subsection (5) is void from the outset, and a person to whom the money is paid does not obtain any title to it.

Appointment
of
Auditors

62.-(1) Within one month after becoming licensed under this Act a market intermediary other than a representative shall appoint an external auditor to perform the functions required of an auditor of a market intermediary under or pursuant to the provisions of this Act.

(2) A person shall not be qualified for appointment as the auditor of a market intermediary unless he is a registered by a recognized professional body to practice as accountant and auditors and holds a valid practising certificate.

(3) An auditor shall not be eligible for appointment under subsection (1) if he is-

(a) a director, officer, employee, shareholder or partner of the market intermediary; or

(b) a partner or employee of such person.

(4) A market intermediary shall, within seven days of the appointment of an auditor, notify the Authority in writing of the name and address of the auditor.

(5) A market intermediary shall, within seven days, notify the Authority in writing of the removal or resignation of an auditor.

Audited
accounts
to be lodged
with Authority

63. A market intermediary shall-

(a) for the financial year beginning on the day on which he commences to carry on commodity exchange business; and

(b) for each subsequent year,

(c) prepare a profit and loss account, a balance sheet and a cash flow statement made up to the last day of the

financial year which shall show a true and fair view, contain the information prescribed, and shall lodge those documents with the Authority not later than three months after the end of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed.

Auditor to report to Authority in certain cases

64. Where in the course of the performance of his duties as auditor for a market intermediary, an auditor-

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the market intermediary to a material extent; or
- (b) discovers evidence of a contravention of provisions on segregation of client assets or provisions relating to accounts and records to be kept by market intermediaries,

he shall as soon as is practicable, and in any event within seven days, report it in writing to the Authority and to the market intermediary.

Authority may appoint auditor

65. Where the Authority is satisfied that it is in the public interest to do so, it may appoint in writing an auditor at the expense of the market intermediary to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the market intermediary, and on money, securities or other property held on account of any other person by the market intermediary or by a nominee appointed by the market intermediary, if-

- (a) the market intermediary has failed to lodge an auditor's report under section 63;
- (b) the Authority has received a report under section 64; or
- (c) the Authority has reason to believe that the market intermediary has failed to comply with section 52 or section 53.

PART XII
APPLICATION OF CERTAIN PROVISIONS OF THE CAPITAL
MARKETS ACT

Authority may
appoint auditor

66. The provisions of the Capital Markets Act set out below shall apply *mutatis mutandis* to the commodity exchanges intermediaries, depositories and clearing houses-

- (a) Part VII in relation to Accounts and Audit of brokers and dealers, which shall apply to the commodities exchange brokers and dealers;
- (b) Part IX on Market Abuse which shall apply in relation to insider dealing, false trading, market rigging, market manipulation, fraudulent inducement of person to deal in commodities; dissemination of false information, employment of manipulative and deceptive devices.

PART XIII
MARKET ABUSE

Insider dealing,
manipulation,
Rigging
etc

67.- Subject to section 66(c), the provisions of the Capital Markets Act in relation to insider dealing, false trading, market rigging, market manipulation, fraudulent inducement of person to deal in commodities; dissemination of false information, employment of manipulative and deceptive devices shall apply with necessary modification to market abuse that may arise in the course of commodities trading on commodity exchanges.

Bucketing

68. No person shall execute a customer's order for his own account outside the exchange with the aim of profiting from an offsetting transaction at a future time.

Cornering

69. No person shall gain control of the supply of a particular commodity which is traded on the commodity exchange with the aim of setting the price of the said commodity.

Liability to

70.- (1) A person who is convicted of an offence under

pay
damages

this Part shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold a commodity contract at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss incurred.

(2) Nothing in subsection (1) limits or diminishes any civil liability that any person may incur under any other Act.

PART XIV INFORMATION, INSPECTION AND INVESTIGATION

Authority
may call
for information

71.- (1) The Authority may, by notice in writing, require a licensed person to furnish it with such information as it may require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

(2) The duty to supply information under this section applies notwithstanding any other enactment or rule of law in Tanzania.

