

## **SECURITIES AND EXCHANGE COMMISSION RULES AND REGULATIONS, 2013**

### ***Introduction***

In order to effectively and efficiently carry out the objectives of securities regulation as embedded in the Investments and Securities Act (The Act), the Securities and Exchange Commission (The Commission), has prescribed these Rules and Regulations.

These Rules and Regulations provide participants (regulated persons) in the capital market with more precise notice of what is expected of them, what conduct will be sanctioned and also promotes fairness and equality of treatment among similarly situated persons.

The Commission recognizes that adoption of formal rule-making process is more efficient than case-by-case adjudication, because it can resolve a multiplicity of issues in a single proceeding. A clear general rule can produce rapid and uniform compliance among the affected firms or individuals and provides individuals with more protection.

The Act has granted the Commission general and specific rule-making authority. However, the Commission in exercising this authority has adopted a consultative procedure whereby inputs and comments are obtained from persons subject to its jurisdiction.

The present Rules and Regulations were subjected to comments from market operators and other participants before its final adoption by the Commission.

These Rules and Regulations are made up of Fourteen (14) parts i.e. A to N and have eleven (11) schedules. They contain both rules of general and specific applications governing securities exchanges; capital market operators; securities offered for sale or subscription; mergers, acquisitions and combinations; collective investment schemes; borrowing by Federal, States, local Government and other Government agencies as well as Supra national bodies amongst other things.

It should be noted that rule-making is a continuous process. In addition to these legislative or substantive rules, which may be amended from time to time, the Commission will also be issuing interpretative rules and general statements of policy all of which guide participants in the market.

Every person subject to the Act is therefore advised to be familiar with both the provisions of the Act and all the Rules of the Commission regulating the capital market.

In the case of any doubt or need for clarification, the Commission should be consulted.

Pursuant to the provision of Section 313 and all other powers conferred upon it under the Investments and Securities Act (ISA) of 2007, the Commission hereby makes the following Rules and Regulations.

**GENERAL RULES AND REGULATIONS  
PURSUANT TO THE INVESTMENTS AND  
SECURITIES ACT, 2007.**

**ARRANGEMENT OF RULE**

**PART A**

***A1. Rules of General Application***

**RULE**

1. Definition of Terms used in the Rules and Regulations
2. Business hours of the Commission.
3. Filing of materials with the Commission.
4. Non-disclosure of information obtained in performing official duties.
5. Disclosure detrimental to national security.
6. Fees.
7. Fine/Penalty.
8. Exemptions.
9. Power of the Commission to demand and examine records required to be maintained.
10. Inspection of documents.
11. Requirements for inspection of documents.
12. Copying of inspected documents.
13. Maintenance of adequate records of affairs and transactions.
14. Appointment of Compliance Officer.

***A2. General Rules on Registration of Capital market Operators***

15. Application forms.
16. Number of copies, signatures, code of conduct, etc.
17. Requirements as to language, printing, etc.
18. Additional information.
19. Sponsored Individuals and Compliance Officers.
20. Qualifications of Sponsored Individuals and Compliance Officers
21. Approval of appointment of Directors of Capital Market Operators
22. Minimum paid-up capital.
23. Amendment to application.
24. Effectiveness of registration.
25. Membership of Self-Regulatory Organizations (S.R.O.)
26. Fingerprinting/Police clearance.
27. Fidelity Bond

***A3. Post-registration Compliance Requirements by Capital Market Operators  
and other Regulated entities***

28. Code of Conduct.
29. Inspections.
30. Required books, records and financial reports.
31. Net capital requirement.
32. Changes in information at the time of registration.

- 33. Withdrawal from registration.
- 34. Suspension/Cancellation of registration.
- 35. Change of status of registrant.
- 36. Approval of branch offices of Capital Market Operators.
- 37. Management of branch offices of Capital Market Operators.

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### ***Regulation of Public Companies([SECRR(A) March 2010]***

- 38. Filing of audited financial statements
- 39. Annual Report
- 40. Rule on earnings forecast
- 41. Quarterly Report
- 42. Half yearly Returns
- 43. Risk management
- 44. Payment of dividends

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### ***Regulation of Capital Market Operators***

- 45. Registrable Functions

#### ***C1. General Provisions***

- 46. Ailing Market Operator.
- 47. Compromise with creditors.
- 48. Issuing House fees.
- 49. Broker/Dealer fees.
- 50. Examination by Self-Regulatory Organizations.
- 51. Reports to be filed.
- 52. Recognition of Experts.
- 53. Expert's Report.
- 54. Exceptions.

#### ***SPECIFIC PROVISIONS***

#### ***C2. Brokers/Dealers and Jobbers***

- 55. Registration requirements.
- 56. Functions.
- 57. Net capital requirement.
- 58. Determination of Net(liquid) Capital
- 59. Records of transactions with clients.
- 60. Segregation of accounts/hypothecation
- 61. Use of Nominee accounts
- 62. Periodic reports to clients.
- 63. Soliciting deposit.
- 64. Mandate to purchase securities.
- 65. Broker acting as agent.

66. Suspension of a Broker.

### ***C3. Sub-broker***

67. Registration Requirements.  
68. Functions.  
69. Net capital requirement.  
70. Records of Transaction with client.  
71. Periodic report to clients.  
72. Prohibition of solicitation of deposits.  
73. Sub – brokers commission.  
74. Relationship between sub – broker and broker/dealers.  
75. Suspension of sub broker.

### ***C4. Market Maker***

76. Definition.  
77. Market making system  
78. Eligibility  
79. Registration requirements.  
80. Functions.  
81. Obligations of Market maker.  
82. Infrastructure.

### ***C5. Issuing Houses***

83. Registration Requirements.  
84. Functions.  
85. Separate accounts for proceeds of issue.  
86. Returns to be filed.

### ***C6. Underwriters***

87. Definition and functions  
88. Registration Requirements.  
89. Eligibility  
90. Content of underwriting agreement.

### ***C7. Fund/Portfolio Managers***

91. Registration requirements.  
92. Functions.  
93. Books and records to be maintained.  
94. Advertisements.  
95. Custody or possession of funds or securities of clients.

### ***C8. Investment Advisers***

- 96. Registration requirements.
- 97. Functions.

### ***C9. Registrars***

- 98. Registration requirements
- 99. Functions.
- 100. Types of registers to be kept.
- 101. Entry in a register on transfer of existing securities.
- 102. Entry of members' names.
- 103. Custody of register.
- 104. Issue and handling of certificates.
- 105. Return monies.
- 106. Mode of return.
- 107. Custody and transfer of unclaimed monies.
- 108. Opening of account for Payment of Dividend

### ***C10. Trustees***

- 109. Registration requirements
- 110. Functions.

### ***C11. Banker to an issue***

- 111. Eligibility
- 112. Registration Requirements
- 113. Functions.

### ***C12. Rating agency***

- 114. Registration Requirements.
- 115. Functions.

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- 116. Definitions.
- 117. Registration Requirements.
- 118. Exemption.
- 119. Denial/withdrawal of registration.
- 120. Functions.
- 121. Code of conduct.
- 122. Related functions.
- 123. Internal controls.
- 124. Monitoring, review, evaluation, and inspection of systems and controls.
- 125. Prohibition of assignment.
- 126. Separate custody account.
- 127. Agreement with the client.

- 128. Maintenance of records and documents/ furnishing of information.
- 129. Preservation of records.
- 130. Disclaimer of liability.
- 131. Responsibility for shortfall in investment.
- 132. Use of nominees.
- 133. Safe keeping of documents.

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- 134. Definition
- 135. Registration Requirements
- 136. Functions duties and responsibilities.
- 137. Eligibility.
- 138. Ownership structure.
- 139. Eligible securities for dematerialization.
- 140. Agreement between depository and issuer.
- 141. Depository Rules.
- 142. Systems and procedures.
- 143. Connectivity.
- 144. Transfer to be effected after payment.
- 145. Withdrawal by participant.
- 146. Evaluation of systems and controls.
- 147. Risk management
- 148. Safety of records.
- 149. Records to be maintained.
- 150. Prohibition of assignment.

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- 151. Definition.
- 152. Registration requirements.
- 153. Functions
- 154. Eligibility.
- 155. Agreement by participant.
- 156. Separate accounts.
- 157. Statement of accounts.
- 158. Transfer or withdrawal by client.
- 159. Connectivity for participant.
- 160. Monitoring, reviewing, evaluation and inspection of internal system and controls.
- 161. Reconciliation for participant.
- 162. Returns.
- 163. Records to be maintained.
- 164. Safety of records.
- 165. Prohibition of assignment.
- 166. Agreement by issuer.
- 167. Handling of share transfer and maintenances of records to be at a single point.
- 168. Redress of grievances.

- 169. Surrendering of certificate of securities to be dematerialized.
- 170. Reconciliation for Issuer or its agent.
- 171. Connectivity for Issuer or its agent.
- 172. Information.
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- 174. Investment advice.
- 175. Code of conduct.

#### ***C15. Securities Clearing and Settlement Company.***

- 176. Registration Requirements.
- 177. Functions.

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- 178. Registration Requirements.
- 179. Reporting accountants.
- 180. Legal practitioner
- 181. Estate Surveyors

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#### **Regulation of Securities Exchanges and Transactions on Exchanges, Capital Trade Points and other Self-Regulatory Organizations**

##### ***E1.General Provisions***

- 182. Registration Requirements.
- 183. Approval of appointment of Chief Executive and Principal Officers of a securities exchange.
- 184. Approval of appointment/election of members of Governing Council or Board of a Securities Exchange.

##### ***E2. Securities Exchanges***

- 185. Permission to trade in securities listed on other exchanges.
- 186. Notices to members of Securities Exchanges
- 187. Securities exchanges to require disclosure of material or price sensitive information likely to affect financial condition.
- 188. Report on securities traded.
- 189. Floor trading.
- 190. Trading rules.
- 191. Disposal of reports and documents filed with the Securities Exchanges, etc.
- 192. Reports of proposed rule changes by a securities exchange.
- 193. Effectiveness of listing and exchange certification.

194. Requirements as to certification of listing and quotation of individual companies.
195. Date of receipt of certificate of listing by Commission.
196. Operation of certification on subsequent amendment.
197. Withdrawal of certification.
198. Suspension of trading.
199. Removal from listing.
200. Fraud and misrepresentation.
201. Identification of quotation.
202. Review of decisions of Securities exchanges.
203. Dealing members.
204. Records to be maintained by Securities exchange members, etc.
205. Records to be preserved by certain Securities Exchange members, etc.
206. Filing of reports
207. Nature and form of reports.
208. Use of statements filed with the Commission and the Securities exchange.
209. Extension of time for filing reports.

### ***E3. Capital Trade Points***

210. Registration requirements
211. Permission to trade in securities listed on other Securities exchanges.
212. Notices to members of Securities exchanges.
213. Securities exchanges to require disclosure of material or price sensitive information likely to affect financial condition.
214. Report on securities traded.
215. Floor trading.
216. Trading rules.
217. Disposal of reports and documents filed with the Securities exchange, etc.
218. Reports of proposed rule changes by a Securities Exchange.
219. Effectiveness of listing and exchange certification.
220. Requirements as to certification of listing and quotation of individual companies.
221. Date of receipt of certificate of listing by Commission.
222. Operation of certification on subsequent amendment.
223. Withdrawal of certification.
224. Suspension of trading.
225. Removal from listing.
226. Review of decisions of Self-Regulatory Organizations (S.R.O.).
227. Dealing members.
228. Records to be maintained by securities exchange members, etc.
229. Records to be preserved by certain securities exchange members, etc.
230. Filing of report.
231. Nature and form of reports.
232. Use of statements filed with the Commission and the securities exchanges.
233. Extension of time for filing reports.



