



**INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
OF UGANDA**

**COMMENTS ON THE DRAFT CAPITAL MARKETS (ACCOUNTING & FINANCIAL
REQUIREMENTS) REGULATIONS 2021**

APRIL 2021

S/N	REGULATION	OBSERVATION	COMMENTS AND PROPOSALS
PART II—ACCOUNTING RECORDS			
1.	Regulation 2	There appears to be some errors and or omissions on Regulation 2.	<p><u>Our Proposals</u></p> <p>i. To amend the interpretation of the word “Act” by removing the comma after Cap 84 and adding the word “and” for the interpretation to read:</p> <p>“Act” means the Capital Markets Authority Act Cap 84, <i>and</i> any amendments thereto;</p> <p>ii. To include fund managers within the interpretation of an approved person.</p> <p>iii. Under the interpretation of “Net Capital”, the term “<i>licensed or approved person</i>” is used however, the Regulations do not provide a difference between the two terminologies. We propose that this is clarified.</p>

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2.	Regulation 3 (1) and (2)	<p><u>Maintenance of records</u></p> <p>Regulation 3 (1) requires an approved person to maintain proper accounting records for the approved person’s transactions, assets and liabilities at all times. The structure of such accounting records is stipulated in Regulation 3 (2).</p> <p>The Accountants Act, 2013 mandates the Institute of Certified Public Accountants of Uganda (ICPAU) to determine the applicable financial reporting and auditing standards for use in Uganda. In 1998, the Council of the ICPAU adopted International Financial Reporting Standards (IFRS Standards) - then known as International Accounting Standards (IAS Standards), as issued by the International Accounting Standards Board (Board). All amendments to old standards and all new standards and interpretations are automatically applicable as and when they are issued by the Board and adopted by ICPAU for application in Uganda.</p>	<p><u>Our Proposal</u></p> <p>We propose that regulation 3(2) (b) be amended by:</p> <ul style="list-style-type: none"> • Removing the words “internationally” and “Accounting”; and • Adding the words “Financial Reporting” and “adopted for use by the Institute of Certified Public Accountants of Uganda (ICPAU).” immediately after the word ‘standards’ <p>for the sub clause to read as follows:</p> <p><i>“3(2)(b) ... be prepared in accordance with the <u>internationally acceptable accounting-International Financial Reporting Standards adopted for use by the Institute of Certified Public Accountants of Uganda (ICPAU).</u>”</i></p> <p><u>Justification</u></p> <p>(i) In Uganda, the acceptable accounting Standards are those Standards adopted by the regulator of the accountancy profession, ICPAU, with or without any modifications. These Standards already provide the structure and minimum disclosure requirements. ICPAU, being a member of IFAC, and with its participation in international standard setting, understands what adoption and application of standards requires.</p> <p>(ii) To ensure coordination between the Capital Markets Authority (CMA) and ICPAU regarding overlapping roles for financial reporting.</p>

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3.	Regulation 3 (3)	<p>Regulation 3 (3) stipulates the minimum period that an approved person retains accounting records i.e. ten years and that the records shall be kept in Uganda and shall be produced within 48 hours when requested for by the Authority.</p> <p>In an era of growing use of cyber space and cloud storage, it should not matter where the records are stored but access to them should be key. A number of potential capital market entities are companies that may have international connections and as such share a storage platform. The concern here should thus be the need to easily access such a record.</p>	<p><u>Our Proposal</u> We propose that Regulation 3 (3) be amended by separating the last sentence to form a new sub clause 3(4) that reads as follows:</p> <p>“Regulation 3(4) The records shall be accessed at the registered office of the company situated in Uganda and produced within 48 hours when requested for by the Authority.”</p> <p><u>Justification</u> There is a trend towards cloud storage which is at times hosted out of the country. There are also instances when records storage and archiving may be outsourced to a third party.</p>
PART III - FINANCIAL REQUIREMENTS			
4.	Regulation 6	<p><u>Working Capital Requirement</u> We note Regulation 6 does not fully define the term “Working Capital”.</p>	<p><u>Our Proposal</u> We propose to add the words, “<i><u>in the last three consecutive months</u></i>” at the end of Regulation 6 for it to read as follows:</p> <p>“An approved person shall maintain working capital equivalent to three times its average monthly operating costs <i><u>in the last three consecutive months.</u></i>”</p>