Inspection

72.- (1) For the purpose of ascertaining whether a person who is, or has at any time has been a licensed person is complying or has complied with any provision of or requirement under this Act or regulation, or the terms and conditions of his licence, the Authority may from time to time inspect any record or document relating to the business to which the licence applies.

(2) The Authority may authorise in writing any person (the “authorized person”) to exercise the powers of the Authority under this section.

(3) In the exercise of powers under this section, an authorized person may-

- (a) enter the premises of the licensed person;
- (b) require the licensed person, or any other person whom he believes is in possession of or has under his control, any record or document referred to in subsection (1), to produce it to him;
- (c) make inquiries of a licensed person, or any other person whom he has reasonable cause to believe has information relating to any record or document, referred to in subsection (1), concerning any such

record or document, or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the licensed person; and

(d) inspect and make copies, or take extracts from, and where necessary take possession of, such documents.

(4) For the purpose of an inspection under this section, the licensed person or other person mentioned in subsection (3) shall afford an authorized person access to the records or documents as may be required for the inspection, and shall produce to the authorized person such records or documents as he may require.

Investigation

73.-(1) Where the Authority has reasonable cause to believe, either on its own motion or as a result of a complaint received, that-

(a) an offence has been committed under this Act or any regulation;

(b) a licensed person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with his commodity business; or

(c) the manner in which a licensed person has engaged or is engaging in his commodity business is not in the interest of the consumer or the public interest,

the Authority may in writing direct one or more of its employees or one or more other persons to investigate any of the matters referred to in paragraphs (a), (b) or (c) and to report the results of the investigation to the Authority.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or document which contains, or which is likely to contain, information relevant to an investigation under this section, or who is so believed or suspected of otherwise having such information in his possession or under his control, shall-

(a) produce to the investigator, within the time and at the place as the investigator requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;

- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend before the investigator at the time and place the investigator requires in writing, and answer truthfully and to the best of his ability under oath or affirmation (which oath or affirmation the investigator is hereby empowered to administer) any question relating to the matters under investigation as the investigator may put to him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

(3) The provision of section 22 and 23 of the Capital Markets **and** Securities Act with regard to investigation of certain matters and measures to be taken pending investigation respectively shall apply in addition to the powers of the Authority under this section.

(4) A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know, is relevant to an inspection under section 72 or an investigation under this commits an offence and upon conviction is liable to a fine of not less than fifty million shillings or to imprisonment for a term of not less than five years or to both the fine and imprisonment.

PART XV DISCIPLINE OF MARKET INTERMEDIARIES

Disciplinary
action in
respect of
licensees

74.- Subject to section 78, where-

- (a) a licensee is, or was at any time, guilty of misconduct; or
- (b) the Authority is of the opinion that a licensee is not a fit and proper person to remain a licensee,

the Authority may exercise such of the following powers as it considers appropriate in the circumstances of the case-

- (i) revoke its license; or
- (ii) suspend its license for such period or until the occurrence of such event as the Authority may specify;
- (iii) publicly or privately reprimand the market intermediary.

Additional
Disciplinary
orders

75.-(1) Subject to section 78, where a licensee is, or was at any time, guilty of misconduct, the Authority may make one or more of the orders, separately or in addition to any power exercisable under subsection (1)(b)(i), (ii) or (iii), namely an order that the licensee-

- (a) pay the Authority a pecuniary penalty not less than five million shillings;
- (b) pay to the Investor Compensation Fund established under the Capital Markets and Securities Act, amount of any profit gained or loss avoided as a result of the misconduct in question.
- (c) with regard to an employee or agent of a market intermediary-
 - (i) require the licensee to take action against the employee or agent;
 - (ii) disqualify the employee or agent from employment in any capacity by any licensee;
 - (iii) recover from the employee or agent an amount double the amount accruing to him from his misconduct;
- (d) pay to the Authority a sum appropriate to reimburse the Authority for the costs and expenses that it has reasonably incurred in relation or incidental to the investigation of its conduct.