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- 234. Definitions.
- 235. Registration requirements.
- 236. Granting of Inter dealer broker authorized user registration.
- 237. Obligation of an IDB authorized user.
- 238. Restrictions on an IDB authorized user.
- 239. Access to service offered by an IDB authorized user.
- 240. Registration and function of officers of an IDB authorized user.
- 241. Data.
- 242. Penalty.

#### **E5. Over the Counter Market.**

- 243. Registration requirements.
- 244. Rules of over the counter relating to quotations rules
- 245. Over the counter market
- 246. Fraud and misrepresentation.
- 247. Identification of quotation.
- 248. Review of decisions of over the counter market
- 249. Dealing members.
- 250. Records to be maintained by over the counter market members
- 251. Records to be preserved by certain over the counter market members.
- 252. Filing of reports
- 253. Nature and form of reports.
- 254. Use of statements filed with the Commission and the over the counter market.
- 255. Extension of time for filing reports.

#### ***E6. Commodity and Futures Exchanges***

- 256. Definitions.
- 257. Registration requirements.
- 258. Governing Council or Board.
- 259. Code of Conduct.
- 260. Floor brokers/futures commission merchants/floor traders, introducing brokers and associated persons.
- 261. Separation of account.
- 262. Commodity futures trading adviser.
- 263. Clearing and Settlement Agency.
- 264. Registration of commodities, futures, options contracts.
- 265. Periodic returns.
- 266. Fees.
- 267. Maintenance of adequate records of affairs and transactions.
- 268. Business records.
- 269. Fraud and other malpractices.
- 270. Floor/pit trading.
- 271. Exchange members.
- 272. Minimum financial requirements.
- 273. Crop market information letters, reports: copies required.

- 274. Information required concerning warehouses, depositories, and other similar entities.
- 275. Records and reports of warehouses, depositories and other similar entities: Inspection of premises.
- 276. Delivery of commodities conforming to specified standards.

### ***E7. Self-Regulatory Organizations and Trade Associations***

- 277. Registration requirements
- 278. Regulation

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### **Registration of Securities**

- 279. Registrable Securities.

### **Regulation of Distribution of Securities**

#### ***F1. Public Offer***

- 280. Filing of registration statement.
- 281. Condition for approval of subsequent public offers
- 282. Prohibition of sale.
- 283. Notice of proposed offering.
- 284. Guidelines for advertisement
- 285. Form, size, number, etc., of Prospectus.
- 286. Date of Prospectus.
- 287. Statements required in a prospectus.
- 288. Contents of prospectus
- 289. Abridged Prospectus.
- 290. Contents of abridged Prospectus.
- 291. Contents of statement in lieu of Prospectus.
- 292. Civil liability for misstatements in prospectus.
- 293. Criminal liability for misstatement in prospectus.
- 294. Criminal liability in respect of statements in lieu of prospectus
- 295. Allotment of securities.
- 296. Opening of subscription lists.
- 297. Consent of parties.
- 298. Parties to an issue/scheme.
- 299. All parties meeting.
- 300. Pre – Offer waiting period (fixed price offer).
- 301. Opening and closing of offer.
- 302. Application form.
- 303. Processing fee on applications.
- 304. Purpose of the offer.
- 305. Proceeds of issue.
- 306. Summary report on completion of a public offer.
- 307. Granting of credit facility/bridging loan.
- 308. Annual report and accounts.

- 309. Allotment period and submission of allotment proposal.
- 310. Power of the commission to abort an issue.
- 311. Basis of allotment.
- 312. Under-subscription.
- 313. Publication of allotment.
- 314. Cost of issue.
- 315. Underwriting of Public issues.
- 316. Amount to be underwritten.
- 317. Underwriting commission.
- 318. Time amount underwritten is made available.
- 319. Vending agreement.
- 320. Book building.
- 321. Definitions.
- 322. Investors in a book building Process
- 323. Conditions for approval of offer.

### ***F2. Rights Issue***

- 324. Notification of rights offering.
- 325. Invitation to existing shareholders.
- 326. Registration of rights circular.
- 327. Contents of a Rights Issue
- 328. Basis of allotment
- 329. Contract in rights circular not to be varied without leave.
- 330. Notice to existing shareholders
- 331. Trading in Rights
- 332. Quotation Price
- 333. Valuation of Rights Issue.
- 334. Delivery of the Rights
- 335. Delisting and Noting of Trading in Rights
- 336. Lodgment of a Rights Circular
- 337. Underwriting of Rights Issues
- 338. Allotment of securities.

### ***F3. Private Placement by Public Companies***

- 339. Definition.
- 340. Conditions for approval of offer.
- 341. Nature of offerees.
- 342. Access to information, etc.
- 343. Filing requirements.
- 344. Placement memorandum.

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### ***G 1. Regulation of Conduct of Securities Business***

- 345. Electronic offer and transfer of securities.
- 346. Cash transaction.
- 347. Know your customer.
- 348. Exemption from application of provisions relating to prospectus in certain cases.
- 349. Prohibition of issuance, circulation etc. of certain notices circulars and advertisement.
- 350. Exemption certificate and effect.
- 351. Expert's statement on prospectus.
- 352. Prospectus on invitation to the public to acquire or dispose of Securities.
- 353. General and restricted invitation to the public.
- 354. Registration of prospectus.
- 355. Securities pledged as collateral

### ***G2. Margin Lending.***

- 356. Definitions
- 357. Requirements of a margin agreement.
- 358. Categories of margin accounts.
- 359. Opening and maintaining margin account (regulation B).
- 360. Types of margin accounts.
- 361. Operation of margin accounts.
- 362. Margin lending by brokers to customers.
- 363. Dealer margin trading accounts.
- 364. Bank margin accounts.
- 365. Central Bank of Nigeria Regulation C (Reg. C).
- 366. Central Bank of Nigeria (CBN) Regulation C Call.
- 367. Components of the margin account.
- 368. Loan value (Loans given against securities).
- 369. The debit balance.
- 370. Determination of excess equity.
- 371. Special memorandum account (SMA).
- 372. Restricted Account.
- 373. Purchase in a restricted account.
- 374. Sales in a restricted account.
- 375. Same day substitution in a restricted account.
- 376. Margin maintenance requirements for broker and bank requirements for margin accounts.
- 377. Margin requirements for exempt securities.
- 378. Marginable securities.
- 379. Criteria for determining marginable securities.
- 380. Investor eligibility.
- 381. Trading/certification of market operators' personnel in margin lending and trading.
- 382. Technology for margin trading/financing.

- 383. Margin transaction reporting.
- 384. Appointment of compliance officer.
- 385. Duties of the Margin Compliance Officer.
- 386. Appointment of Principal Margin Compliance Officer.
- 387. Valuation of securities used for collateral in margin accounts.

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- 388. Definitions
- 389. General requirements.
- 390. Other requirements
- 391. Collateral management
- 392. Processes
- 393. Criteria for eligibility as lending agent
- 394. Obligations and responsibilities of a lending agent

### ***G4. Trading in Securities***

- 395. Persons required to register their securities.
- 396. Exemptions.
- 397. Rules relating to securities ownership.
- 398. Rules relating to Share Buy-back.
- 399. Rules relating to dual listing of securities.
- 400. Manipulative and deceptive devices and contrivances.
- 401. Filing of notice by directors and other insiders upon sale or purchase of their shares in the company.
- 402. Disclosure of director's interest in stockbroking/dealing companies.
- 403. Disclosure of interest in stockbroking/dealing companies in quoted companies.
- 404. Disclosure of interest of public quoted companies in stockbroking/dealing companies.

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#### ***H 1. Foreign Investments***

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- 406. Investing in Securities
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- 408. Requirements for certificate of capital importation
- 409. Prohibited Investments
- 410. Modalities for portfolio investments.
- 411. Use of Custodian
- 412. Divestment of securities.
- 413. Repatriation of proceeds from divestment.
- 414. Sale or offer for subscription of securities.
- 415. Filing of application
- 416. Exemptions

## ***H2. Cross-border Securities Transactions***

- 417. Public offering of securities.
- 418. Filing of registration statement
- 419. Content of the Prospectus.
- 420. Depository receipts by Nigerian entities.

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### ***I 1. Mergers***

- 421. Definitions.
- 422. Scope of the Regulation.
- 423. Approval by the Commission.
- 424. Exemptions.
- 425. Procedures for Obtaining Approval for Mergers.
- 426. Requirements for Merger Notification.
- 427. Lower and upper threshold.
- 428. Clearance of scheme document.
- 429. Requirements for formal approval.
- 430. Post-approval requirements.
- 431. Post-merger inspection.
- 432. Power to order the Break- up of a company.

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- 433. Definition.
- 434. Scope of the regulation.
- 435. Contents of Publication.
- 436. Contents of the information Memorandum.
- 437. Post-Acquisition.
- 438. Dissenting Shareholders.
- 439. Post-Acquisition inspection.

### ***I 3. External Restructuring***

- 440. Definition
- 441. Procedure for obtaining approval for External Restructuring
- 442. Requirements for External Restructuring
- 443. Requirements for formal approval
- 444. Post approval requirements

### ***I 4. Take-Over***

- 445. Take-over bids.
- 446. Contents of a bid.
- 447. Authority to proceed with take-over bid.
- 448. Registration of take-over bid.
- 449. Rules on management buy-out.

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- 450. General Rules For Collective Investment Schemes
- 451. Allowable fee/expenses
- 452. Advertising
- 453. Winding up of schemes
- 454. Custodial Services for collective investment schemes
- 455. Functions of the custodian of a collective investment scheme
- 456. Obligations of the custodian of a collective investment scheme
- 457. Commission's Power of intervention
- 458. Termination of custodial agreement

#### ***J 1. Unit Trust***

- 459. Application for authorisation of unit trust scheme.
- 460. Requirements as to form of Prospectus.
- 461. Statements as required in Prospectus.
- 462. Date of Prospectus.
- 463. Contents of Prospectus.
- 464. Requirements as to form, number, etc. of Trust Deed.
- 465. Contents of Trust Deed.
- 466. Filing executed and registered Trust Deed.
- 467. Calculation of price of units

#### ***J2. Money Market Fund***

- 468. Definition.
- 469. Use of name /title.
- 470. Approved/permissible instruments.
- 471. Term of maturity of investment asset.
- 472. Portfolio maturity.
- 473. Asset Allocation.
- 474. Investment restriction.
- 475. Government securities.
- 476. Authorized collective investment schemes.
- 477. Valuation (Amortized cost method/Accumulated Net Asset Value).
- 478. Stable Net Asset value per unit.
- 479. Valuation review.
- 480. Dividend distribution.
- 481. Fund rating.
- 482. Risk Assessment.
- 483. Prohibition.

### ***J3. Islamic Fund***

- 484. Definition.
- 485. Qualification for a sharia adviser.
- 486. Information to be disclosed by fund.
- 487. Content of a trust deed.
- 488. Fund manager.
- 489. Composition of investment committee.
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- 491. Written disclosure and declaration.
- 492. Internal audit.
- 493. Acceptable principles /concepts.

