

GUARANTEE FUND OPERATING PROCEDURES, 2020

(Pursuant to Section 65 of the Securities Central Depositories Act, 2009 & Reg. 16(5) of the Securities Central Depositories Regulations SI. No 38 of 2009)

Arrangement of Procedures

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GUARANTEE FUND OPERATING PROCEDURES

PART I- APPLICATION SCOPE AND DEFINITIONS

1. Application

- 1.1. These procedures form part of the Rules of the Securities Central Depository of the Uganda Securities Exchange and apply to SCD Agents duly licensed by the CMA and approved by the Exchange.

- 1.2. This document describes the procedure to be applied by the SCD of the Exchange in the establishment, maintenance and management of a Guarantee Fund in accordance with the Section of 65 of the Securities Central Depository Act, 2009.

2. Purpose

The purpose of these procedures is to provide for the establishment ,maintenance and management of the guarantee fund to indemnify against any default in respect of payments for and/or delivery of securities by any participant and of any obligations of participants towards the securities central depository.

3. Interpretation

- 3.1. The terms, words and phrases defined in and the provisions of the Securities Central Depository Act, 2009 (including the Regulations and Rules made thereunder); and the Capital Markets Authority Act, Cap 84 as amended (including the Rules and Regulations made there under),.

- 3.2. Unless inconsistent with the context, the singular includes the plural.

- 3.3. Headings are purely for reference purposes and shall not be taken into account in the interpretation of the procedures

4. Definitions

In these procedures, unless the context otherwise requires;

“Act”	Refers to the Securities Central Depository Act, 2009
“Authority”	Means the Capital Markets Authority of Uganda
“Exchange/ USE”	Means the Uganda Securities Exchange
“Funds Settlement Failure”	Refers to the failure by an SCDA to effect payment within timelines prescribed under the SCD operating procedures.
“Guarantee Fund Contribution”	Refers to the contribution described under Procedure 5.1 (a)
“Participant”	Means Trading Participant as defined in the SCD Act
“SCD”	Means the Securities Central Depository
“SCDA”	Means a person appointed under Section 11 of the SCD Act to be an agent of the SCD
“Securities Central Depository”	Means the Securities Central Depository licensed by the Authority under the Securities Central Depositories Act, 2009
“Securities Settlement Failure”	Refers to the failure by a SCDA to deliver the securities

PART II- COMPOSITION OF THE GUARANTEE FUND

5. The Guarantee Fund.

- 5.1. The following monies, payments and/or contributions shall comprise Guarantee Fund;
 - a. A contribution of such amounts as the SCD may from time to time determine in consultation with the Authority and the Exchange "Guarantee Fund Contribution";
 - b. Penalties and fines imposed by the securities central depository; (c) money accrued from interest and profits from investing moneys of the Fund;
 - c. A levy for every transaction through the Securities Exchange or Depository as approved by the Authority;
 - d. Any other funds as the Board of Directors of the Securities Central Depository, with the approval of the Authority may determine.
 - e. Interest received from the Guarantee Fund Investments

PART III- MANAGEMENT OF THE FUND

6. Fund to be managed as a separate fund

- 6.1. Guarantee Fund will be held in a Bank Account in the names of the Uganda Securities Exchange with a Bank that the SCD may appoint for custody purposes
- 6.2. The Fund shall be managed as a separate fund from the SCD and Exchange's operational or other funds
- 6.3. The monies held in the Fund shall be invested by the SCD on such terms that it remains accessible at the short notice.
- 6.4. The SCD shall keep a proper record of the guarantee fund and will prepare financial statements in accordance with IFRS on an annual basis.
- 6.5. The fund shall pay to the SCD an annual management fee of 0.5% of the interest Income which shall be net of all other expenses incurred by the Fund as approved by the board, at the end of each financial year for all the services rendered.

7. Auditing of the Guarantee Fund

The Accounts and records of the Guarantee Fund shall be audited by an Auditor appointed by the SCD and approved by the Board.

8. Investment of the fund

- 8.1. Monies comprised in the fund may time to time, be invested into any financial instruments that Management of SCD may deem fit and proper and in line with an Investment Policy approved by the Board in relation to investment of monies comprised in the Fund
- 8.2. Management shall report on a quarterly basis to the Board on the performance of such investment.

PART IV- SETTLEMENT RISKS AND SETTLEMENT FAILURE

9. Categories of settlement risk

9.1. *Securities Settlement Failure*

Where a securities settlement failure has occurred, the financial risk shall be equal to the difference between the price of the original trade and the price at which the replacement securities are bought. This risk shall be borne directly by the responsible selling SCDA.

9.2. *Funds Settlement Failure*

Where a funds settlement failure has occurred, the Exchange shall utilize the guarantee fund settlement to settle the account of the client with sum equivalent to the net settlement obligation of the SCDA.

10. Responsibilities of SCDAs in preventing securities and fund settlement failures.

- 10.1. An SCDA shall confirm that the balance on the client's depository account/ trust is sufficient to effect settlement of any trade.
- 10.2. A trade will remain unallocated in the SCD if the trade that has been allocated to a client account receives a negative affirmation.
- 10.3. Where a client account receives a negative affirmation, the trade will remain unallocated in the SCD and the SCD shall rectify the anomaly in Procedure 10.2 and allocate the trade in accordance with the trading cycle.