(2) A licensee ordered to pay a pecuniary penalty under subsection (1) (b) shall pay the penalty within 30 days, or such further period as the Authority may specify by notice after the order has taken effect.

- (3) In this section “misconduct” means-
- (a) a contravention of any of the provisions of this Act or regulations made under this Act;
 - (b) a contravention of any of the terms or conditions of a license granted under this Act;
 - (c) failure to comply with a direction of the Authority; or
 - (d) an act or omission by a licensee in relation to his regulated activity which, in the opinion of the Authority, is or is likely to be prejudicial to the public interest;
 - (e) and “guilty of misconduct” shall be construed accordingly.

Other
circumstances
for
disciplinary
action

76.-(1) The Authority may revoke a license or suspend a license for such period or until the occurrence of such event as the Authority may specify-

- (a) in the case of an individual-
 - (i) it is shown by certified medical evidence that he has become mentally or physically incapable of performing the activities to which the license relates;
 - (ii) he has been adjudged a bankrupt, in Tanzania or elsewhere;
 - (iii) he is convicted, whether in Tanzania or elsewhere, of fraud or other offences involving dishonesty;
 - (iv) he is in breach of this Act or any regulation made by the Authority under this Act;
 - (v) he has contravened or failed to comply with any condition applicable in respect of his license;
 - (vi) he has failed to comply with a direction of the Authority;
 - (vii) he has failed to provide the Authority with information required, or provides false or misleading information;
 - (viii) he ceased to carry on the business for

- which he is licensed;
 - (ix) he is the holder of a representative's license and the license of the principal to whom he is accredited is revoked or suspended; or
 - (x) he is no longer, by reason of any other circumstances, a fit and proper person to hold a license;
- (b) where a licensee is a company-
- (i) the company goes into liquidation or is ordered to be wound up;
 - (ii) a receiver or manager of all or a substantial part of the property of the company is appointed;
 - (iii) the company ceases to carry on the business for which it is licensed;
 - (iv) the Authority has reason to believe that the company, or any of its directors or employees, has not performed his duties honestly and fairly;
 - (v) the company contravenes or fails to comply with any condition applicable in respect of the license;
 - (vi) the company does not continue to employ at least one person who holds a representative's license granted under this Act;
 - (vii) the company is in breach of this Act, or any regulation made by the Authority under this Act;
 - (viii) fails to comply with a direction of the Authority;
 - (ix) fails to provide the Authority with information required, or provides false or misleading information; or
 - (x) by reason of any other circumstances, the company is no longer a fit and proper person to hold a license.
- (2) Where the Authority suspends a license under this

section, the suspension shall be for a period not exceeding 3 months; provided that the Authority may, if it considers it necessary, extend the suspension for a further period not exceeding 3 months at the expiry of which the Authority shall either lift the suspension, or proceed to revoke the license, as it deems appropriate.

(3) The licence shall be deemed to be suspended if the licensee fails to pay the prescribed annual fee and, subject to subsection (4), the suspension shall remain in force until such time as the Authority considers it appropriate that the license should no longer be suspended and informs the licensee to that effect by notice in writing.

(4) Where a license is suspended under subsection (3) and the prescribed fee has not been paid within 30 days after the day on which the suspension becomes effective under subsection (3), or such further period as the Authority may specify by notice in writing to the licensee, the license shall be deemed to be revoked.

(5) The Authority may revoke or suspend a license at the request of the licensee.

(6) For the purposes of subsections (1)(a)(viii) and (1)(b)(iii) a licensee shall be deemed to have ceased to carry on the business for which he is licensed if -

(a) he has ceased to carry on the business for which he is licensed for more than 30 days unless he has obtained the prior approval of the Authority to do so; or

(b) he has ceased to carry on such business under a direction issued by the Authority under section 46.