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- 497. Additional disclosure.
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- 501. Definition of Terms.
- 502. Registration Requirements of Fund of Funds.
- 503. Registration Requirements of Feeder Funds.
- 504. General Requirements of Feeder Funds.
- 505. Contents of Prospectus of a Feeder Fund.
- 506. Management of the Feeder Fund.
- 507. Target Investor of the Feeder Funds.

### ***J 6. Real Estate Investment Schemes***

- 508. Definitions Of Real Estate & Real Estate Related Assets
- 509. Title To Real Estate Investment Scheme Property
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- 511. Requirements for authorization as a Company
- 512. Requirements as to form of Prospectus.
- 513. Statements as required in Prospectus.
- 514. Date of Prospectus.
- 515. Contents of a Prospectus.
- 516. Underwriting.
- 517. Amount to be underwritten.



- 518. Underwriting Commission.
- 519. Time Amount Underwritten is to be made available.
- 520. Minimum Level of Subscription.
- 521. Asset Allocation.
- 522. Valuation Report.
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- 526. Requirement for authorization as a Trust
- 527. Requirements as to Form of Prospectus.
- 528. Statement as required in Prospectus.
- 529. Date of Prospectus.
- 530. Contents of a Prospectus.
- 531. Requirements as to Form, Number, etc. of Trust Deed.
- 532. Contents of Trust Deed.
- 533. Filing Executed and Registered Trust Deed.
- 534. Underwriting.
- 535. Amount to be underwritten.
- 536. Underwriting Commission.
- 537. Time Amount Underwritten is made available.
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- 543. Definitions.
- 544. Parties to an ETF.
- 545. General Requirements
- 546. Authorized dealer (Broker Dealer).
- 547. Offering and listing of units of an ETF.
- 548. Listing of foreign ETF.
- 549. Creation and redemption of ETF.
- 550. Pricing and dealing of units.
- 551. Information to be provided.
- 552. Valuation.
- 553. Contents of ETF prospectus/offer documents.
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- 555. Requirements for authorization.
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- 558. Applicability.
- 559. Eligibility.
- 560. Restrictions.
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- 565. Requirements for registration.
- 566. Conditions to be satisfied by the Issuer.

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- 570. Applicability
- 571. Structuring Sukuk transaction
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- 573. Submission of proposals
- 574. Appointment of Shariah adviser
- 575. Shariah principles as applicable to Sukuk issuance
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- 578. Disclosure of material information
- 579. Underwriting
- 580. Utilisation of proceeds
- 581. Additional requirements for Sukuk Programmes
- 582. Early redemption of Sukuk
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- 584. Other regulatory approvals and compliance with relevant laws
- 585. Revision to terms and conditions

- 586. Requirement for Sukuk trustee
- 587. Offerings of Sukuk under a shelf registration
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- 590. Application of rules.
- 591. Requirements as to proxy.
- 592. Presentation of information in proxy statement.
- 593. Service of proxy statement and proxy forms.
- 594. Filing requirement.
- 595. Revised material.
- 596. False or misleading statements.
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# GENERAL RULES AND REGULATIONS PURSUANT TO THE INVESTMENTS AND SECURITIES ACT, 2007

## PART A

### *A1. Rules of General Application*

#### **1. Definition of terms used in the Rules and Regulations**

As used in the rules and regulations made pursuant to the Investments and Securities Act, 2007, unless the context otherwise requires;

“**Act**” means Investments and Securities Act, 2007.

“**Beneficial owner**” of a security shall include:

- (a) any person who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise has or shares;
  - (i) voting power which includes power to vote or to direct the voting of such security; and/or;
  - (ii) investment power which includes the power to dispose, or to direct the disposition, of such security;
- (b) any person who directly or indirectly creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirement to notify the Commission of any direct or indirect ownership of more than 5% of any class of securities;
- (c) subject to the provisions of paragraph (b) above, where that person has the right to acquire beneficial ownership of such security, as defined in paragraph (a) above at any time within sixty days including but not limited to any right to acquire:
  - (i) through the exercise of any option or right;
  - (ii) through the conversion of security or;
  - (iii) pursuant to the power to revoke a trust, discretionary account, or similar arrangement, any securities not outstanding which are subject to such options, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person:

Provided that a person who in the ordinary course of business is a pledge of securities pursuant to a bona fide pledge agreement shall not be deemed to be the beneficial owner of such pledged securities merely because there has been a default under such an agreement, except during such time as the event of default shall remain incurred for more than thirty (30) days or at any time before a default is cured if the power acquired by the pledge pursuant to the default enables him to change or influence control of the issuer;

- (d) all securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of securities beneficially owned by such person.

**“Capital Market Operator”** as defined in the Act;

**“C.A.C.”** means Corporate Affairs Commission established under the Companies and Allied Matters Act, 1990;

**“Commission”** means the Securities and Exchange Commission established under the Investments and Securities Act, 2007;

**“Plan”** shall include all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document;

**“Registrant”** means the issuer of securities or any person for whom a registration statement or a proxy statement or an application is filed;

**“Registration statement”** means the application for registration of any security provided for in the Act or any amendment thereto, any statement, report, Prospectus, consents, undertakings, document or memorandum accompanying such application or incorporated therein by reference;

**“Rules and Regulations”** refer to all the rules and regulations made by the Commission pursuant to the Act including the forms for registration, reports and the related instructions thereto;

**“Securities Exchange”** shall have the same meaning as defined in the Act;

**“Qualified Institutional Investor”** means a purchaser of securities that is financially sophisticated and as defined by the Commission;

Unless the context otherwise specifically requires, a rule or regulation which defines a term without express reference to the Act or to the rules and regulations, or to a portion thereof defines such term for all purposes as used both in the Act and in the rules and regulations.

## **2. Business hours of the Commission**

- (1) The office of the Commission shall be open to the public for business, Monday to Friday except on Public Holidays.
- (2) The official hours of business shall be between the hours of 8 o'clock in the morning and 4 o'clock in the afternoon.

## **3. Filing of materials with the Commission**

- (1) Documents, information and papers may be filed electronically. Such documents are deemed received by the Commission where they are filed in hard copy and delivered to the headquarters or any Zonal Office of the Commission.
- (2) Such papers, documents or information may be filed by delivery to the Commission by hand, postal communication, electronic mail, facsimile, licensed courier companies or such other modes of communication as may be prescribed from time to time by the Commission.

- (3) The date of filing of any paper, document or information shall be the date such paper, document or information is received by the Commission, Provided that all the requirements for filing have been complied with and the required fee paid, provided also that the original paper, document or information of filings through electronic mail, facsimile or other mode of communication required by the Commission shall thereafter be forwarded to the Commission within fourteen (14) days.
- (4) Any paper, document or information filed with the Commission that contains false or misleading statements shall be subject to a penalty of N100,000 in the first instance and N5,000 per day for every day the violation continues.
- (5)
  - (a) All correspondence to the Commission by securities exchanges, other self-regulatory organizations (S.R.O's) and capital market operators shall be signed by the authorized signatories;
  - (b) All securities exchanges, other S.R.O's and capital market operators shall furnish to the Commission the names and specimen signatures of the authorized signatories from time to time.
- (6) **Time for processing**
  - (a) Every application for registration shall be granted by the Commission within sixty (60) days of the filing provided that the applicant has met all the registration requirements of the Commission.
  - (b) An application for any form of registration by an applicant shall lapse if the applicant fails or neglects to comply with the registration requirements within twelve (12) months of filing the application.

**(7) Suspension of application**

An application for registration shall be suspended if the applicant fails or neglects to continue with the processing of the application submitted to the Commission, even though the registration requirements have been complied with.

**4. Non-disclosure of information obtained in performing official duties**

- (1) Every officer or employee of the Commission shall adhere to a code of secrecy in respect of any paper, document or information which he may possess or have knowledge of, as the case may be, whether in the course of any examination or investigation conducted pursuant to any provision of the Act or these rules and regulations or in the course of his official duty.
- (2) Without prejudice to sub rule (1), an officer or employee of the Commission may disclose any information or produce any paper or documents under the following circumstances, where the officer is:-
  - (a) expressly authorized by the Commission to disclose such information or produce such paper or document;

- (b) is served with a subpoena requiring the disclosure of such information or the production of such paper or document by a court of competent jurisdiction.
- (3) Any officer or employee of the Commission shall only be obliged to produce any paper or document or disclose any information in respect of which a subpoena has been issued and served by a court of competent jurisdiction.
- (4) Any officer or employee of the Commission served with a subpoena to produce a paper or document or disclose any information shall promptly inform the Commission of the service of the subpoena, the nature of the information, paper or document sought, and of any other circumstance which may bear upon the desirability or otherwise of making available such information, paper or document.

**5. Disclosure detrimental to national security**

- (1) Except where otherwise expressly provided for by law, no registration statement, report, proxy statement, or other document filed with the Commission or any securities exchange shall contain any document or information which pursuant to executive order has been classified (by any appropriate department or agency of Government in Nigeria) for protection in the interest of national security or the foreign policy of Nigeria.
- (2) Where a document, statement, report or information is omitted pursuant to rule 5 (1) there shall be filed in lieu of such document, statement, report or information, a statement from the appropriate department or agency of Government in Nigeria to the effect that such document, statement, report or information has been classified or that the status thereof is awaiting determination.
- (3) Where a document, statement, report or information is omitted pursuant to sub- rule (1) of this rule, and information relating to the subject matter of such document, statement, report or information is nevertheless included in any material filed with the Commission pursuant to a determination of an appropriate department or agency of the Government of Nigeria, the disclosure of such information shall not be classified as being contrary to the interest of national security or the foreign policy of Nigeria and the appropriate department or agency of Government in Nigeria shall be required to submit a statement in writing informing the Commission.
- (4) The applicant may rely upon any such statement in filing or omitting any document or information to which the statement relates.
- (5) The Commission may protect from disclosure any information in its possession which may require classification in the interest of national security or the foreign policy of Nigeria, pending the determination by an appropriate department or agency of Government in Nigeria as to whether or not such information should be classified.
- (6) Before filing any paper, documents statement or information with the Commission, the applicant shall submit to the appropriate department or agency of Government in Nigeria any document or information protected from disclosure in sub rule (1) of this rule and obtain from the department or agency of Government concerned, relevant clearance to file the document or information, or in lieu thereof, the statement referred to in sub rule (2) of this rule.
- (7) All statements shall be in writing.



**6. Fees**

- (1) The fees chargeable by the Commission in respect of registrations and all transactions with it shall be as prescribed in schedule I to these rules and regulations as amended from time to time by publication in two national daily newspapers or by notice in the Gazette.
- (2) At the time of filing by an issuer or market operator of an application for registration under the Act, the applicant shall pay to the Commission, the appropriate fee, no part of which shall be refundable.
- (3) Payment of fees shall be made in cash, certified bank cheque or by electronic means to the Commission or paid into any of the Commission's designated accounts. Payments in cash should not exceed N50,000 and shall be made at the finance and accounts department of the Commission which shall issue official receipts for such fees.

**7. Fine/Penalty**

Except as otherwise specified, any person who violates any provision of these rules and regulations shall be liable to a penalty of not less than N100,000 and a further sum of not more than N5,000 for every day of default.

**8. Exemptions**

- (1) The provisions of the Act and these rules and regulations requiring registration shall not apply to:
  - (a) any note, draft, currency, bill of exchange or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which has a maturity at the time of issuance not exceeding nine (9) months exclusive of days of grace, or the maturity of which is likewise limited;
  - (b) any security issued by a person, organized and operated exclusively for religious, educational, benevolent, charitable or reformatory purposes and not for pecuniary profit and no part of the net earning which accrues to the benefit of any person, shareholder or individual and subject to such other terms and conditions as may be stipulated by the Commission. Any issue of securities pursuant to this exemption shall not exceed in aggregate value the sum of N5,000,000;
- (2) The Commission may by rules add any class of securities or transactions to those exempted under this regulation.

