

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 25, Volume CXVI, dated 14th April, 2023

Printed by UPPC, Entebbe, by Order of the Government.

S T A T U T O R Y I N S T R U M E N T S

2023 No. 41.

**THE FINANCIAL INSTITUTIONS (PREFERENCE AND APPRAISED
BOOK VALUE) REGULATIONS, 2023**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Application
3. Purpose
4. Interpretation
5. Preference
6. Realisation of collected and posted margin, collateral or credit support
7. Ascertainment of appraised book value of repo and securities lending transactions
8. Appraised book value of derivative transactions
9. Revocation of S.I. No. 1 of 2019

SCHEDULES

SCHEDULE 1— SPECIFIED FINANCIAL CONTRACTS

SCHEDULE 2— FORMULA FOR ASCERTAINING APPRAISED
BOOK VALUE OF REPO TRANSACTIONS AND
SECURITIES LENDING TRANSACTIONS

STATUTORY INSTRUMENTS

2023 No. 41.

The Financial Institutions (Preference and Appraised Book Value) Regulations, 2023

(Under sections 88 and 131(1) (m) of the Financial Institutions Act, Act 2 of 2004)

IN EXERCISE of the powers conferred upon the Central Bank by sections 88(2) (c) and 131(1)(m) of the Financial Institutions Act, 2004, and in consultation with the Minister responsible for finance, these Regulations are made this 29th day of February, 2023.

1. Title

These Regulations may be cited as the Financial Institutions (Preference and Appraised Book Value) Regulations, 2023.

2. Application

These Regulations apply where a financial institution in Uganda and a domestic or foreign counterparty have entered a specified financial contract and the financial institution becomes subject to—

- (a) management takeover under section 88 of the Act; or
- (b) closed pursuant to the Act.

3. Purpose

The purpose of these Regulations is—

- (a) to define specified financial contracts and guide on their treatment under section 88(2)(c) of the Act;
- (b) to encourage financial institutions to enter into specified financial contracts for risk management and liquidity management; and
- (c) to increase the safety, stability, efficiency and international competitiveness of domestic financial markets in Uganda.

4. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Financial Institutions Act, 2004, Act 2 of 2004;

“counterparty” means the other party to a specified financial contract;

“derivative transaction” means a transaction that derives its value from the performance of an underlying asset, value, index or interest rate, and which is not a repo transaction or securities lending transaction;

“Global Master Repurchase Agreement (GMRA)” means an agreement, complemented, by the relevant annex, published by the Securities Industry and Financial Markets Association (SIFMA) and the International Capital Markets Association (ICMA), or any successor agreement for repo transactions published by SIFMA, ICMA or a successor organisation, which is enforceable in accordance with its stated governing law;

“Global Master Securities Lending Agreement (GMSLA)” means a securities lending agreement, complemented, by the relevant schedule, published by the International Securities Lending Association (ISLA), or any successor agreement for securities lending transactions published by ISLA or a successor organisation, which is enforceable in accordance with its stated governing law;

“haircut” means a risk adjustment to the appraised book value applied in determining the purchase price in a repo transaction or the required collateral value at the commencement of a securities lending transaction;

“instrument” means—

- (a) treasury bills or treasury bonds issued by the Government of Uganda; or

(b) Bank of Uganda bills;

“International Swaps and Derivatives Association Master Agreement (ISDA Master Agreement)” means an agreement, including as the context permits, the relevant Schedule and any relevant credit support document, published by the International Swaps and Derivatives Association (ISDA), or any successor agreement for derivative transactions published by ISDA or a successor organisation, which is enforceable in accordance with its stated governing law;

“purchase price” means the market value of the instrument as adjusted for liquidation and other possible future losses on the instrument, in potentially stressed market conditions;

“repo transaction” means a transaction in which one party, referred to as seller, sells instruments to the counterparty, referred to as buyer, against the transfer of funds by the buyer, with a simultaneous agreement by the buyer to sell to the seller equivalent instruments at a repurchase date or on demand against the payment of funds by the seller;

“repurchase date” means the date on which the buyer is to sell equivalent instruments to the seller under a repo transaction;

“securities lending transaction” means a transaction in which one party, referred to as a lender, in exchange for a fee transfers instruments with full title to the counterparty, referred to as a borrower, with an agreement that at the conclusion of the securities lending transaction the borrower shall transfer equivalent instruments with full title to the lender;

“specified financial contract” means a contract for repo transactions, securities lending transactions or derivative transactions, entered into by a financial institution and any other domestic or foreign counterparty, specified in Schedule 1 to these Regulations;

“trade date” means the date on which the transaction details are agreed upon in relation to a repo transaction or a securities lending transaction;

“Treasurers’ Forum” means the specialised committee under the Uganda Bankers’ Association responsible for setting, publishing and reviewing the maximum haircut;

“Uganda Bankers’ Association” means the umbrella body for financial institutions licenced and supervised by the Central Bank;

“yield curve” means the yield curve published daily on the official website of the Central Bank.