(7) Where the Authority suspends or revokes the licence of a market intermediary under this section, it shall cause notice of that fact to be published in the official Gazette.

Effect of
revocation
or
suspension

77.-(1) The revocation or suspension of a license under this Act shall not operate so as to-

(a) avoid or affect an agreement, transaction or arrangement entered into by the market intermediary on the commodity market of a commodity exchange

where the agreement, transaction or arrangement was entered into before the revocation or suspension;

(b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(2) Where a license is revoked or suspended under this Act, the Authority may by notice in writing-

(a) require the licensee to transfer to, or to the order of, his client such records relating to client property or to the affairs of the client held at any time for the client, in such manner, as the Authority may specify in the notice; or

(b) permit the licensee to-

(i) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation;

(ii) in the case of a suspension, carry on only essential business operations for the protection of interests of clients during the period of suspension;

(iii) subject to such conditions as the Authority may specify in the notice.

Procedural
requirements
for exercise
of disciplinary
powers

78.-(1) The Authority shall not exercise any power under section 74 or 75 without first giving the licensee in respect of whom the power is to be exercised a reasonable opportunity of being heard.

(2) The Authority may prescribe the manner in which the market intermediary shall be given an opportunity to be heard.

(3) Where the Authority decides to exercise any power under section 74 or 75, the Authority shall inform the licensee in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include-

(a) a statement of the reasons for which the decision is made;

(b) the time at which the decision is to take effect;

(c) in so far as applicable, the duration and terms of any revocation or suspension to be imposed under the decision;

(d) in so far as applicable, the terms in which the licensee is to be reprimanded under the decision;

(e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect) within which it is required to be paid.

(4) A pecuniary penalty imposed by the Authority in the exercise of its powers under this Part may be recovered by the Authority as a civil debt and, for the purposes of proof of such debt, a certificate under the hand of the Chief Executive Officer of the Authority shall be receivable in evidence as sufficient proof of such debt.

(5) The provisions of section 49 regarding powers of the Authority to institute statutory management shall apply in the case of revocation of licences under this section.

Disciplinary
Committee

79. The Authority shall establish a standing disciplinary committee to hear and determine disciplinary proceedings brought against a licensee pursuant to this Act.

PART XVI OFFENCES AND PENALTIES

Offences
and
penalties

80.- (1) A person who contravenes or fails to comply with any provision of this Act or any regulation commits an offence and is liable on conviction-

(a) in the case of an individual, to a fine of not less than five million shillings or to imprisonment for a term of one year or to both;

(b) in the case of a company, to a fine of not less than ten million shillings.

(2) A person who furnishes or produces for the purposes of this Act, or any requirement imposed under any provision of this Act or any regulation which is, or any return, documents or statement the contents of which are, to his knowledge, untrue, incorrect or misleading, commits an offence and is liable on conviction-

(a) in the case of an individual, to a fine of not less than ten million shillings or to imprisonment for a term of two

years or to both;

(b) in the case of a company, to a fine of not less than fifteen million shillings.

(3) A person who wilfully obstructs any member of the Authority, an officer or servant of the Authority, or an authorized person or investigator, in the performance of his duties under this Act, commits an offence and is liable on conviction-

(a) in the case of an individual, to a fine of not less than five million shillings or to imprisonment for a term of one year or to both the fine and imprisonment;

(b) in the case of a company, to a fine of not less than fifteen million shillings.

General
penalty

81. A person who is guilty of an offence under this Act for which no specific penalty is provided, shall be on conviction to a fine of not less than five million shillings or imprisonment for a term of not less than one year or to both.

PART XVII MISCELLANEOUS PROVISIONS

Immunity

82. The Authority, officers and employees of the Authority shall not be liable to any action in damages for anything done or omitted in the exercise or performance of any power or duty conferred or imposed by or under this Act unless the act or omission is shown to have been in bad faith.