**9. Power of the Commission to demand and examine records required to be maintained**

- (1) The Commission may pursuant to the provisions of the Act, at any time it deems fit, examine the records and affairs of or call for information from any entity covered by the provisions of the Act.
- (2) An entity whose affairs are being inspected and every director, officer and employee thereof shall produce to the inspecting officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to its activities as the inspecting officer may require within such period as the inspecting officer may specify.

- (3) An entity being inspected shall allow the inspecting officer to have access to his or its premises or any premises occupied by any other person on his or its behalf and also extend facility for examining any books, records, documents and computer data in his or its possession or such other person and provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant for the purposes of the inspection.
- (4) The inspecting officer shall examine and may record the statements of any director, officer or employee of the entity.
- (5) Every director, officer or employee of the entity being inspected shall give the inspecting officer all assistance in connection with the inspection as the inspecting officer may require.
- (6) The Commission may appoint an auditor or any other professional to inspect or investigate, as the case may be, the books of accounts, records, documents or affairs of the entity;

Provided that the auditors or other professionals so appointed shall have the same powers as vested in the inspecting officer under sub-rules (4) and (5) and the entity and its directors, officers and employees shall be under the same obligations towards the auditor so appointed as mentioned in the said sub-rules.

- (7) The Commission shall recover from the entity such expenses including fees paid to the auditor or other professional as may be incurred by it for the purposes of inspecting the books of accounts, records and documents of the entity.
- (8) Any entity which fails or neglects to comply with any request or stipulation in accordance with the foregoing provisions of this regulation shall be liable to a fine of N2,500 for every day such failure, refusal or neglect persists and in addition to any other disciplinary measure the Commission may impose for the protection of investors.
- (9) Entity under this rule means market operator, person or institution covered by the provisions of the Act.

#### **10. Inspection of documents**

Every document delivered to the Commission for filing pursuant to the Act and these rules and regulations shall be open to inspection by any person upon payment of a fee prescribed by the Commission in schedule I of these rules and regulation and any person may obtain copies or certified true copies of any such document on payment of a fee prescribed in schedule I thereof. Provided that documents delivered to the Commission for filing in respect of registration (other than registration of capital market operators) shall only be available for inspection from the commencement date specified in the transaction document.

#### **11. Requirements for inspection of documents**

- (1) Any person wishing to inspect any document shall prior to the inspection write a letter or file Form S.E.C. ID notifying the Director-General of his intention to inspect such document;
- (2) Such letter shall state:-
  - (a) proposed date and time of inspection;
  - (b) purpose for inspection;

- (c) whether photocopying and certification will be required;
- (d) full name and address of applicant;
- (e) address of registered office, if a corporate body;
- (f) occupation of applicant.

## **12. Copying of inspected documents**

- (1) Pursuant to rule 11 above, documents will be available for inspection in the Commission's head office on Monday to Friday (except on public holidays) between the hours of 11 a.m. and 2 p.m.
- (2) No person shall be allowed to make more than one (1) copy of any document—
  - (a) notwithstanding the provisions of rule 11 above, the Commission reserves the right to classify certain documents in accordance with the Official Secrets Act, Cap. 03 Laws of the Federation, 2004;
  - (b) such classified documents shall be exempted from disclosure to/inspection by the public.

## **13. Maintenance of adequate records of affairs and transactions**

- (1) All S.R.O.'s and market operators shall maintain correct and adequate records of their affairs and all transactions they are involved in as required under the provisions of their rules and regulations.
- (2) The Commission may, whenever it deems it necessary, prescribe the nature, form and content of the records to be kept by any, or all of the persons referred to in sub rule (1) of this Regulation and it shall be the duty of any such person or persons to comply.
- (3) Any person who contravenes, fails, neglects or refuses to comply with the provisions of sub rules (1) and (2) of this regulation shall be liable to a fine of N1,000 for every day such contravention, failure, neglect or refusal persists; in addition to any other sanction the Commission may impose.

## **14. Appointment of Compliance Officer**

- (1) Every market operator shall appoint a Compliance Officer who shall possess requisite knowledge of relevant capital market regulations and who shall be responsible for monitoring and ensuring compliance with the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Commission or the Federal Government;
- (2) The Compliance Officer shall be registered by the market operator with the Commission as a sponsored individual by filing Form S.E.C. 2 as contained in schedule III of these rules and regulations;
- (3) The Compliance Officer shall immediately and independently report to the Commission any non-compliance observed by him;

- (4) The Compliance Officer shall be responsible for educating other members of staff on compliance related issues;
- (5) The Compliance Officer shall on an annual basis attend at least two trainings organized by institutions recognized by SEC.

## ***A2. General Rules on Registration of Capital market Operators***

### **15. Application Forms**

- (1) Application for registration shall be made in accordance with these rules and regulations and the form prescribed thereof by the Commission as in effect on the date of filing;
- (2) An application for registration shall be filed in duplicate as the case may be, in the form contained in schedule III to these rules and regulations or as prescribed from time to time by the Commission;
- (3) Application forms are obtainable on payment of fees as prescribed in schedule I of these rules and regulations.

### **16. Number of copies, signatures, code of conduct, etc.**

- (1) Two (2) copies each of the completed application form and the draft prospectus and all other documents listed as part of the registration statement shall be filed with the Commission;
- (2) Both copies of the application form shall be duly executed as indicated on the form;
- (3) If an application form is signed pursuant to a power of attorney, two copies of such duly executed power of attorney shall be filed with the application form;
- (4) All questions on the application form(s) shall be answered and the application sworn to by the company secretary before a Commissioner for oaths or notary public;
- (5) The applicable fee shall accompany all applications;
- (6) Any undertaking required to be filed under this regulation shall be sworn to before a notary public or commissioner for oaths;
- (7) Every application for registration as a market operator shall in addition to other requirements be accompanied by a duly executed undertaking by the applicant to comply and secure compliance of its employees with the code of conduct for capital market operators and their employees as approved by the Commission in schedule IX.

### **17. Requirements as to language, printing, etc.**

- (1) The registration statement and any other application filed with the Commission shall be in the English language. If any paper or document to be filed with the registration statement is in any other language, it shall be accompanied by a certified translated version of that paper or document;

- (2) The registration statement and, in so far as practicable, all papers and documents accompanying such application shall be printed or type-written. However, the application or any portion thereof may be prepared by any similar process which in the opinion of the Commission produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such document, shall be clear, easily readable and suitable for repeated photocopying;
- (3) Where any space in the application form is insufficient, a statement may be attached and marked as an addendum, cross-referencing each statement to the item to which it pertains provided it is manually initialed by the registrant;
- (4) All documents pertaining to any question shall be attached to the application form and shall be properly marked.

## **18. Additional Information**

In addition to the information expressly required to be included in a registration application or statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

## **19. Sponsored Individuals and Compliance Officers**

- (1) Sponsored individuals **and compliance officers** for purposes of this regulation are the principal officers and/or professionals held out by the applicant as experts and on whose advice or actions investors are expected to rely. The said sponsored individuals shall be registered as such by the Commission;
- (2) Sponsored individuals **and compliance officers** are required to file Form S.E.C. 2 as contained in schedule III to these rules and regulations;
- (3) All sponsored individuals **and compliance officers** are required to undergo police clearance in a manner specified by the Commission from time to time;
- (4) Except as otherwise directed by the Commission, all applicants for registration shall appear before the Commission's committee on registration of capital market operators and institutions for interview:
  - (a) except with the permission of the Commission, any applicant who fails to appear before the Commission's registration committee shall be liable to a fine as contained in schedule II of these rules and regulations;
  - (b) any applicant who fails to demonstrate sufficient knowledge of capital market operations before the Commission's registration committee, shall, on appearance at a subsequent interview, pay a re-appearance fee as contained in schedule II of these rules and regulations.
- (5) Every stockbroker employed in an institution involved in capital market activities shall be sponsored for registration by that institution.

- (6) All sponsored individuals and compliance officers proposed by an applicant shall be employees of that applicant.
- (7) Companies registered/seeking registration to carry out multiple functions shall sponsor the total number of individuals prescribed for each function.

## **20. Qualifications of Sponsored Individuals and Compliance Officers**

- (1) Sponsored individuals and compliance officers are required to have any of the following qualifications and job experience:
  - (a) a first or higher degree or its equivalent in a relevant field including banking, finance, accounting, business management, law, economics and company secretarial studies with a minimum of four (4) years relevant post-qualification experience (excluding the National Youth Service Corps year); or
  - (b) a first or higher degree or its equivalent in a non-relevant field including science-oriented courses, the Arts, etc., with a minimum of six (6) years relevant post-qualification experience (excluding the National Youth Service Corps year); or
  - (c) a West African School Certificate (W.A.S.C.)/S.S.C.E., General Certificate of Education (G.C.E.) or Higher School Certificate or its equivalent with a minimum of fifteen (15) years relevant post-qualification experience.
- (2) Where the sponsored individual and compliance officer intends to be registered as a registrar, such officer must in addition to (1) above have any of the following qualifications and job experience:
  - (a) a legal practitioner with a minimum of five (5) years post-call experience;
  - (b) a first degree or its equivalent with a minimum of seven (7) years relevant working experience in a registrar's establishment registered by the Commission;
  - (c) a school certificate holder with a minimum of fifteen (15) years working experience in a registrar's establishment duly recognized by the Commission.
- (3) Where the individual is sponsored by a rating agency such officer shall comply with rule 114(4) (g).
- (4) Where an individual is sponsored by a sub-broker, such a person shall be an Associate Member of the Chartered Institute of Stockbrokers (CIS) or have any of the qualifications specified in (1) above or such other professional qualifications as acceptable to the Commission. *[SECRR(A) August, 2009]*
- (5) All sponsored individuals and compliance officers are required to forward copies of their credentials with their applications for registration while the originals are to be presented for sighting during the registration interviews.

- (6) All sponsored individuals and compliance officers are required on an annual basis to file with the Commission evidence of attendance of at least one training organized by institutions recognized by the Commission.

## **21. Approval of Appointment of Directors of Capital Market Operators**

- (1) Executive directors of market operators shall be approved by the Commission prior to their appointment;
- (2) A director of a market operator shall have the minimum qualifications as specified in rule 20 of these rules and regulations.

*[SECRR(A) March, 2010]*

## **22. Minimum Paid-up Capital**

- (1) The minimum paid-up capital for the purpose of registration is as contained in Part B of schedule 1 of these rules and regulations or as prescribed from time to time by the Commission;
- (2) The following documents shall be filed with the Commission as evidence of compliance with the paid-up capital requirements:-
- (a) copy of the shareholders resolution authorizing the increase in share capital certified by the company secretary;
  - (b) **Copy of certificate of increase certified by the Corporate Affairs Commission;**
  - (c) Return on allotment certified by the Corporate Affairs Commission;
  - (d) audited statement of account or management account signed by two directors with a letter of confirmation by an external auditor, or statement of affairs (for companies in existence for less than two (2) years) signed by an auditor, showing that the increase has been paid-up;
  - (e) where capital contributed is in form of real property, title documents in the name of the company in respect of the capitalized property(ies) in any of the following ways shall suffice:
    - (i) the property should be relevant to the operations of the company;
    - (ii) the title deed must have been perfected and registered in the name of the company;
    - (iii) an estate valuer's report and the search report by an independent solicitor shall be attached;
    - (iv) where it is any other type of property, an appropriate valuer's report shall be attached;
  - (f) bank statement showing evidence of deposit of prescribed paid-up capital before deduction to acquire fixed assets.