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			<p><u>Justification</u> Working capital computation inputs need to be clarified.</p>
PART IV– FINANCIAL STATEMENTS			
5.	Regulation 9	It is unclear how the Authority exercises the right to approve appointment and disappointment of Auditors of approved persons.	<p><u>Our Proposal</u></p> <ul style="list-style-type: none"> We propose that the procedure for approval of auditors is made clear within the Regulations and that prequalification of external auditors should be in liaison with ICPAU. We propose that the Authority inserts a new sub-regulation 1 as follows and renumbers the rest: <p><i><u>“Regulation 9 (1) An approved person shall appoint an auditor from a list of external auditors pre-qualified by the Authority in consultation with the Institute of Certified Public Accountants of Uganda.”</u></i></p> <p><u>Justification</u> To foster transparency in the authority’s regulatory activities. The external auditor of an approved person should be picked from an approved list of auditors.</p>
6.	Regulation 9 (2)	<p><u>Auditors</u> Regulation 9 (2) reads as follows: “If the auditor an approved person, in the course of the performance of his duties under the Act and Regulations is satisfied that-</p>	<p><u>Our Proposal</u> We propose that Regulation 9 (2) be amended by adding and removing some words for the sub clause to read as follows:</p>

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		<p>a. There has been a serious breach of or noncompliance with the provisions of the Act or the Regulations, made thereunder, guidelines or other stipulations of the Authority; or</p> <p>b. An offence involving fraud or other dishonesty has been committed by the licensed person or any of its key officers or employees; or</p> <p>c. Serious irregularities have occurred which may jeopardize the security of investors or creditors of the licensed person; or</p> <p>d. The Auditor is unable to confirm that the claims of investors and creditors of the approved person are capable of being met out of the assets of the approved person, the Auditor shall immediately report the matter to the Authority.”</p> <p>We note that:</p> <ul style="list-style-type: none"> • The current structure and format of Regulation 9 (2) makes it unclear. • The term “serious” although used frequently in this regulation, is not defined. There may be differences in opinion as to what constitutes “serious” which may lead to incomparable interpretation of the Regulation. 	<p>“ The if the auditor of an approved person <u>shall immediately report to the Authority if</u>, in the course of the performance of his/her duties under the Act and Regulations, <u>is</u> satisfied that-</p> <p>a. There has been a serious-<u>material</u> breach of or noncompliance with the provisions of the Act or the Regulations, made thereunder, guidelines or other stipulations of the Authority; or</p> <p>b. An offence involving fraud or other dishonesty has been committed by the licensed person or any of its key officers or employees; or</p> <p>c. Serious-<u>Material</u> irregularities have occurred which may jeopardize the security of investors or creditors of the licensed person; or</p> <p>d. The Auditor is unable to confirm that the claims of investors and creditors of the approved person are capable of being met out of the assets of the approved person, the Auditor shall immediately report the matter to the Authority.”</p> <p><u>Justification</u></p> <p>For clarity of the Regulations on what the auditor should do.</p>
7.	Regulation 9 (3)	There is need to provide some clarity to this regulation and address the effect of non-compliance by the auditor.	<p><u>Our Proposal</u></p> <p>We propose that Regulation 9(3) be amended for the sub clause to read as follows:</p>