Rights of
applicants
and holders
of licenses

83.-(1) The Authority shall not-

(a) refuse an application for the grant of any licence under this Act; or

(b) revoke or suspend any licence granted under this Act, without first giving the applicant or licence holder, as the case may be, an opportunity of being heard.

(2) The Authority shall, if it refuses an application, notify the applicant in writing of the refusal and the reasons for it.

(3) The Authority shall, if it revokes or suspends a licence, notify the license holder in writing of the revocation or suspension and of-

(a) its reasons for doing so;

- (b) the date on which the revocation or suspension takes effect; and
- (c) the duration of a suspension, or the event which will terminate it.

(4) The Authority may prescribe the manner in which a person shall be given an opportunity to be heard.

Appeals

84. A person aggrieved by the final decision of the Authority-

(a) refusing to grant a licence under this Act; or
(b) revoking or suspending a license granted under this Act, may appeal against such decision to the Tribunal within fourteen days from the day on which the decision was communicated to that person.

(2) The Tribunal may, on an appeal made to it under subsection (1), accept, reverse or vary the decision of the Authority or make such other order as the interests of justice require.

(3) Notwithstanding any provision of any other law, a decision of the Authority shall not be subject to any stay proceedings under subsection (1), in the Tribunal or in any other court of law.

Liability of licensee for acts of representative, etc

85. For the purpose of this Act, an act, omission or failure of a representative, agent, employee or other person acting for or on behalf of a licensed person within the scope of his office or employment shall be deemed to be the act, omission or failure of the licensed person as well as of the representative, agent, employee or other person.

Authority may make regulations

86.-(1) In addition to the powers conferred by any other section, the Authority may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to-

- (a) applications for licences, the issue of licences and incidental matters;
- (b) depositories and clearing houses;
- (c) the standards for the qualifications, experience and training of applicants for licensing as market intermediaries;

- (d) the conditions for the conduct of business including margin requirements and position limits on a commodity market;
 - (e) the form and content of contracts, confirmation notes, client agreements and risk disclosure statements;
 - (f) the fixing of limits on amounts of trading or holding of positions during trading on a commodity exchange;
 - (g) the form, content, distribution and publication of written, printed or visual material and advertisements in respect of commodity trading;
 - (h) the information to be contained in auditors' reports required to be lodged under this Act on the annual accounts of market intermediaries;
 - (i) the remuneration of an auditor appointed under this Act and the costs of an audit carried out under this Act;
 - (j) the display of licences and the issue of duplicates;
 - (k) the making of annual or other regular returns to the Authority by licensees;
 - (l) the fees to be paid in respect of any matter or thing required for the purposes of this Act;
 - (m) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) Any regulations made under this Act by the Authority may-
- (a) provide that a contravention of any specified provision shall be an offence and may impose financial penalties not exceeding shillings five million;
 - (b) be of general or special application and may make different provisions for different cases or classes of case; and
 - (c) provide for the exercise of discretion in particular cases.
- (4) For the avoidance of doubt, the powers of the Authority to make regulations under this section are in addition to and not in derogation of any other power of the Authority to make regulations under any provision of this Act or any other Act.
- (5) All regulations made by the Authority under this Act shall be published in the *Gazette* and shall take effect upon such publication or on any other date as may be specified in the *Gazette*.

General
directions
by Authority

87.-(1) Where the Authority considers that, for the protection of investors, there is a need for immediate action with regard to the conduct by a market intermediary in respect of its commodity business, the Authority may entirely on its own initiative issue directions of a general or special nature by notice in writing to the market intermediary.

(2) A direction issued under subsection (1) may relate to any matter concerning the conduct of commodity business by a market intermediary.

(3) Failure to comply with a direction issued under subsection (1) shall constitute a disciplinary offence and may lead to disciplinary action.

Complaints
committee

88. The Authority may establish a standing complaints committee whose jurisdiction shall include the power to award compensation in a sum not exceeding five million shillings and whose composition and procedures shall be as prescribed by the Authority.