- (3) The minimum paid-up capital for multiple functions shall be the aggregate of the minimum paid-up capital of all the functions applied for;
- (4) The cash/asset mix ratio for core operators in the market shall be 60% liquid assets and 40% fixed and other assets while non-core operators cash/assets mix ratio shall be 30% cash and 70% fixed and other assets.

**23. Amendment to Application**

- (1) Whenever any information contained in any application for registration or in any amendment thereto or in any of the documents submitted therewith becomes inaccurate for any reason, the registrant shall file an amendment on Form S.E.C. 7 as contained in schedule III to these rules and regulations correcting the information within ten (10) working days of the occurrence of the event;
- (2) The filing of any amendment to an application for registration by a registrant pursuant to sub rule (1) of this rule, which registration has not become effective, shall postpone the effective date of the registration until the 30th day following the date on which the amendment is filed whichever last occurs, unless the Commission takes affirmative action to accelerate, deny or postpone the registration;
- (3) Every amendment filed pursuant to sub rule (1) of this rule by a securities exchange shall constitute a report.

**24. Effectiveness of Registration**

An applicant for registration shall not be deemed to have been registered by the Commission unless and until it receives a formal letter conveying the confirmation of the board of the Commission granting its registration, provided that the Commission may where it deems fit, issue a provisional letter of registration pending confirmation by its board.

**25. Membership of Self-Regulatory Organizations (S.R.O.)**

- (1) Every person registered to perform any function in the market shall be a member of an SRO or a trade association relevant to its function.
- (2) A broker or dealer shall be a member of an association of securities dealers to effect transactions in an over-the-counter market (OTC).
- (3) Where the broker or dealer effects transactions on any exchange and over-the-counter market, the appropriate self-regulatory organization shall be the exchange(s) and the association of the relevant over-the-counter market (OTC).

**26. Finger-printing/Police Clearance**

- (1) Every partner, officer, director, chief executive and sponsored individual shall be cleared by the police at the central criminal registry;
- (2) Such person shall in the presence of an authorized officer of the Commission make his thumb impression on the prescribed form for the purpose of the police clearance;
- (3) All promoters and directors of the registrant shall file their personal and physical data in the prescribed form;



- (4) Adverse report shall be ground for –
  - a) Denial of registration;
  - b) Withdrawal of registration where the Commission granted registration without knowledge of such adverse report.

## **27. Fidelity Bond**

- (1) Every registered corporate body shall provide and maintain a bond which shall be issued by an insurance company acceptable to the Commission against theft/stealing, fraud or dishonesty, covering each officer, employee and sponsored individual of the company;
- (2) The bond shall provide that it shall not be cancelled, terminated or modified except after written notice shall have been given by one party to the other party and to the Commission not less than sixty (60) days prior to the effective date of cancellation, termination or modification;
- (3) The bond shall be in such reasonable form and amount as the fiduciary duties of the officer, employee or sponsored individual require but with due consideration to all relevant factors including but not limited to the value of the aggregate assets of the registered corporate body in relation to all its registered functions to which any officer, employee or sponsored individual may have access, the type and terms of the arrangements made for the custody and safekeeping of such assets and the nature of the securities in the company's portfolio, provided however that the minimum amount of the bond shall be as prescribed by the Commission from time to time;
- (4) Every registered corporate body shall:-
  - (a) file with the Commission within five (5) days after the making of any claim under the bond a statement of the nature and amount of the claim;
  - (b) file with the Commission within five (5) days of the receipt thereof, a copy of the terms of the settlement of any claim made under the bond.

### ***A3. Post-registration Compliance Requirements by Capital Market Operators and other Regulated Entities***

## **28. Code of Conduct**

- (1) All capital market operators and other regulated entities shall comply with these rules and regulations, the code of conduct for capital market operators and their employees, and the code of corporate governance for public companies approved by the Commission and contained in schedule IX and X of these rules and regulations.
- (2) All registered capital market operators shall display the certificate of registration issued by the Commission at the reception of their offices.

## **29. Inspections**

- (1) A registered person shall be subject to inspection by the Commission for compliance with regulatory requirements within one (1) month of registration.
- (2) The Commission may after the inspection in sub rule (1) above inspect any registered person on a periodic basis.
- (3) Books, records and any other information required shall be made available by every registered person to the Commission without notice within a reasonable time.

## **30. Required books, records and financial reports**

- (1) All registered persons shall keep and maintain all books, records and financial reports required under the Act and these rules and regulations.
- (2) All such books, records and financial reports shall be maintained and preserved in a readily accessible place for a period of not less than five (5) years from the end of the year during which the last entry was made on such record, provided that in the first two (2) years such documents maintained shall be in an appropriate office of the registered person.

## **31. Net Capital Requirement**

All registered persons shall maintain the prescribed minimum paid-up capital and are required to have at all times sufficient liquid assets to cover their current indebtedness.

## **32. Changes in information at the time of registration**

All registered persons shall file with the Commission the following information:

- (1) Any major changes in the company that could affect the information filed in respect of the company's registration which at the time of registration was not known. This shall be filed in the appropriate form;
- (2) Where changes mentioned in sub rule (1) above affect the audited accounts, such amended accounts shall be filed with the Commission within six (6) months of the occurrence of the aforementioned change.

## **33. Withdrawal from registration**

- (1) (a) A notice of withdrawal from registration as a market operator or from a registered function pursuant to the Act shall be filed on Form S.E.C. 8 as provided in schedule III to these rules and regulations.  
  
(b) Notice of withdrawal from registration of securities shall be filed on Form S.E.C. 8A as provided in schedule III to these rules and regulations.
- (2) Except as hereinafter provided, a notice to withdraw from registration shall become effective on the 60th day after filing thereof with the Commission or within such shorter period of time as the Commission may determine;

- (3) Notwithstanding the provisions of sub rule (2) above, a notice of withdrawal from registration filed after a registration certificate has been issued shall not become effective, until the original certificate of registration is returned to the Commission for cancellation;
- (4) If prior to the effective date of a notice of withdrawal from registration, the Commission has initiated proceedings to suspend or revoke the registration or to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors;
- (5) The market operator shall:-
  - (a) file with the Commission, a list of all its clients with the outstanding liabilities written against their names;
  - (b) file evidence of satisfactory discharge of its obligation to clients; the Commission reserves the right to verify the information;
  - (c) discharge all outstanding obligations to the Commission e.g. returns, fees, penalties, etc.;
  - (d) file information about the market operator taking over its operations;
  - e) file a sworn statement of indemnity, in favour of the market operator taking over its operations;
  - (f) file a copy of the agreement between it and the market operator taking over its operations;
  - (g) file a copy of the public notice of the withdrawal, which shall be published in two (2) national daily newspapers.

#### **34. Suspension/Cancellation of Registration**

- (1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the rules and regulations, the code of conduct for capital market operators or fails to do any of the following:
  - (a) furnish any information relating to its activities as required by the Commission or furnishes information which is false and misleading in any material particular;
  - (b) submit periodic returns or reports as required by the Commission;
  - (c) co-operate in any enquiry or inspection conducted by the Commission;
  - (d) update its systems and procedures as recommended by the Commission;
  - (e) resolve the complaints of clients or fails to give a satisfactory reply to the Commission in this regard.
- (2) The Commission may cancel the registration granted a market operator where it is found:
  - (a) guilty of fraud or has been convicted of an offence involving moral turpitude; or
  - (b) guilty of repeated defaults.

**(3) *Effect of Suspension and cancellation of registration***

- (a) From the date of the suspension of registration, the market operator shall cease to carry on any capital market activity and shall be subject to the directives of the Commission with regard to any records, documents or securities that may be in its custody or control relating to its activities as a market operator.
- (b) From the date of cancellation of registration, the market operator shall, with immediate effect, cease to carry on any capital market activity as a market operator and shall be subject to the directives of the Commission with regard to the transfer of any records, documents or securities that may be in its custody or control relating to its activities as a market operator.
- (c) where the registration of a market operator is suspended or withdrawn by the Commission, the registration of its sponsored individual also stands suspended or withdrawn.

**(4) *Publication of Order of Suspension or Cancellation.***

The Commission shall publish the order of suspension or cancellation of registration in at least two national daily newspapers.

**35. Change of Status of Registrant**

- (1) Where any sponsored individual resigns or for any other reason leaves the employment of a sponsoring corporate body, the corporate body shall notify the Commission in writing within five (5) working days from the date of his leaving the employment.
- (2) The corporate body shall within thirty (30) days replace the sponsored individual who has left its employment with another officer by filing Form S.E.C. 2A accompanied by:-
  - (a) completed Form S.E.C. 2 from the new officer being sponsored;
  - (b) a copy of the letter of resignation from its previous sponsored individual;
  - (c) letter of termination from the company (where applicable);
  - (d) letter of acceptance of resignation from the company:

Provided that where the company still has the required minimum number of sponsored officers, it may not replace the officer who left its service.

- (3) The officer in sub rule (2)(a) above shall comply with the requirements of rules 19 and 20.
- (4) Where a registered sponsored individual intends to transfer to another registered corporate body, the following shall be complied with by the affected sponsored individual:
  - (a) where the registration of a market operator is suspended or withdrawn by the Commission, the registration of its sponsored officer also stands suspended or withdrawn;

- (b) where a sponsored officer resigns his employment in the sponsoring company, he may transfer his registration to another registered corporate body by complying with the following:

- (i) notify the Commission in writing within five (5) working days from the date he resigns from his previous employment,

- (ii) file Form S.E.C. 2B within fourteen (14) days of assumption of duty with the new operator accompanied by a copy of letter of employment issued by the present employer and a copy of letter of acceptance of resignation from the previous employer,

- (iii) file completed Form S.E.C. 2 as a sponsored individual by the present employer:

Provided that where the individual has been out of capital market operations for three (3) years or more, he shall file a fresh application for registration with the Commission;

- (c) where an employee of a capital market operator resigns or is dismissed on grounds of fraudulent or manipulative acts, the capital market operator shall notify the Commission in writing within two (2) working days from the date of the employee's resignation or dismissal.

#### **(5) *Revalidation of registration***

- (a) Where a capital market operator's registration is suspended and it complies with the terms and conditions of the suspension order after the expiration of the registration, the market operator shall file an application to revalidate the registration upon the fulfillment of the following requirements:

- (i) compliance with the terms and conditions of the order of suspension;

- (ii) where restitution was ordered, a written confirmation from the aggrieved party, of compliance by the market operator, shall be filed by the affected market operator with the Commission. The Commission reserves the right to verify the authenticity of the written confirmation mentioned herein;

- (iii) sworn undertaking not to commit the breach that gave rise to the suspension;

- (iv) file an application for revalidation of registration as provided for in **this rule**;

- (b) Where the suspended market operator is unable or failed to comply with the terms and conditions of the suspension order within a period of twelve (12) months, its registration shall become void. The market operator shall file a fresh application for registration.

