



GAZETTE NOTICE NO.....

THE CAPITAL MARKETS ACT, 1989
(Cap 485A)

IN EXERCISE of the powers conferred by sections 11(3) (v) and 12A of the Capital Markets Act, the Capital Markets Authority issues the Stewardship Code for Institutional Investors, 2017 set out in the Schedule hereto, for application by institutional investors investing in the capital markets.

SCHEDULE

STEWARDSHIP CODE FOR INSTITUTIONAL INVESTORS, 2017

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Definitions

“Authority” means the Capital Markets Authority established under section 5 of the Capital Markets Act;

“institutional investors” are asset owners and asset managers with equity and debt holdings in public listed companies;

“stewardship” means the responsible management and oversight of assets for the benefit of the institutional investors’ ultimate beneficiaries or clients;

“Code” means the Stewardship Code for Institutional Investors, 2017;

“Corporate Governance Code” means the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015;

“asset owners” means the collective investment vehicles which collect funds on behalf of their beneficiaries or clients and manage them internally or externally and include pension funds, private pension scheme providers, insurance companies, takaful operators and investment trusts;

“asset managers” means the agents of asset owners who provide fund management and other investment services on a commercial basis to asset owners pursuant to an investment management agreement or the governing documents of individual investment funds and often act as stewards and nominees of asset owners;

“service providers” include—

- (a) custodians as agents responsible for maintenance and safekeeping of records of the asset owners and asset manager’s assets, including sub-custodians; and
- (b) proxy advisors, investment consultants and trustees as agents who undertake functions mandated by asset owners and asset managers to support their activities.

“apply or explain” means that the principles and best practices in the Code shall be applied by institutional investors and an explanation must be given for any departure or non-adherence.

Application

- (1) The Code applies to asset owners and asset managers investing in the debt and equity of companies listed on a licensed securities exchange. The primary focus is on domestic investors domiciled in Kenya. Overseas institutional investors in Kenyan equities are encouraged to become signatories to the Code. The Code seeks to reinforce

the implementation of the Corporate Governance Code to ensure that listed companies adhere to the corporate governance requirements.

- (2) In cases of controlling foreign ownership by multinationals, the controlling owner may also be an important party to stewardship discussions, balancing the interests of the global multinational with the interests of minority shareholders through a licensed exchange in Kenya, and thereby providing a potentially robust engagement theme.
- (3) In the investment context, stewardship calls for diligence on the part of institutional investors, both asset owners and asset managers, to exercise ownership rights actively and responsibly as part of their fiduciary responsibility to their clients. The role of a stewardship code is to codify the key institutional investor responsibilities that come with ownership rights and to provide guidance on how institutional investors act as responsible stewards in their oversight of issuers. The Code also articulates the commitment that institutional investors make to their clients to address these responsibilities.
- (4) While listed companies as issuers are not themselves signatories to the Code, they also have a role to play to make the Code effective, through co-operating in good faith with institutional investors, particularly in the engagement process, and more generally in respecting shareholder rights.
- (5) For an “apply or explain” system to be effective, an issuer’s explanation of non-application of the Corporate Governance Code needs to be monitored to ensure its explanations are well-reasoned, convincing and provide for acceptable governance arrangements in the event of non-application.
- (6) In the event that an issuer’s explanations are inadequate, it is the role of institutional investors to monitor issuer non-application and to use ownership rights to challenge issuers when necessary. Without the active monitoring of explanations by institutional investors, an “apply or explain” system would lack an ultimate means of enforcement or influence. The Code therefore plays a critical role in providing a market-based system for institutional investors to hold issuers to account for their corporate governance practices. The application of the Code requires willingness and good faith on the part of institutional investors.
- (7) The signatories to the Code agree to either apply the principles of the Code in their investment practices or explain why specific aspects of the provisions may not have been adhered to. This statement is to be displayed publicly on the institutional investor’s own website and on the Authority’s website.

Stewardship Code

The purpose of the Code is to encourage the institutional investment community to take action to serve as responsible stewards for their beneficiaries and to help to promote good corporate governance and the sustainable success of listed companies in the capital markets. The Code seeks to enhance the market’s further growth and development.