Assistance to
regulators
outside
Tanzania

89.-(1) Where the Authority receives, from a regulatory authority outside Tanzania, a request for assistance for the purposes of the exercise of its functions or for the purposes of investigating whether a person specified by the regulatory authority has contravened or is contravening legal or regulatory requirements which-

- (a) the regulatory authority enforces or administers; and
- (b) relate to such securities transactions as are regulated by the regulatory authority,

the Authority may, where it is of the opinion that the conditions specified in subsection (3) are satisfied, provide such assistance and the assistance to investigate the matter by exercising any of its powers under sections 71, 72 and 73, or by providing such other assistance as the Authority thinks fit.

(2) For the purposes of subsection (1), the provisions of Part VIII shall, with such adaptations as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement were an offence under this Act.

(3) The conditions referred to in subsection (1) are that-

- (a) it is desirable or expedient that the assistance requested is provided in order to meet the Authority's objectives

under this Act; or

- (b) the assistance will enable or assist the recipient of the assistance to perform its functions; and
- (c) the Authority is satisfied that the foreign regulatory authority will provide any non-public information with the confidentiality protection appropriate in the circumstances.

(4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Authority shall take into account whether the regulatory authority-

- (a) will pay to the Authority any of the costs and expenses incurred in providing the assistance;
- (b) will be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Tanzania; and
- (c) is a signatory to the multilateral Memorandum of Understanding of the International Organization of Securities Commissions.

Forms

90. The Authority may, by notice in the official Gazette, specify forms that are required to be used for any purpose under this Act.

Codes,
guidelines,
etc

91.-(1) The Authority may issue such codes, guidelines or regulatory or policy statements as it considers appropriate for providing guidance-

- (a) in relation to of any of its regulatory objectives under this Act;
- (b) in relation to any matter relating to any of the functions of the Authority under this Act;
- (c) in relation to the operation of any provision of this Act.

(2) The Authority may publish codes and guidelines in such manner as it deems fit.

PART XVIII CONSEQUENTIAL AMENDMENTS

Amendments of the Capital Markets and Securities Act:

Construction
Cap. 79

92. This Part shall be read as one with the Capital Markets

and Securities Act hereinafter referred to as the “principal Act”.

Amendment
Of section 10

- 93.** The principal Act is amended in section 10 by-
- (a) adding a new section 10A after section 10 as follows:

“ The Objective
of the Authority

- 10A.** The objectives of Authority shall be to:
- promote the confidence and informed participation of investors and ensuring efficiency of capital markets and commodity exchanges in Tanzania;
 - (b) provide an appropriate degree of the protection of investors in capital markets and commodity exchanges trading from unfair, improper and fraudulent practices.
 - (c) foster fair, efficient, transparent, competitive, orderly and informed markets for securities and trading on commodity exchanges in Tanzania;
 - (d) promote and facilitate the development of the capital markets and commodity exchanges trading;
 - (e) to actively participate and contribute to a process for monitoring, mitigating and reducing systemic risk in capital markets and commodity exchanges trading;
 - (f) to review the perimeters of regulation of the capital markets;
 - (g) to ensure that conflicts of interest and mismanagement of incentives are avoided, eliminated, disclosed or otherwise managed;

- (h) to suppress and prevent financial crimes and illegal practices in capital market and commodity exchanges trading; and
 - (i) to co-operate and collaborate with domestic and international organizations, law enforcement supervisors and regulatory bodies.”
- (b) by inserting the following paragraphs after paragraph (w) of subsection (2):
- “(x) regulate the capital market and commodity exchanges;
 - (w) establish investor protection standards, enforcement mechanisms, transparency through disclosure requirements, resolution regimes and business conduct regulations to enable the Authority to mitigate and manage risks against erosion of market trust;
 - (y) develop approaches that permit beneficial innovation of new and evolving products, business models and participants without compromising investor protection;
 - (z) develop key risk measures and indicators through the use of qualitative or quantitative data that are relevant to systemic risk arising within the securities market;
 - (aa) regularly review whether its current regulatory requirements and framework adequately addresses risks posed to investor protection, and to fair efficient and transparent markets as well as to the reduction of systemic risks;
 - (bb) establish a nationwide scheme to compensate investors whose losses are

not covered under the investors protection funds administered by exchanges;