PART V- MEASURES TO BE APPLIED BY USE IN CASE OF A SETTLEMENT FAILURE

11. Dealing with Securities Settlement failure

- 11.1. Where an SCDA has not allocated a trade in accordance with the prevailing trading cycle, the trade shall be temporarily suspended and the procedures related to Securities Delivery Failure under Procedure 7.5 of the SCD Operating Procedures shall apply
- 11.2. The defaulting stockbroker shall be required to make a cash deposit of 10% of the value of the trade to the Fund and pay a daily fine of 0.14% of the value of the securities (marked to market daily) until the buy-in is completed or the situation remedied within the period provided for under the settlement failure provision stipulated in the SCD Operating Procedures
- 11.3. Upon full settlement, the cash deposit made under 11.2 above will be refunded excluding any fines or charges due to the fund

12. Dealing with a Funds settlement failure

- 12.1. Where an SCDA fails to satisfy its funds settlement obligations for reasons that either they or their client cannot pay for the securities they bought, the defaulting SCDA shall be suspended and their access to the Exchange's trading facilities blocked.
- 12.2. The SCD shall settle using the guarantee fund and the defaulting SCDA refund the amounts utilized from the guarantee fund within 14 days.
- 12.3. The amounts utilized to settle in 12.2 above shall be limited to up to 100% of the defaulting SCDA's initial cash guarantee and where the said amount is not sufficient to cover the settlement obligation, up to 30% of the amounts from interest, levies and penalties on a pro-rated basis.
- 12.4. Where the SCDA fails to refund the amounts from the guarantee Fund as indicated in 12.2 the suspension and denial of access to the Exchange's trading facilities of the defaulting SCDA shall be maintained until such amounts due to the fund have been refunded in full
- 12.5. The SCD will immediately notify the Authority and publish a notice of suspension in at least one widely circulated daily English Newspaper at the cost of the defaulting SCDA.

13. Invoking the Guarantee Fund

- 13.1. Where any SCDA fails to discharge any financial obligation under a valid Agency agreement, or if the Exchange suffers any loss or expense arising out of the trading activities or such activities as may be incidental to the trading activities of an SCDA, then the SCD shall apply the SCDA's contribution plus up to 30% of the amounts from interest, levies and penalties on a prorated basis to discharge such obligation, expense or loss.
- 13.2. If the amount of the un-discharged obligation, expense or loss exceeds that amount of the SCDA's contribution to the Fund in addition to the portion of accrued interest ,levies and penalties stated in 13.1 above and or the SCDA fails to pay the SCD any outstanding or due amounts on demand , such outstanding amounts shall be directly recovered from the SCDA which will remains liable to the SCD for the full amount until payment thereof.
- 13.3. The amount of any outstanding obligation, expense due or loss shall be determined by the SCD and the Exchange without reference to the possibility of any subsequent recovery in respect thereof, but the net amount of any such recovery shall be applied in accordance with these Procedures.
- 13.5. Management of the SCD will notify the Board and the Authority after the procedures under this Part have been followed.

14. Procedure for dealing with the SCDA following a Funds Settlement Failure

- 14.1. The defaulting SCDA will be suspended until the amounts due from such SCDA are recovered in full.
- 14.2. The SCD will invoke the Guarantee Fund to effect the failed funds settlement and the trade will proceed.
- 14.3. All penalties, levies and charges related to an SCDA funds settlement failure shall be paid by the defaulting SCDA on the date the failure occurs.
- 14.4. Where the suspended SCDA fails to refund the amounts due to the Guarantee Fund within 14 days from the date the failure occurs, the Exchange shall terminate the SCDA's access to the Exchanges trading facilities and the SCD may terminate its agreement with the SCDA; any subsequent reinstatement shall be at the cost of the SCDA

15. Termination following a funds settlement failure

- 15.1. Where Termination has taken place in accordance with Procedure 14 above the SCD may commence recovery proceedings to recover amounts due from the defaulting SCDA
- 15.2. Proceeds from the recovery proceedings under 15.1 shall go to replenishing the Fund to the extent of the and costs incurred in the recovery proceeding

PART VII - EXIT OF AN SCDA FROM THE FUND

16. Procedure for voluntary exit by an SCDA

- 16.1. It shall be mandatory for all SCDA's carrying out trading activities and/or with access to the Exchange's trading facilities to maintain the required contribution in the Fund
- 16.2. An SCDA which has ceased to carry out trading activities or to access the trading facilities of the Exchange may apply to the SCD and the Exchange for approval to withdraw its contribution to the Fund
- 16.3. Such Application shall be accompanied by a certificate of cessation of business issued by the Authority together with a board and shareholder resolution approving their decision to voluntarily exit/withdraw their contribution from the Fund.
- 16.4. Where approval has been granted by the SCD and the Exchange, the SCDA's contribution to the guarantee Fund shall be refunded exclusive of any profits accrued from investment pro rata to its contribution and less any loss or expense attributable to the SCDA and any fines or penalties levied against the SCDA.
- 16.5. The Guarantee Fund rules will be taken into account in any case of termination of the SCDA agreement between an SCDA and the SCD.
- 16.6. The Exchange and the SCD shall have the mandate to set-off all charges, fees, penalties due to them or to the Fund from the amounts refundable to the exiting SCDA from the Fund.