

By Electronic Mail

July 31, 2020

The Ag. Chief Executive
Capital Market Authority (Kenya)
3rd Floor, Embankment Plaza
Longonot Road, Upperhill

Re: Comments on the proposed Guidelines on Share Buybacks for Listed Companies

Dear Sir:

BCCM Advisors (“BCCM”) appreciates the opportunity to provide comments in response to the proposed Guidelines on Share Buybacks for Listed Companies (the “Guidelines”) by the Capital Markets Authority (the “CMA”) pursuant to Section 11(3) (d) of the Capital Markets Act, Cap 485A.

We are pleased to note the progress taken towards making Part XIV of the Companies Act (the “Act”) implementable and hope our comments will assist the CMA in this regard.

As part of our investment process, BCCM considers a range of ESG factors and actively takes opportunities to engage with various industry stakeholders to help contribute to the development of the capital markets -- in this case, utilizing our local knowledge of Kenya’s priorities, and drawing from our multi-decade experience investing in developed and emerging markets across the globe, to give our recommendations in support of the Guidelines.

We thank you for the opportunity to submit this feedback and would welcome the opportunity to discuss with you these and other issues going forward.

Respectfully submitted,



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BCCM Advisors' Comments on the proposed Guidelines on Share Buybacks for Listed Companies

Section	Provision/ Requirement	BCCM Advisors' Comment	BCCM Advisors' Proposal
2.2 2.3 2.4	The proposed share buyback must be authorised by shareholders in a general meeting	This should be the responsibility of the Board of Directors as part of their role in representing shareholders' best interests. It will also avoid missed opportunities due to timing of AGM versus stock price dislocations that shareholders could benefit from.	We propose the share buyback be authorized by the Board of Directors in their discretion at any time without a shareholder general meeting. Share buyback program details shall be disclosed publicly immediately following the decision to implement one. Consequently, proposal 2.3 should be eliminated. We propose 2.4 be amended such that the circular is not a proposal, but rather a disclosure of the intended buyback program to the Authority for review and approval.
3.2	In addition, the shareholder circular shall contain the following information: ...	To provide appropriate disclosure on buyback activity including actions of company insiders and directors.	We propose the inclusion of an additional disclosure item aimed at providing more transparency including details of any share buyback made within the last 12 months, including the total number of shares purchased, purchase price paid, total consideration paid for the purchases and number of shares held by current and former corporate insiders and directors

3.2b	The number of shares to be bought back.	The value of shares to be purchased is more informative to shareholders so they can understand cash to be allocated to purchases and the effect on leverage. Share prices can vary considerably so the number of shares to be purchased under the current language is variable.	We propose the “number” of shares be replaced with “value” of buyback authorization
3.2e	The price per share of effecting the share buyback prescribing the maximum and minimum price. In disclosing the price, detailed explanation should be provided including valuation reports supporting the prescribed price.	Disclosing minimum and maximum prices is overly transparent and potentially detrimental to existing shareholders. Additionally, we do not believe it is the responsibility of the company to disclose valuation reports supporting the prescribed price.	We propose eliminating the provision.
3.2h	Declaration of solvency and liquidity by the directors of the company to undertake the share buyback. Such declaration should include a statement by the directors confirming that as at the date of the shareholder circular, the assets of the company are fairly valued and are equal or exceed the liabilities of the company and that the company will be able to pay its debts as they become due in ordinary course of business for a period of 12 months	From an accounting standpoint, it is possible for a company to have a negative equity value while remaining well capitalized. This scenario can occur if treasury stock is greater than the rest of the equity value. It is noted the existence of provision 8.2 is likely to make this scenario unlikely.	For the avoidance of confusion, we recommend removing “the assets of the company are fairly valued and are equal or exceed the liabilities of the company and that” from the proposal.

4	<p>Off-market purchase transactions In the event of an intended off-market purchase, the draft share buyback contract shall be submitted to the Authority accompanying the shareholders' circular for the Authority's approval, in line with the requirements of private transactions.</p>	To ensure fair dealing	<p>We recommend that the framework allow for off-market acquisitions to only be undertaken on an equal access scheme.</p> <p>To qualify as an equal access scheme, the offers under the scheme are to be made to every non-inside and non-related party shareholder to purchase the same percentage of their shares and the terms of all the offers are the same.</p>
4	<p>Off-market purchase transactions In the event of an intended off-market purchase, the draft share buyback contract shall be submitted to the Authority accompanying the shareholders' circular for the Authority's approval, in line with the requirements of private transactions.</p>	To ensure fair dealing.	<p>Management and the Board of Directors and insiders, as well as related parties, shall not be allowed to transact in off-market purchase transactions except for transactions related to compensation schemes.</p>
5.1	<p>The company intending to undertake share buyback shall issue relevant public announcements subject to the Authority's approval to be published in at least one (1) newspaper of national circulation and made available on the company's website within one (1) day of the board's' resolution to undertake the share buyback.</p>	To seek clarification regarding the proposal.	<p>We find the language of this proposal unclear. If the proposal is aimed at announcing to the market immediately prior to the company commencing a buyback then market participants would be able to front-run the company's repurchases.</p> <p>We also encourage buyback information to be disclosed publicly on the CMA and NSE website.</p>
5.2b	The minimum and maximum prices	Overly transparent and potentially detrimental to existing shareholders	We propose eliminating the provision.

6.1	For on-market (Exchange) transactions, the maximum share buyback price shall be 10% above the weighted price average of the share 10 days prior to the day of the Board resolution of share buyback.	The proposal could potentially hinder the ability to execute a pre-established buyback program.	We recommend removing or adjusting the proposal.
6.2	The minimum price shall be the nominal price of the shares or the prevailing market price of the shares at the time the resolution was approved by the shareholders.	This runs counter to the benefit of shareholders. Purchasing at a lower price is beneficial to shareholders.	We recommend removing the proposal.
9	Volume of the shares purchased on any single day must not exceed 25% of the average daily trading volume for the four calendar weeks preceding the week of the purchase and must not be executed as to significantly adversely affect the liquidity of the shares in questions. The buyback should not be effected during pre-open session.	Placing a limit on volume of single day purchases may render a buyback difficult, if not impossible to implement for companies whose stock trades infrequently.	Companies shall be able to trade in one block trade per week without regard to the volume limit, provided it does not make any other repurchases on the same day.

11	<p>A company shall not effect share buyback transactions during the period of two (2) weeks prior to the publication of its half-yearly or annual financial statements; or after it has become aware of any material information which has not been made public, which if disclosed, could affect the price of the shares.</p> <p>A buyback may be cancelled or otherwise suspended if material information is announced within 14 days prior to the buyback being conducted or if the company deems it fit, subject to that company doing so within reasonable time.</p>	<p>To avoid tipping off market participants that the company is in possession of material information.</p>	<p>We propose language should be added that allows for companies to enter in pre-established, binding contracts that provide instructions to a broker to effect repurchases at a future time period. The company shall continue to purchase shares under this scheme even if it has obtained material inside information and regardless of possession of information the company shall not be able to exercise any subsequent discretion to dates of trades, price or number of shares to be repurchased.</p>
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