The Stewardship Code is based on seven core principles—

- (a) stewardship or responsible investment policies;
- (b) monitoring companies held in investment portfolios;
- (c) active and informed voting practices;
- (d) engagement, escalation and collaboration with other institutional investors;
- (e) conflicts of interest;
- (f) focus on sustainability issues, including environmental, social and ethical factors;
and
- (g) public disclosures and client reporting.

Principle 1: Stewardship or Responsible Investment Policies

Institutional investors shall develop and disclose publicly a policy on how they approach stewardship and responsible investment.

Guidance—

- 1.1 Policies on stewardship are a critical foundation to the development and execution of stewardship practices. Such policies shall address the seven principles of the Code.
- 1.2 Stewardship policies should include supporting explanations of how the policies are applied in the investment process. This shall include the approach to stewardship in the following areas—
 - (a) investment analysis including the integration of environmental, social and governance factors;
 - (b) voting at shareholder meetings;
 - (c) engagement with issuers;
 - (d) managing conflicts of interest; and
 - (e) client or beneficiary reporting.
- 1.3 Stewardship policies need not be lengthy documents but shall be clear and specific with regard to scope, and shall carry an explicit endorsement of the institutional investor and executive management.
- 1.4 Institutional investors may choose to establish one overarching policy document that takes into consideration the individual principles of the Code.
- 1.5 Not all individual components of a stewardship policy need be in the public domain. For example, an institutional investor may wish to develop its own proprietary approach to voting guidelines, or conflict of interest protocols may exist in other internal compliance documents. In such cases the institutional investor shall confirm that such protocols exist even if not all the details or underlying documents are in the public domain.

Principle 2: Monitoring Companies Held in Investment Portfolios

Institutional investors shall actively monitor issuers in terms of strategy, risk, performance, governance and other factors that influence sustainable long-term success.

Guidance—

- 2.1 Monitoring involves keeping track of issuer performance, including internal and external developments.
- 2.2 Institutional investors shall hold regular meetings with issuer's management and directors to discuss financial, strategic and governance matters; this can also be linked to engagement activity.
- 2.3 Institutional investors shall seek to develop an understanding of executive management leadership and the quality of board oversight.
- 2.4 In addition to traditional forms of financial monitoring, a key dimension of monitoring issuers under the Code is to develop an understanding of an issuer's governance practices and the extent to which they support minority investor interests. In particular, this calls for institutional investors to monitor issuer non-compliance with governance codes and to assess the quality of explanations of non-compliance. Monitoring of this nature is essential if the "apply or explain" Code of Corporate Governance is to have impact.
- 2.5 Institutional investors shall seek to develop analytical tools to assess financial and operational risks, including environmental, social and governance risks, and to integrate these factors within traditional investment research and analysis.

Principle 3: Active and Informed Voting Guidelines and Practices

Institutional investors shall develop responsible voting guidelines to allow institutional investors to vote their equity positions diligently and in a way that supports good corporate governance practices.

Guidance—

Voting shall cover all shares held, and this shall be reflected in the overarching stewardship policy.

- 3.1 Institutional investors shall develop guidelines on voting in conjunction with the broader policy on stewardship. Such guidelines shall reflect on the broad principles of corporate governance, as presented in the Corporate Governance Code, and have relevance for the nature of the specific resolutions presented for voting at shareholder meetings.
- 3.2 Voting guidelines shall provide guidance to institutional investors in identifying the types of governance practices that may justify voting for or against a

management resolution. Specific guidelines might reflect how negative voting activity could be triggered in shareholder meeting resolutions relating to director elections, approval of financial statements, appointing the auditor, approval of director remuneration, issuance of capital or other corporate actions.

- 3.3 Voting guidelines may exist separately from the broader stewardship policy and may be more granular and proprietary to the individual institutional investor.
- 3.4 Institutional investors should be prepared to vote against management resolutions or abstain when such resolutions conflict with institutional investor's voting guidelines or good corporate governance practices.
- 3.5 Institutional investors shall endeavour to communicate with the issuer the reasoning behind any resolutions that they do not support. Ideally this communication would take place before the shareholder meeting, but if that is not possible it may take place following the shareholder meeting.
- 3.6 Disclosure of the institutional investor's voting record shall be a standard feature of reporting to clients. Public disclosure of voting outcomes by institutional investors is encouraged.
- 3.7 To the extent the institutional investor engages in securities lending, shares shall not be lent or borrowed for purposes of voting.