#### **(6) *Reinstatement of suspended registration***

The following conditions are imposed for reinstatement of a suspended registration:

- (a) Where a capital market operator's registration is suspended and it complies with the terms and conditions of such suspension order while its registration is still valid, then

the registration of the market operator shall be reinstated within fourteen (14) days upon the fulfillment of the following requirements:

- (i) compliance with the terms and conditions of the order of suspension;
  - (ii) where restitution was ordered, a written confirmation from the aggrieved party, of compliance by the market operator, shall be filed by the affected operator with the Commission. The Commission reserves the right to verify the authenticity of the written confirmation mentioned herein;
  - (iii) sworn undertaking not to commit the breach that gave rise to the suspension;
- (b) Where the suspended market operator is unable or failed to comply with the terms and conditions of the suspension order within a period of twelve (12) months, its registration shall become void. The market operator shall file a fresh application for registration.
- (c) Where a registered sponsored individual's or compliance officer's registration is suspended and the terms and conditions of the suspension order have been complied with the registration of the sponsored individual or compliance officer shall be reinstated.
- (7) Any person who fails to comply with the provisions of this regulation shall be liable to a late filing fee of N500 for every day that the default subsists and shall have its registration summarily suspended if the period of default exceeds ninety (90) days.

### **36. Approval of branch offices of Capital Market Operators**

Every capital market operator shall seek and obtain the approval of the Commission before the establishment of a new branch. Where an operator intends to close any of its branch offices, it shall give not less than thirty (30) days' notice of its intention giving reasons for the closure.

### **37. Management of branch offices of Capital Market Operators**

All branch offices of a capital market operator shall be managed by a sponsored individual.

## **PART B**

### ***Regulation of Public Companies***

### **38. Filing of Audited Financial Statements**

- (1) All public companies whose securities are required to be registered shall file with the Commission on a periodic or annual basis and on a specified format its audited financial statement and other returns as may be prescribed by the Commission from time to time.
- (2) Every public company shall appoint a compliance officer who in conjunction with the chief financial officer shall ensure compliance with all regulatory requirements of the Commission.

### **39. Annual Report**

- (1) The annual report to be filed with the Commission shall in all material facts comply with the relevant accounting standard. It shall also make disclosures of its unclaimed dividend fund with respect to bank balance, investments and earned income by way of notes to the audited accounts and other periodic reports filed with the Commission.
- (2) The annual reports shall be filed with the Commission, not later than ninety (90) days after the financial year end in line with the provisions of CAMA;
- (3) The chief executive officer and chief financial officer or officers or persons performing similar functions in a public company shall in filing the annual account, attach a duly signed certification letter to the matters specified in section 60(2) of the Act;
- (4) The auditor to the public company shall be registered by the Commission in line with Section 62 of the Act;
- (5) The auditor of a public company shall in his audit report to the company issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the company;
- (6) The annual report shall state the level of compliance of the public company with the Code of Corporate Governance for public companies as contained in schedule X of these rules and regulation. *[SECRR(A) September, 2011]*
- (7) Any company who fails to file its annual report with the Commission as in ( 1) above shall be liable to a fine of N1million and the sum of N25,000 for every day the default continues.

### **40. Rule on Earnings Forecast**

- (1) All public quoted companies shall release its earnings forecast to the relevant securities exchange, the Commission and the investing public twenty (20) days prior to the commencement of a quarter.
- (2) The forecast shall be in line with the company's policy and securities exchange listing requirements;
- (3) Underlying assumptions that formed the bases of the forecast shall also be disclosed;
- (4) The forecast shall be certified by the chief executive officer and chief financial officer or officers or persons performing similar functions in the company;
- (5) All public companies shall notify the relevant securities exchanges as soon as it is known that the forecast will not be realized and the reasons for the non-realization shall be stated.

### **41. Quarterly Report**

- (1) Public quoted companies shall not later than thirty (30) days from the end of each quarter file with the Commission and simultaneously with the relevant securities exchanges and the investing public a quarterly report prepared in accordance with the International Financial Reporting Standard (IFRS).
- (2) The quarterly report shall contain the following by way of notes:
  - (a) Accounting policy changes;

- (b) Seasonality or cyclicalality of operations;
- (c) Unusual items;
- (d) Changes in estimates;
- (e) Issuance, repurchase, and repayment of debts and equity securities;
- (f) Dividends;
- (g) Items of segment information (where applicable);
- (h) Significant events after the end of the interim period;
- (i) Business combinations;
- (j) Long term investments;
- (k) Restructuring and reversals of restructuring provisions;
- (l) Discontinuing operations;
- (m) Correction of prior errors;
- (n) Write-down of inventory to net realizable value;
- (o) Impairment loss of property, plant, equipment, intangible or other; assets, and reversal of such impairment loss;
- (p) Litigation settlements;
- (q) Any debt default or any breach of a debt covenant that has not been corrected subsequently;
- (r) Related party transactions;
- (s) Acquisitions and disposals of property, plant and equipment;
- (t) Commitments to purchase property, plant and equipment.

(3) The chief executive officer and chief financial officer or officers or persons performing similar functions in a public company shall in filing the quarterly report attach a duly signed certification letter.

**(4) *Publication of Interim Financial Statement.***

All public companies shall publish their “signed” quarterly balance sheet, income statement and cash flow statements in at least one (1) national daily newspaper. However, the accounting policies, notes and other relevant information shall be posted on the company’s website which address shall be disclosed in the newspaper publication. The publication shall be signed by the officers mentioned in (3) above.

(5) Any company which fails to file quarterly report with the Commission shall be liable to a fine of N1million and the sum of N25,000 for every day the default continues.

**42. Half Yearly Returns**

- (1) Public companies shall file half yearly returns with the Commission in the prescribed manner and shall contain the following:
  - (a) General information;
  - (b) Corporate Governance issues;
  - (c) Unclaimed dividends;
  - (d) Audit Committee;
  - (e) Undertaking by the company secretary, chief internal auditor, financial controller, managing director, board chairman and chairman of audit committee certifying the reliability of the information in the format provided.



(2) The completed form shall be returned to the Commission within thirty (30) days from the end of the half year period, either in hard or electronic copy.

(3) Any company which fails to file its half yearly returns with the Commission shall be liable to a fine of N1million and the sum of N25,000 for every day the default continues.

**(4) *Unclaimed Dividend***

All public companies shall file with the Commission in the prescribed form a report of unclaimed dividends on half a yearly basis.

**(5) *Audit Committee***

(a) Every public company shall establish an audit committee with written term of reference. The committee shall be independent in carrying out its terms of reference.

(b) The audit committee shall maintain records of attendance and deliberations of its meeting and interactions.

(c) The audit committee of every public company shall review the company's financial statements prior to approval by the board of the company and present the report at the annual general meeting.

(d) All members of the audit committee of the board shall be financially literate.

*( SECRR(A)February, 2013)*

**43. Risk Management**

**(1) Risk Management by public companies**

Every public company shall:

(a) include risk management as part of its accounting policies;

(b) disclose by way of notes any material effect of unmitigated risk on corporate profitability;

(c) disclose by way of notes strategies for preventing risks the company is exposed to.

**(2) Risk Management by the Board**

The board shall establish a risk management committee to assist it in its oversight of the risk profile, risk management framework and the risk reward strategy determined by the board.

*( SECRR(A)February, 2013)*

**44. Payment of dividends**

(1) Dividend declared shall be paid en-bloc by the issuance of a cheque or transfer of funds to the registrar not later than seven (7) working days after the annual general meeting where the dividend was declared.

(2) Dividend shall be paid only out of the current profits or revenue reserves of the company. No company shall borrow for the purpose of paying dividend.

- (3) A company shall not declare or pay dividend if there are reasonable grounds to believe that the company is or would be, after payment, unable to pay its liabilities as they fall due.
- (4) (a) All directors who pay or are party to the payment of dividend out of capital shall be personally liable to refund to the company any payment so made.
- (b) All directors who recommend the payment of dividend when it is apparent that the company has no resources to pay, shall be personally liable to pay the declared dividend to shareholders. [SECRR(A) March, 2010]

## **PART C**

### **Regulation of Capital Market Operators**

#### **45. Registrable Functions**

- (1) The following are capital market operators:
  - a. issuing houses/merchant bankers;
  - b. underwriters;
  - c. broker/dealers;
  - d. sub-brokers;
  - e. receiving bankers;
  - f. registrars;
  - g. trustees;
  - h. investment advisers (corporate and individuals);
  - i. fund/portfolio managers;
  - j. rating agencies;
  - k. market makers
  - l. custodian
  - m. any other function the Commission may determine from time to time.
- (2) Only corporate bodies are qualified to file applications for the following functions:
  - a. broker/dealer;
  - b. underwriter;
  - c. issuing house;
  - d. registrar
  - e. trustee;
  - f. fund/portfolio manager;
  - g. rating agency
  - h. market makers
  - i. receiving bankers

Provided that where an existing entity intends to perform the functions of a registrar, it shall incorporate a separate body for that purpose.

- (3) Managers of an authorized collective investment scheme shall not engage in the performance of any other function.

### ***C1. General Provisions***

**46. Ailing Market Operator**

The Commission may, where it deems fit, appoint an individual or body corporate to oversee the affairs of a suspended or ailing capital market operator in the interest of the general investing public.

**47. Compromise with creditors**

Any market operator shall notify the Commission, at least three (3) months before the meeting of creditors, of its intention to compromise with its creditors.

**48. Issuing House Fees**

Issuing house fees on equities and interest bearing securities shall not exceed the limit approved by the Commission from time to time.

**49. Broker/Dealer Fees**

- (1) Broker/dealer fees for the purchase or sale of securities on behalf of their clients shall not exceed the limit approved by the Commission from time to time.
- (2) Every broker/dealer shall pay to the Commission the prescribed fees as per Schedule I of these rules and regulations on every security traded on an exchange or any other registered self-regulatory organizations (S.R.O)

**50. Examination by Self-Regulatory Organizations**

- (1) A market operator, subject to these regulations, shall permit duly authorized officer(s) of an self-regulatory organizations (S.R.O) to which the market operator belongs to examine the activities and records of such operator.
- (2) An self-regulatory organizations (S.R.O). shall furnish copies of all reports of examination of any person who is a member of such S.R.O. to the Commission not later than thirty (30) days after the quarter in which such inspections were carried out.

**51. Reports to be filed**

- (1) Every market operator whether active or not shall file with the Commission reports listed in schedule IV of these rules and regulations:-
  - (a) Quarterly returns shall be filed within thirty (30) days after the end of the quarter.
  - (b) Annual accounts certified by an auditor and prepared on a calendar or fiscal year basis, shall be filed not later than six (6) months after the end of the accounting year.

- (c) Where a market operator fails to file quarterly returns twice in a year and nine (9) months after the annual accounts becomes due, the market operator shall be referred for further enforcement action.

Provided that an operator who was not active during a reporting period shall file a nil return supported by affidavit.

- (2) Upon the discovery of the theft or loss of any security, a capital market operator shall report to the Commission, the exchange to which it is a member, and the registrar. Such reports shall be made within forty eight (48) hours of the discovery and shall state the following information if applicable:-

- (a) name of issuer;
- (b) type of security;
- (c) date of issue;
- (d) maturity date;
- (e) denomination;
- (f) interest rate;
- (g) certificate number;
- (h) name in which registered;
- (i) date of discovery.

## **52. Recognition of Experts**

The Commission shall not recognize as a qualified expert any person who is not duly recognized and entitled to practice as such under the laws of Nigeria or any person who is barred by the Commission, for the protection of investors, from acting as such in connection with any investment and securities business.