- (cc) protect the integrity of the securities market and commodity exchanges trading against all forms of abuses by taking legal or administrative measures to prevent fraudulent and unfair trade practices including insider dealing;
- (dd) promote and register self-regulatory organizations.”

OBJECTS AND REASONS

The objective of this Bill is to put in place a legal framework for the Licensing, operation and supervision of the commodity exchanges by the Capital Markets and Securities Authority (CMSA).

A commodity exchange is a platform for trading of commodities and commodities derivatives. It is usually an entity incorporated as a company which provides a formal open and organized market place where various buyers and sellers trade ownership titles (contracts) to standardized quantities of specific commodities. The trades are carried out in an orderly organized manner based on clearly specified and transparent rules by members of the exchange known as brokers or dealers on behalf of the various buyers and sellers.

In view of the above objective, the Bill is divided in divided into Twelve Parts.

Part I deals with preliminary matters which include citation of the Act, Interpretation of the terms used in the Act and Application of the Bill.

Part II provides for the responsibilities of the CMSA and objectives of regulating commodity exchanges.

Part III deals with licensing requirements of Commodity Exchanges. The Part prohibits operating a commodity exchange without a licence from the CMSA. It further sets out licensing requirements of Commodities Exchange.

Part IV deals with the responsibility of a licensed commodity exchanges, including duty to act fairly, prudently and observing confidentiality.

Part V makes provisions that are intended to assist the CMSA to ensure that it discharges its supervisory responsibilities effectively. In that regard, the CMSA is empowered to issue directions of general and specific nature to Commodity Exchanges. Commodity Exchanges are further required under this Part to comply with the CMSA's directions. The CMSA is also empowered under this Part to take measures for non compliance with its directions which includes removal of officers or censure.

Part VI provides for powers of the CMSA to review disciplinary measures taken by commodity exchanges, appeals on disciplinary measures, actions by commodity exchanges and emergency powers of the CMSA.

Part VII deals with aspects of revocation of licences issued to commodity exchanges. Part VIII deals with approval by the Authority of commodity exchanges contracts, fixing commodity trading positions and trading limits.

Part IX deals with procedures for licensing of commodity exchanges market intermediaries.

Part X makes provisions on standards of conduct for commodity market intermediaries which requires certain disclosures such as agreements and contract to be made to be kept by the said intermediaries.

Part XI makes provision for accounts and audit for both the commodity exchanges and their market intermediaries.

Part XII applies certain provisions of the Capital Markets and Securities Act.

Part XIII sets out market abuse incidence in relation to commodity exchanges trading.

Part XIV confers powers to CMSA to call for information and Part XV deals with disciplinary measures for market intermediaries.

Part XVI deals with offences and Penalties.

Part XVII deals with miscellaneous provisions which include powers to make regulations, assistance to regulators outside Tanzania, immunity of officers and staff acting in good faith when discharging their responsibilities and appeals from decisions of the Authority.

Part XVIII deals with consequential amendments to the Capital Markets and Securities Act and the Companies Act.

MADHUMUNI NA SABABU

Madhumuni ya Muswada huu ni kutunga Sheria itakayoiwezesha Mamlaka ya Masoko ya Mitaji na Dhamana kusimamia Masoko ya Bidhaa (Commodity Exchange).

Masoko ya bidhaa huundwa kama kampuni zinazoratibu ununuzi wa bidhaa kwa kupitia mikataba inayohamisha milki kutoka kwa muuzaji kwenda kwa mnunuzi.