Principle 4: Engagement, Escalation and Collaboration with other Institutional Investors

Institutional investors shall engage with issuers to build dialogue and understanding, and to express concerns or exert influence in areas that give rise to a concern; this may include collaboration with other institutional investors, as well as escalation of engagement if concerns regarding an issuer persist.

Guidance—

- 4.1 Engagement should be viewed as a constructive dialogue between institutional investors and issuers. In the context of the Code, the purpose of engagement is to promote sustainable company success over the long term.
- 4.2 Engagement may take many forms, including face to face meetings, letters, emails, telephone conversations, and to various levels of the issuer, including both its executive management and the board.
- 4.3 The potential scope of engagement dialogue is broad, and may extend to any area which has relevance for the issuer's ability to provide sustainable long-term returns to institutional investors. This may include topics such as strategy, risk,

shareholders rights, board effectiveness, remuneration, ethics, and corporate responsibility.

- 4.4 A key area of engagement should relate to corporate governance, particularly in cases of non-compliance with the Corporate Governance Code.
- 4.5 Institutional investors shall address how issuers are prioritised for engagement in terms of risk, holding size or other factors.
- 4.6 A clear approach to escalation shall exist to provide guidance on how an institutional investor shall handle difficult situations that require resolution. This may include meeting with board members, making public statements, filing resolutions, requisitioning for general meetings where necessary or making portfolio decisions about individual holdings.
- 4.7 Institutional investors should be prepared to collaborate when an engagement message is most effectively or efficiently achieved in the context of a larger group of institutional investors.
- 4.8 Institutional investors may wish to develop or make use of institutional investor associations to facilitate collective engagement. Institutional investor associations may be formal or informal arrangements for institutional investors to come together to cooperate collectively on promoting good corporate governance in issuers and responsible investment practices by institutional investors.
- 4.9 Particularly in collective meetings with management outside of the annual general meeting, institutional investors should not seek information that puts them at an unfair advantage over other investors. Engagement with the company should be supportive of long-term company success in a way that benefits all investors, including retail investors.

Principle 5: Conflicts of Interest

Institutional investors shall seek to avoid or minimise conflicts of interest and have an effective process in place for identifying and managing conflicts that might interfere with their obligations to act in the interests of clients or beneficiaries.

Guidance—

- 5.1 A defined approach to addressing conflicts of interest shall reflect an explicit recognition of the need for institutional investors to act in the interests of clients including asset owners and end beneficiaries including pensioners, holders of insurance products and individual savers. This may be included within the broader stewardship policy, or could also exist as a document on its own.
- 5.2 While some conflicts of interest may occur, they should be avoided or minimised.

- 5.3 Real or potential conflict of interest shall be managed, using tactics including chinese walls and segregation of duties.
- 5.4 The approach for managing conflict of interest shall be publicly disclosed.
- 5.5 Particular care shall be taken in voting and engagement activity where the institutional investor is an interested party. Examples include investment holdings in related companies held in client portfolios (such as corporate pension fund clients).
- 5.6 Institutional investors are encouraged to disclose how conflicts of interest are identified and overseen. In the event that a formal policy is not disclosed they should be prepared to discuss with clients and regulators how conflicts are identified and mitigated.

Principle 6: Focus on Sustainability Issues, Including Environmental, Social and Ethical Factors

Institutional investors shall act responsibly in promoting sustainable markets and societies, and shall put into consideration environmental, social, and ethical issues in their investment process.