## **53. Expert's report**

- (1) An expert's report shall be duly signed and dated by a named individual.
- (2) Where the report is by an auditor, it shall contain amongst others :-
  - (a) a reasonably comprehensive statement as to whether the auditor reviewed the internal control systems with respect to safeguarding the securities of customers, and including, if with respect to significant items in the report if auditing procedures generally recognized as normal have been omitted, a specific designation of such procedures and of the reasons for their omissions;
  - (b) a statement whether the audit was conducted in accordance with generally accepted auditing standards applicable in the circumstances; and
  - (c) a statement whether the audit made omitted any procedure deemed necessary by the auditor under the circumstances of the particular case;

- (d) The report of the auditor shall state clearly his opinion with respect to the financial statements covered by the report and the accounting principles and practices reflected therein.
- (3) Nothing in this regulation shall be construed to imply authority for the omission of any procedure, which the auditor(s) would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by these rules and regulations.

#### **54. Exceptions**

Any matter to which the auditor takes exception shall be clearly identified and the exception thereto clearly and specifically stated to the extent practicable and the effect of each of the exceptions on the related item of the report shall be given.

### ***SPECIFIC PROVISIONS***

#### ***C2. Brokers/Dealers and Jobbers***

#### **55. Registration Requirements**

An application for registration as broker/dealer shall be filed on Form S.E.C. 3 contained in schedule III to these rules and regulations and shall be accompanied by:-

- (1) a minimum of two sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (2) a copy of Certificate of Incorporation certified by the Corporate Affairs Commission (C.A.C.); where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;
- (3) a copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission which among others shall include the power to act as a broker/dealer;
- (4) a copy of CAC Form containing particulars of directors certified by the Corporate Affairs Commission;
- (5) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
- (6) profile of the company covering among others brief history of the company organizational structure, shareholding structure, principal officers, etc. (see Form S.E.C. 3 for details);
- (7) Fidelity bond representing 20% of paid-up capital;
- (8) sworn undertaking to keep proper records and render returns;
- (9) a copy of the dealership certificate of the authorized dealing clerk being sponsored by the applicant;
- (10) evidence of minimum paid-up capital of N70 million.

## **56. Functions**

### **(1) Brokers**

Registered brokers shall have the following functions amongst others:-

- (a) sale and purchase of securities on a recognized securities exchange on behalf of his clients.
- (b) other services ancillary to (a) above;
- (c) disclose to the Commission any dealings in a security valued at a minimum of N50 million executed in a single deal or in multiple deals on the same day on behalf of his clients.
- d) shall report any suspected market manipulation or insider dealing to the Commission within 48hrs.

### **(2) Dealers**

Registered dealers shall have the following functions amongst others:-

- (a) sale and purchase of securities on a recognized securities exchange on his own account;
- (b) other services ancillary to (a) above;
- (c) disclose to the Commission any dealings in a security valued at a minimum of N50 million executed in a single deal or in multiple deals on the same day on his own account.
- (d) shall report any suspected market manipulation or insider dealing to the Commission within 48hrs.

## **57. Net capital requirement**

(1) No broker or dealer shall permit his aggregate indebtedness to exceed 10 times its net capital.

(2) Net capital shall be computed as specified below:

- (a) Determine equity by subtracting the broker-dealer's liabilities from its assets (broker-dealer assets include cash; money owed by customers and other broker-dealers; securities held in proprietary trading and investment accounts; and fixed assets like buildings, furniture and equipment. Broker-dealer liabilities include money owed to customers and other broker-dealers, bank loans, debt securities issued by the broker-dealer, or funds loaned to it by the parent company);
- (b) Add back certain subordinated liabilities to equity, subject to certain conditions;
- (c) Deduct illiquid assets, such as the value of fixed assets from equity;
- (d) Deduct unsecured receivables.

## **58. Determination of Net (liquid) Capital**

(1) Every stock broker (broker/dealer) registered with the Commission shall compute and report in all statutory report/filing its Net (liquid) Capital applying the following procedures:

- (a) Total asset
- Less: total liabilities
- Net-Worth
- Add: Reserves/earning
- Subordinated loans
- Net capital before adjustments
- (b) Less: Fixed assets
- Prepaid expenses
- Exchange membership fee
- Unquoted investments
- Unsecured receivable (loan)
- Net capital before provisions
- (c ) Less: Provisions (Haircuts)
- Net (liquid) capital
- (d) Less: Required minimum capital base
- Within threshold/in excess/shortfall

## (2) Definition Of Terms

**Networth** means the difference obtained when the liabilities is subtracted from the assets of a stockbroking firm.

**Prepaid Expense** means payment in lieu of service or goods delivery. It is an asset to the company not immediately recoverable.

**Unquoted Investment** means investment in securities that are not listed on the stock exchange. The value of such investment cannot be immediately determined.

**Unsecured receivable (loan)** means a debit balance on the account of clients that are not covered by any collateral, but by the assets acquired by the stockbroking firm under a margin loan agreement or any other form of unsecured loan agreement.

**Subordinated loan** means the lending of cash or collateral to a broker/dealer for use in the company. The lender has last claim in the assets in case of financial difficulties. This type of loan is usually obtained from the company's promoters or its directors.

**Provisions (Hair cut)** means an industry term that is applied to the value of an asset. Depending on its liquidity, the value is reduced by what amount could be expected if the asset had to be liquidated in a hurry.

**59. Records of transactions with clients**

- (1) (a) A broker shall maintain proper and adequate records of transactions for and on behalf of each client. Such records shall include among others;
- i. mandate forms;
  - ii. contract notes;
  - iii. clients' statement of accounts;
  - iv. deposit receipt for purchase of shares;
  - v. scrip receipt for certificate deposit;
  - vi. the exact price at which each quantity of shares were bought or sold;
  - vii. the full details of fees charged on secondary market transactions.
  - viii. Two duly completed and signed transfer forms of all initial purchases of a particular security, one of which shall be forwarded to the appropriate registrar through the securities depository.
- (b) Account opening documents and mandate form may be completed electronically or otherwise in triplicate, with copies held by the following:
- i. broker;
  - ii. Central Securities Clearing System (CSCS);
  - iii. Investor.

It shall be the responsibility of the stockbroker opening the account to circulate a copy to the CSCS.

- (2) A dealer shall maintain proper and adequate records of all its transactions.

**60. Segregation of accounts/hypothecation**

- (1) A broker/dealer is required at all times to keep separate accounts for every client transaction and shall not engage in the following acts:-
- (a) commingling of client's funds with funds of the broker/dealer in a single account;
  - (b) commingling of securities carried for the account of a customer with securities carried for the accounts of any other customer or self;
  - (c) pledging of any securities of a client to borrow in the ordinary course of business as a broker/dealer;
  - (d) use of client's fund to purchase securities not specified in the prior mandate of the client;



- (e) alteration of the client's mandate without obtaining the prior written consent of the client;
  - (f) use of client's un-invested funds for purposes other than for the benefit of the client;
  - (g) any other act that may be specified by the Commission from time to time for the protection of investors.
- (2) A broker/dealer may maintain margin accounts for his clients subject to the provisions of the Act and the monetary guidelines issued from time to time by the Central Bank of Nigeria:-
- (a) a broker/dealer maintaining margin accounts shall, as a matter of policy, disclose it in the annual audited accounts and to his clients;
  - (b) no broker/dealer shall extend credit to his clients in excess of 10 times its net capital in the aggregate per annum;
  - (c) margin accounts maintained by a broker/dealer shall not be used for any other purpose other than for transaction in securities;
  - (d) a broker/dealer shall file a quarterly report with details of the operations of the margin account.

## **61. Use of Nominee accounts**

### **(1) Definition of terms**

For the purpose of this regulation the following terms shall have the meanings hereinafter assigned to them:

**Nominee registration** means the registration of securities by a custodian/agent, where it is stated that the custodian/agent are not the owners of the securities.

**Nominee account** means the custodians/agents account in which clients' securities are maintained.

**Custodian/agent** means corporate entity or firm authorized to hold securities owned by its clients.

**Client** means the person who receives the financial benefit from or bears the financial risk of securities and grants authorization to the custodian/agent to act in its own name and be registered as the beneficial owner of the securities.

### **(2) Regulation of Nominee Account**

#### **(a) Application**

Corporate entity or firm authorized to hold securities owned by its clients shall apply to the Commission for approval to hold these in a nominee account and accept payment on behalf of its clients from individual issuers of securities.

**(b) Nominee Account Owners' approval**

A client's securities shall not be registered in a nominee account without the client's consent. The custodian/agent shall inform the client of the legal effects of registering securities in a nominee account.

**(c) Information on clients**

The custodian/agent shall have information available on clients requesting nominee registration of securities. The custodian shall inform the client of the obligation to provide information to the Commission under this regulation.

The custodian/agent shall preserve information on nominee accounts, for five (5) years from the end of the business relationship.

**(d) Record of clients and financial instruments**

A custodian/agent holding securities in a nominee account shall maintain a record of the shares of each individual client. The record shall always include the names and numbers of clients associated with the securities registered in the nominee account, as well as the number of securities covered by each nominee registration agreement. The record shall be prepared in such a way that there is no doubt regarding the ownership of financial instruments.

**(e) Identification of financial instruments registered in nominee accounts**

The registrar of securities shall identify securities registered in nominee accounts separately in its records, so that there is no doubt as to which securities are held in nominee accounts.

**(f) Bankruptcy of custodians/agents**

In the event that a custodian's/agent's estate is subjected to bankruptcy proceedings or a moratorium is granted on its debts, or the custodian/agent is wound up or comparable measures are taken, the client may, on the basis of the record provided, withdraw its securities from the nominee account, provided that their ownership is not disputed.

**(g) Rights conferred by securities**

No other rights conferred by securities besides the rights provide herein are attached to a nominee account. Voting rights at shareholders meetings are not attached to nominee accounts (except expressly required to do so in writing).

**(h) Permission to accept payments, etc**

A custodian/agent is permitted to accept payments on behalf of its clients from individual issuers of securities, including rights to dividends or other payment and rights to new shares in the event of an increase in share capital. The custodian/agent shall keep these payments separate from its other assets.

**(i) Supervision and provision of information (Information on business)**

The Commission reserves the right to demand from a custodian/agent the disclosure of the identity of the clients registered as owners of securities held in a nominee account at any specific point in time.

A custodian/agent shall provide the Commission with the information required under (a) in the form and within the time limit as specified by the Commission.

**(j) Revocation of registration**

(i) The Commission may revoke the registration of the custodian/agent in a nominee account:

(a) If the custodian/agent violates the provision of the rules and regulations of the Commission regarding the provision of information to the Commission on nominee accounts.

(b) If the custodian/agent in other respects commits serious or repeated violations of the legal provisions to which its activities are subject.

(ii) Before any revocation pursuant to (i) (b) above, the custodian/agent may be given a period of one (1) month to rectify the situation, if rectification is possible in the estimation of the Commission.

(iii) Revocation of the custodian's/agent's licence for approval in a nominee account shall be notified to the board of directors of the custodian and reasoned in writing.

(iv) Where the approval of a custodian/agent is revoked the nominee accounts shall be transferred to another custodian/agent, which shall only be operated as a nominee account where the nominee enters into a new agreement with the new custodian/agent. (*SECRR(A) February, 2013*)

**62. Periodic reports to clients**

(1) Every broker/dealer shall furnish his clients with:-

(a) a quarterly report showing all transactions on behalf of the client including the statement of account for the period.

(b) a quarterly report detailing the client's share portfolio, including the statement of share ownership from the clearing agency.

(2) Notwithstanding sub rule (1) above every broker/dealer shall provide a client on demand, a statement of account showing both credit and cash transactions on behalf of the client.