Kwa kuzingatia lengo kuu hapo juu, Muswada huu umegawanyika katika Sehemu Kumi na Nane.

Sehemu ya Kwanza inahusu masuala ya utangulizi ambayo yanajumuisha jina la sheria, tafsiri ya maneno na matumizi ya Sheria hii.

Sehemu ya Pili inahusu majukumu ya Mamlaka ya Masoko ya Mitaji na Madhumuni ya usimamizi wa Masoko ya Bidhaa.

Sehemu ya Tatu inaweka bayana masuala ya usajili wa masoko ya bidhaa na hivyo kuzuia uendeshwaji wa masoko ya bidhaa bila kuwa na leseni ya mamlaka, na kuweka masharti kwa Masoko ya Bidhaa ya kuwa na kanuni za uendeshaji wa masoko hayo pamoja na mambo mengine.

Sehemu ya Nne inaweka masharti ya majukumu ya Masoko ya Bidhaa kuendesha shughuli zao kwa uadilifu na kwa kuzingatia maslahi ya umma.

Sehemu ya Tano inaweka masharti kwa masoko ya bidhaa kuisaidia mamlaka na kwa ajili hiyo inaipa uwezo mamlaka kutoa maelekezo kwa Masoko ya Bidhaa. Kwa mujibu wa masharti haya mamlaka imepewa uwezo wa kuchukua hatua endapo maelekezo hayajatekelezwa.

Sehemu ya Sita inapewa uwezo Mamlaka kupitia upya hatua za kinidhamu zilizotolewa na soko la bidhaa na hivyo mamlaka inaweza kubadili uamuzi huo. Masuala ya hatua za dharura za mamlaka pia yanaainishwa kwenye Sehemu hii.

Sehemu ya Saba inahusu masharti ya kufuta leseni za masoko ya mitaji na Sehemu ya Nane inaainisha masharti ya usajili wa watendaji mbalimbali wa masoko ya mitaji ikiwa ni pamoja na madalali, wachuuzi na washauri.

Sehemu ya Tisa, inaweka taratibu za usajili wa watendaji wa masoko ya bidhaa na Sehemu ya Kumi inaweka masharti ya maadili ya kiutendaji kwa watendaji wa masoko ya bidhaa.

Sehemu ya Kumi na Moja, na Mbili inaweka mashartiya uwekaji wa kumbukumbu za hesabu kwa masoko ya bidhaa na kwa watendaji wake.

Sehemu ya Kumi na Mbili, inaweka masharti ya kutumia mafungu mbalimbali yaliyomo kwenye Sheria ya Masoko ya Mitaji na Dhamana, Sura ya 79 kwa madhumuni ya kusimamia vyema masoko ya bidhaa.

Sehemu ya Kumi na Tatu inaainisha mienendo mbalimbali ambayo hairuhusiwi kwenye biashara ya Masoko ya Bidhaa.

Sehemu ya Kumi na Nne inaiwezesha Mamlaka kuitisha taaarifa na kufanya ukaguzi au uchunguzi pale inapobidi.

Sehemu ya Kumi na Tano inaweka masharti ya kinidhamu kwa watendaji wa Masoko ya Bidhaa.

Sehemu ya Kumi na Sita inaainisha mashartianayohusu makosa ya jinai yanayoweza kutendwa chini ya Sheria inayopendekezwa.

Sehemu ya Kumi na Saba inahusu masharti mengineyo kama vile utungaji wa taratibu, ulinzi kwa watendaji wa Mamlaka wanapokuwa kazini na masuala ya rufaa kwa maamuzi ya mamlaka.

Sehemu ya Kumi na Nane inahusu marekebisho ya Sheria ya Masoko ya Mitaji na Dhamana na Sheria ya Makampuni ili kusaidia utekelezaji bora wa Sheria hii.

Dodoma,
15 May,2015

SAADA M. SALUMU
Waziri wa Fedha