Guidance—

- 6.1 The Corporate Governance Code has a specific section on Ethics and Social Responsibility which relates to the role of listed companies in contributing to responsible social outcomes as a dimension of good corporate governance. Accordingly, the Stewardship Code reflects the importance of institutional investors focusing on these sustainability factors as part of their monitoring of issuer compliance to the Corporate Governance Code.
- 6.2 Both institutional investors and issuers need to build awareness and sensitivity with regard to the impact of companies on key long-term stakeholders and society at large. Institutional investors shall call for ethical and responsible conduct by listed issuers as a component of their engagement activity.
- 6.3 In the investment context, the main focus of institutional investors is on those aspects of social, environmental and ethical practice by issuers that may pose a material commercial risk or opportunity. Attention to these sustainability issues in the investment process shall be regarded as part of an institutional investor's fiduciary responsibility to the ultimate beneficiaries.
- 6.4 Institutional investors are called upon to act responsibly, both as a matter of ethics and as a way to promote greater systemic health and stability.
- 6.5 As a matter of responsible investment practice and for full consideration of "non-financial" risks facing issuers, institutional investors shall factor an issuer's

social, environmental and ethical performance into monitoring, voting and engagement activities. Relevance of an environmental, social and governance factor may depend on each investor's investment policy and may differ according to specific investee companies.

- 6.6 Integrated reporting shall allow for material environmental, social and ethical factors to be linked to an issuer's performance drivers. Institutional investors may wish to advocate issuer adoption of integrated reporting as a dimension of their engagement outreach.
- 6.7 To the extent that issuer disclosures on its sustainability performance are limited, or do not allow for a full understanding of related risks and opportunities, institutional investor engagement shall include calls for more robust issuer disclosure of material social, environmental and ethical factors. This disclosure shall include a description of how the company addresses risks arising from social and environmental issues.

Principle 7: Public Disclosures and Client Reporting

Institutional investors shall publicly disclose their policies and activities relating to stewardship.

Guidance—

- 7.1 Institutional investors shall confirm annually their compliance to each of the seven principles of the Code to the Capital Markets Authority. This statement of compliance shall be made public on both the institutional investor's website and the Capital Markets Authority's website.
- 7.2 Institutional investors shall systematically record their engagement with issuers, investment analysis and voting activity.
- 7.3 Institutional investors shall disclose key aspects of this stewardship activity in regular client reporting.
- 7.4 Key features of engagement activity and performance should be disclosed publicly, at least on an annual basis.
- 7.5 Public disclosure on voting is regarded as best practice.
- 7.6 External assurance of stewardship activities by an independent auditor is encouraged as best practice.

Implementation and Monitoring of the Code

The Authority shall monitor the Code take-up by the institutional investment community, and shall develop views on the quality of Code's implementation and effectiveness. However it is also critical that the monitoring of an individual asset manager's compliance to the Code should be undertaken by its asset owner to ensure that the asset manager's activities support the Code in a manner consistent with the asset owner's expectations.

Monitoring of the asset owner's Code compliance should be undertaken by the asset owner's trustees to ensure that the asset owner is taking the necessary steps to conform to the Stewardship Code on behalf of the asset owner's end beneficiaries.

Responsibilities of Asset Owners

Asset owners shall—

- (a) champion the Code;
- (b) together with their representative bodies, publicly support the Code by becoming signatories;
- (c) develop policies on stewardship outlined in the Code;
- (d) establish compliance with the Code as a component of asset management mandates, and call on asset managers to become signatories to the Code;
- (e) call for asset managers to consider sustainability, environmental, social and ethical issues, both as an aspect of risk assessment and responsible investment;
- (f) show diligence in overseeing that asset managers or other service providers take on these tasks, and call for disclosures and reporting from asset managers along stewardship performance, not just financial performance reports; and
- (g) encourage and facilitate training in stewardship and fiduciary duties, including for trustees and investment advisors.

Responsibilities of Asset Managers

Asset managers shall—

- (a) be willing to become Code signatories and take on these responsibilities in support of the Code's seven Principles;
- (b) post their statements of Code compliance on their own websites, in addition to sending these to the Authority;
- (c) meet with issuers and provide constructive engagement in support of the Code and to promote long-term company success;

- (d) be open to forming institutional investor associations or use existing associations to promote collective engagement;
- (e) develop and implement policies on stewardship outlined in the Code;
- (f) vote actively on behalf of the asset owner, based on governance policies, without relying solely on recommendations from service providers, including proxy advisors;
- (g) coordinate with custodians to encourage and facilitate efficient and cost effective proxy voting practices, allowing for timely reporting of voting activity to clients and for tabulation of poll outcomes by companies and their registrars;
- (h) be willing to oppose management resolutions where necessary; and
- (i) show transparency on stewardship activities, including policies on securities lending.