5. Preference

(1) Where a financial institution is a party to a specified financial contract and is placed under management take-over in accordance with section 88 of the Act or closed under any provision of the Act, the following transactions entered into by that financial institution shall not be void—

- (a) any delivery, payment, transfer, substitution or exchange of cash, margin, collateral, credit support or any other interests or assets from the financial institution to the counterparty made before the management take-over or closure of the financial institution, under or in connection with the specified financial contract;
- (b) any payment or delivery obligation incurred by the financial institution and owing to the counterparty before the management take-over or closure of the financial institution, under or in connection with the specified financial contract;
- (c) any netting or set-off of amounts as a result of an early termination of one or more specified financial contracts

at the commencement of the management take-over or closure of the financial institution, in accordance with the provisions of the specified financial contract; or

- (d) any payment or delivery obligation incurred by the financial institution and owing to the counterparty as a result of netting or set-off of amounts pursuant to an early termination of one or more specified financial contracts before or after the management take-over or closure of a financial institution.

(2) Notwithstanding subregulation (1), where it is established that there is clear and convincing evidence that the financial institution made a delivery, payment, transfer, substitution or exchange with actual intent to hinder, delay or defraud any entity, the delivery, payment, transfer, substitution or exchange shall be void.

(3) Where a delivery, payment, transfer, substitution or exchange is found to be void under subregulation (2), the liquidator or statutory manager shall immediately, and in any case not later than two working days, communicate that finding in writing to the financial institution, the counterparty and the Central Bank.

(4) The communication referred to in subregulation (3) shall state—

- (a) that the transaction is void; and
- (b) the grounds on which the transaction was rendered void.

6. Realisation of collected and posted margin, collateral or credit support

(1) A counterparty to a specified financial contract may collect margin, collateral or credit support to protect the counterparty from credit exposure and may exchange such margin, collateral or credit support in accordance with the terms of the specified financial contract.

(2) A counterparty may choose whether or not to exchange margin, collateral or credit support in excess of the credit exposure in accordance with the specified financial contract.

(3) Upon management take over or closure of a financial institution under any provision of the Act, the margin, collateral or credit support posted in terms of a specified financial contract may be realised, appropriated or liquidated by the respective counterparty in accordance with the provisions of the specified financial contract, without notification or approval of the Central Bank.

7. Ascertaining appraised book value of repo and securities lending transactions

(1) An instrument that is a subject of a repo or securities lending transaction is deemed to have been transferred at appraised book value where the repo or securities lending transaction satisfies the following conditions—

- (a) the purchase price of the instrument is derived from the yield curve, published daily by the Central Bank where the data used for this purpose is sourced from published benchmark security quotes by financial institutions and interpolated for every outstanding instrument;
- (b) the date for determination of the appraised book value is the trade date; and
- (c) the haircut is not more than the maximum haircut set, published and reviewed quarterly by the Treasurers' Forum.

(2) Where a treasury bill is the subject of a repo or securities lending transaction under subregulation (1), the financial institution shall determine the appraised book value in accordance with the formula prescribed in paragraph 1 of Schedule 2 to these Regulations.

(3) Where a treasury bond is the subject of a repo or securities lending transaction under subregulation (1), the financial institution shall determine the appraised book value in accordance with the formula prescribed in paragraph 2 of Schedule 2 to these Regulations.

8. Appraised book value of derivative transactions

Any asset which is the subject of a derivative transaction is deemed to have been transferred at appraised book value unless it is established that there is clear and convincing evidence that the party entered into or amended the specified financial contract under which the derivative transaction was conducted, with actual intent to hinder, delay or defraud any entity.

9. Revocation of S.I. No. 1 of 2019

The Financial Institutions (Appraised Book Value) Regulations, 2019 are revoked.

SCHEDULES

SCHEDULE 1

Regulation 4

SPECIFIED FINANCIAL CONTRACTS

- (a) Global Master Repurchase Agreement (GMRA);
- (b) Global Master Securities Lending Agreement (GMSLA); or
- (c) International Swaps and Derivatives Association Master Agreement (ISDA Master Agreement).

SCHEDULE 2

Regulation 7(2) and (3)

FORMULA FOR ASCERTAINING APPRAISED BOOK VALUE OF REPO AND SECURITIES LENDING TRANSACTIONS

1. Where the transaction is in relation to a treasury bill, the formula shall be purchase price = market value x (1- haircut) where—

market value = (price from yield curve) x (par value)/100.
2. Where the transaction is in relation to a treasury bond, the formula shall be purchase price = dirty market value x (1-haircut);
 - (a) where dirty market value = (clean price from yield curve + accrued interest) x ; and
 - (b) where accrued interest = x

DR. MICHAEL ATINGI-EGO,
Deputy Governor, Bank of Uganda