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			<p>“Where an auditor of an approved person fails to comply with the requirements of <i>this regulation</i> paragraph (2) above, the Authority shall disqualify them from appointment as an auditor of its approved persons.”</p> <p><u>Justification</u> For clarity of the Regulations.</p>
8.	Regulation 9 (4)	<p><u>Auditors</u></p> <ul style="list-style-type: none"> • We note that this sub-regulation appears to be incomplete. • We wish to draw the attention of the Authority to the existence of Non-Compliance with Laws and Regulations (NOCLAR) Standard, a new pronouncement that has been included in the Professional Code of Ethics for Accountants requiring Members of ICPAU to, in addition to adhering to the highest standard of conduct and ethical behavior, respond to non-compliance or suspected non-compliance with laws and regulations. The Code provides a response framework, setting out the responsibilities of a CPA and the steps that should be taken when a CPA becomes aware of non-compliance or suspected non-compliance. The Code sets out the expectation that “turning a blind eye” to 	<p><u>Our Proposal</u></p> <ul style="list-style-type: none"> • We propose that the first sentence is deleted for the sub-regulation to read as follows: <p>“A duty to which an auditor of an approved person may be subject to shall not be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by it or any information or opinion on a matter to which this regulation applies and which is relevant to any function of the Authority under this Act or Regulations made thereunder. Where the Auditor fails to report or provide information required of them in regard to an approved person, the Auditor”</p> <ul style="list-style-type: none"> • We propose that the Authority inserts a new sub-regulation 5 as follows and renumbers the rest: <i><u>“Regulation 9 (5): In applying this Regulation, the auditor shall adhere to the ethical requirements adopted by the Institute of Certified Public</u></i>

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		<p>non-compliance or suspected non-compliance is not an acceptable response from a CPA.</p>	<p><u>Accountants of Uganda in regard to non-compliance with laws and regulations.”</u></p> <p><u>Justification</u></p> <ul style="list-style-type: none"> • To provide clarity. • Professional accountants are already bound by the duty to respond to non-compliance or suspected non-compliance with laws and regulations. • To reinforce the connectedness of shared regulation.
9.	Regulation 10 (1)	<p><u>Duty to prepare audit reports</u></p> <ul style="list-style-type: none"> • Regulation 10 (1) requires an audit of accounts and records and this should be under a guided framework. 	<p><u>Our Proposal</u></p> <ul style="list-style-type: none"> • We propose to rephrase sub-regulation 10 (1) as follows:: <p><u>“ Regulation 10 (1): The accounts and records of an approved person shall <i>for</i> each financial year <i>shall</i> be audited and reported upon by an auditor, appointed by the approved person with the approval of the Authority, in accordance with International Standards on Auditing adopted by the Institute of Certified Public Accountants of Uganda.”</u></p> <p><u>Justification</u></p> <p>It is already clear how the auditor is appointed.</p> <ul style="list-style-type: none"> • To provide clarity and make reference to the International Standards on Auditing adopted by the Institute of Certified Public Accountants of Uganda.

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			<ul style="list-style-type: none"> To strengthen cooperation and interconnectedness of Regulation.
10.	Regulation 10 (4)	<p><u>Duty to prepare audit reports</u></p> <ul style="list-style-type: none"> Regulation 10 (4) holds the Auditors liable for any false information or any misrepresentations in the audit reports or financial statements. 	<p><u>Our Proposal</u></p> <ul style="list-style-type: none"> We propose that the Authority amends sub-regulation 4 for it to read as follows: <p>“Regulation 10 (4): Where the audit reports or financial statements have false information or any or material misrepresentations, the Auditors shall be held liable for such false information or <i>material</i> misrepresentation in accordance with the Act.”</p> <ul style="list-style-type: none"> We also propose that the Authority adds a new sub-regulation 5 to read as follows: <p><i>“Regulation 10 (5): It shall be a defense for the auditor charged under sub-regulation 4 to prove that such false information or material misrepresentation was the result of deception by the approved person without any negligence on the part of the auditor.”</i></p> <p><u>Justification</u></p> <ul style="list-style-type: none"> There are instances where the Auditor may be misled by his client to believe that false information is indeed true. At all times, the financial statements remain the responsibility of the approved persons.

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			<ul style="list-style-type: none"> We propose that this section be amended to allow for relief of an Auditor who has proof of being misled by his client.
11.	Schedule 1	<p><u>Net Capital Requirements (amounts in Ugx)</u> We note that the Schedule has similar Net Capital requirements for the Broker, Dealer and Broker/Dealer.</p>	<p><u>Our proposals</u> ICPAU proposes that this segmentation be clarified particularly the segmentation of Broker, or dealer vs. Broker/Dealer.</p>