Responsibilities of Listed Companies (Issuers)

Listed companies shall—

- (a) engage with institutional investors, including in collective meetings with a number of institutional investors;
- (b) provide the opportunity for institutional investors to engage with both company executive management and with board members when relevant to governance concerns;
- (c) establish an investor relations function. If a formal investor relations function does not exist, issuers should identify a point of contact to support institutional investors in terms of providing access to management and a source for information requests;
- (d) be willing to engage with institutional investors that might oppose or challenge company actions or resolutions at shareholder meetings, and not withhold access to institutional investors acting in good faith to uphold their responsibilities under the Code;
- (e) provide sufficient disclosure about governance and sustainability performance to provide “hooks” for institutional investor dialogue;
- (f) introduce voting by poll, rather than show of hands, during shareholder meetings to ensure that all investor votes are taken into consideration and to better understand areas where institutional investors may have concerns;
- (g) co-ordinate with registrars to facilitate an efficient flow of information and voting instructions through the custody chain—in co-operation with custodians and institutional investors;

- (h) encourage corporate pension funds to consider stewardship responsibilities as asset owners;
- (i) identify potential training needs and facilitate relevant training for management and board members relating to engagement and institutional investor stewardship initiatives.

Responsibilities of Capital Markets Authority

The Authority shall—

- (a) serve as champion and promoter of the Code in the capital markets;
- (b) encourage institutional investors to become the Code signatories, and also encourage issuers listed on the Nairobi Securities Exchange or any other licensed exchange to engage with institutional investors as part of the stewardship process;
- (c) seek to build support for the Code among relevant institutional investor representative bodies, market participants and public sector bodies;
- (d) establish a section on its website where it hosts the statements of the Code application by institutional investors for public display;
- (e) monitor the adoption of the Code by institutional investors who are signatories. The Authority can choose as to whether it prefers to use its own resources or engage third-party assistance to monitor the Code's take-up and effectiveness. As part of this process the Authority may undertake or commission an annual survey of market participants including asset owners, asset managers and issuers to gauge the effectiveness of the Code;
- (f) report on its monitoring of the Code and its assessment of the Code's effectiveness, as well as the effectiveness of the "apply or explain" framework;
- (g) periodically review the language of the Stewardship Code, particularly as the Corporate Governance Code undergoes changes, to ensure the Code remains relevant and up-to-date;
- (h) periodically convene meetings and workshops involving the Code signatories to discuss the Code's effectiveness and best practices in implementing the Principles of the Code.

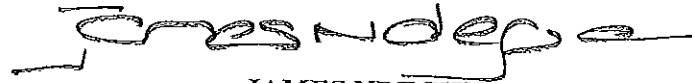
Responsibilities of service providers

There is a broad range of service providers that play a role in supporting stewardship activities by institutional investors and corporate issuers acting as agents or intermediaries in the "asset chain" between companies as users of capital and asset owners as providers of

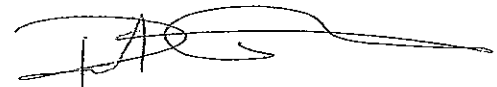
capital on behalf of its end beneficiaries. Such providers include company registrars, custody banks, data platforms, research providers including proxy research and investment advisors to pension funds and other asset owners.

It is beyond the scope of this Code to outline guidance of best practice for these, or any other, individual service provider groups. However, where relevant, the Code does encourage service providers to promote the Code's ambition to achieve efficient, high quality and cost effective stewardship practices in Kenya's capital markets and to ensure that service providers are acting with full awareness of their own fiduciary duty of care to their clients and ultimately to the beneficiaries on both ends of the asset chain.

Dated the 9th May,, 2017.



JAMES NDEGWA,
Chairman,
Capital Markets Authority.



PAUL MUTHAURA,
Chief Executive,
Capital Markets Authority.