**63. Soliciting deposit**

Pursuant to the provisions of the Act, no broker/dealer shall solicit deposits through brochures, salesmen, canvassers or by any other means.

**64. Mandate to purchase securities**

Every broker shall ensure that the aggregate worth of all mandates to purchase securities for clients does not exceed 200 percent of its paid-up share capital.

(*SECRR(A) February, 2013*)

**65. Broker acting as agent**

- (1) A broker acting as agent of the transferor shall verify the certificate for such security with the registrar of the security before any deal on such security can be executed on an exchange. On no account shall a client's holding be disposed of without specific mandate.
- (2) The period between the lodgment and verification of a certificate shall not exceed ten (10) days provided that where there is a need to exceed the prescribed period, the broker/dealer shall notify the Commission justifying the need for an extension of time.
- (3) Where the security is available, the broker with the mandate to buy shall execute its client's order including lodgment within five (5) working days:

Provided that where the security is not available within the stipulated period, the broker shall revert to the client for further instructions.

- (4) In the case of nominal transfer, the broker shall submit evidence of verification and lodgment with the registrar within five (5) days and the certificates (where applicable) mailed by registered post by the broker to the clients within five (5) days of collection from the registrar.
- (5) Unauthorized disposal of securities or non-purchase or delay in purchase of securities where available and non-remittance of the proceeds of sale to client shall attract a penalty of at least N100,000 and a further sum of not less than N5,000 for every day from the date of disposal without authority, or date mandate was supposed to be executed or date proceeds were supposed to be remitted.

**66. Suspension of a Broker**

- (1) Any broker suspended for a period of more than three (3) months, shall provide the Commission, not later than five (5) working days from the date of receipt of notice of the suspension, with the following:-
  - (a) list of all his clients' securities with the registrar and C.S.C.S.;
  - (b) any share certificate yet to be sent for verification;
  - (c) share certificate yet to be verified by the registrar;
  - (d) unexecuted mandate of clients if any;
  - (e) all un-concluded inter-broker transfers;
  - (f) clients dividend warrant or certificates yet to be delivered;
  - (g) cash balance of all clients;
  - (h) trading and operational account statements.

- (2) The Commission may, upon receipt of the information in (1) above, direct the transfer of such account(s) to other registered stockbroker(s) of the client's choice and may take such other steps as may be appropriate.
- (3) The Commission may, where it deems fit, appoint an individual or body to oversee the affairs of a suspended broker in the interest of the general investing public.

### ***C3. Sub-Broker***

## **67. Registration requirements**

### **( 1) *Corporate Sub-Broker***

An application for registration as corporate sub-broker shall be filed on Form SEC 3 as contained in schedule III to these rules and regulations and accompanied by –

- (a) two (2) sets of completed Form SEC 2 to be filed by the sponsored individual;
- (b) a copy of the certificate of incorporation certified by the Corporate Affairs Commission (CAC). Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;
- (c) a copy of the memorandum and articles of association certified by the Corporate Affairs Commission which among others shall include powers to act as a sub-broker;
- (d) a copy of the CAC Form containing particulars of directors certified by the Corporate Affairs Commission;
- (e) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (f) profile of the company covering among others brief history of the company, organizational structure, shareholding structure, principal officers, etc;
- (g) Fidelity bond representing 20% of paid-up capital;
- (h) sworn undertaking to keep proper records and render returns;
- (i) a copy of the agreement signed between the sponsoring broker/dealer firm and sub-broker;
- (j) evidence of minimum paid-up capital of N1 million;
- (k) Sworn undertaking to comply with the provisions of the Act and the rules and regulations as may be required from time to time by the Commission;
- (l) A recommendation letter from the sponsoring broker/dealer firm;
- (m) Evidence of compliance with rule 20(4);

- (n) any other information or document that may be required by the Commission from time to time.

**( 2) *Individual Sub-Broker***

- (a) An application for registration as an individual sub-broker shall be filed on Form SEC 2 as provided in schedule III of these rules and regulations and shall be accompanied by the following:
  - (i) Certified copy of certificate of registration of business name (where applicable);
  - (ii) Evidence of minimum net worth of N500,000;
  - (iii) Sworn undertaking to comply with the provisions of the Act and the rules and regulations as may be required from time to time by the Commission;
  - (iv) Evidence of compliance with rule 20(4);
  - (v) Sworn undertaking to keep proper records and render returns.
- (b) Rule 83(3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a sub-broker.

**68. Functions**

- (1) A registered sub-broker shall have the following functions which shall be carried out only through its sponsoring broker/dealer;
  - (a) purchasing of securities;
  - (b) sale of securities;
  - (c) receiving payments from clients in any of the transactions mentioned in (a) and (b) above only by cheques written in favor of the sponsoring broker/dealer;
  - (d) making payments to clients in any of the transactions mentioned in (a) and (b) above only by cheques drawn by the sponsoring broker/dealer;
  - (e) other services ancillary to (a) to (d) above.
- (2) The sub-broker shall not keep the funds of the client in its custody.
- (3) All monies received from or on behalf of clients shall be duly receipted and remitted to the sponsoring broker/dealer within two (2) working days.
- (4) The receipt issued by the sub-broker to clients shall bear the names and logos of the sub- broker and the sponsoring broker/dealer.

- (5) All certificates, and warrants received by the sub-broker from client's for stock broking transactions, shall be forwarded to the sponsoring broker/dealer within two (2) working days.

**69. Net Capital Requirement**

No sub-broker shall permit its aggregate indebtedness to exceed 10 times its net capital unimpaired by losses.

**70. Records of Transactions with Clients**

A sub-broker shall maintain proper and adequate records of transactions for and on behalf of each client. Such records shall include among others:-

- (a) Duly executed mandate form;
- (b) Deposit receipt for purchase of shares;
- (c) Script receipt for certificate deposit;
- (d) Clients statement from any recognized and registered depository.

**71. Periodic reports to clients**

- (1) Every sub-broker shall furnish its clients in any quarter in which there was a transaction with at least;
  - (a) A quarterly statement of account showing all purchase and sales transactions on behalf of the client;
  - (b) A quarterly report detailing the clients' shares portfolio, including the statement of share ownership from the clearing agency;
- (2) Notwithstanding sub-rule (1) above, every sub-broker shall provide a client on demand, a statement of account showing both credit and debit transactions on behalf of the client.
- (3) The sub-broker shall comply with rule 51 of these rules and regulations as it relates to filing of reports with the Commission. The report shall be filed through the sponsoring broker/ dealer.

**72. Prohibition of Solicitation of Deposits**

Pursuant to the provisions of the Act, no sub-broker shall solicit deposits through brochures, salesmen, canvassers or by any other means.

**73. Sub-Brokers Commission**

The commission payable to a sub-broker for transactions on behalf of the sponsoring broker/dealer shall not be less than 35% of the commission earned on the transaction by the sponsoring broker/dealer.

#### **74. Relationship between Sub-Brokers and Broker/Dealers**

- (1) A sub-broker shall:
  - (a) co-operate in protecting the interest of the client with regard to dividends, bonus shares or any other rights relating to the client's portfolio;
  - (b) not fail to carry out the clients instructions;
  - (c) execute an agreement or contract which would clearly specify the rights and obligations of the sub-broker and the broker/dealer;
  - (d) not resort to unfair means of inducing clients from other broker/dealers.
- (2) A sub-broker shall not:
  - (a) indulge in insider dealing, dishonorable, disorderly or improper conduct in the course of his business. He shall comply with the provisions of the rules and regulations of the Commission;
  - (b) neglect or fail or refuse to submit to the Commission such books, returns, correspondences, documents and papers or any part thereof as may be required, and shall not make any false or misleading statement on any returns required by the Commission;
  - (c) indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains;
  - (d) create false market either acting alone or in concert with others, or indulge in any act detrimental to the public interest or which leads to interference with the fair and smooth functions of the market mechanism.

#### **75. Suspension of Sub-Broker**

- (1) Any sub-broker suspended for a period longer than three (3) months, shall, not later than seven (7) working days from the date of receipt of notice of the suspension, provide the following information to its sponsoring broker/dealer and copy the Commission:
  - (a) names and addresses of its clients;
  - (b) all share certificates yet to be sent for verification;
  - (c) schedule of share certificates yet to be verified by the registrar;
  - (d) schedule of unexecuted mandates from clients, if any;
  - (e) all clients dividend warrants or share certificates yet to be delivered;
  - (f) transaction account statements.



- (2) The Commission may take such other steps as may be appropriate including the imposition of such penalties as provided for in the rules and regulations.
- (3) The Commission may, where it deems fit, appoint an individual or a body to oversee the affairs of a suspended or ailing sub-broker in the interest of the general investing public.

*[SECRR(A) August ,2009]*

#### **C4. Market Maker**

##### **76. Definition.**

**Market maker** shall mean any specialist permitted to act as a dealer, any dealer acting in the position of a block positioner, any dealer who, with respect to a security, holds himself out as being ready to buy and sell such securities for his own account on a regular and continuous basis.

##### **77. Market making system**

The market making system may be “**Quote Driven, Order Driven or Hybrid**”.

*[SECRR(A) April 2012]*

##### **78. Eligibility**

###### **The Market Maker Shall:-**

- (1) be a company duly registered with the Corporate Affairs Commission.
- (2) be an entity desirous of performing the function of a market maker in the capital market and shall be licenced as a broker–dealer by a self- regulatory organisation (SRO). *[SECRR(A) April 2012]*
- (3) have a minimum paid up capital as specified by the supervisory self-regulatory organization (SRO) with the approval of SEC. *[SECRR(A) April 2012]*. The market maker shall at all times maintain sufficient liquid assets to cover its current indebtedness.
- (4) clearly state in its Memorandum and Articles of Association that it can deal in securities in the capital market.
- (5) convey any change in information, which affects the status of the company to the Commission as required by rule 37 of these rules and regulations.

##### **79. Registration Requirements**

Any entity desirous of being registered as a market maker must comply with the following:

- (1) be registered as a member of a self- regulatory organization (SRO) as required by the provision of rule 25 [(1), (2), and(3) ] of the rules and regulations.
- (2) comply with the code of conduct of capital market operators as provided under rule 28(1) and (2) of the rules and regulations.

- (3) maintain a fidelity bond in line with the provisions of rule 27.

## **80. Functions**

- (1) A registered market maker shall perform the following functions:-

- (a) be a specialist in designated securities and shall hold itself out (by entering quotation in an inter-dealer communications system or otherwise) as being willing to buy and sell the designated securities for its own account on a regular or continuous basis;
  - (b) promote continuous liquidity in the market at all times;
  - (c) serve as a source of market information for the designated securities for which at all times, it stands ready;
  - (d) facilitate a smooth trading atmosphere and engender market stability as well as promote price discovery.
- (2) The market maker may in addition to sub rule (1) above, carry out other functions, such as underwriting; but it shall not combine market making functions with stockbroking.

## **81. Obligations of Market Maker**

A market maker shall comply with the following:

- (1) stabilize the market by ensuring continuous liquidity, by synchronizing buy and sell transactions;
- (2) operate within the established transaction spread to be specified by the supervising self-regulatory organization (SRO) with the approval of the Commission; *[SECRR(A) April 2012]*
- (3) have the capacity for continuous 2-way quotes in the relevant stocks throughout the trading session in a minimum quote size to be specified by the supervising self-regulatory organization (SRO) with the approval of the Commission; *[SECRR(A) April 2012]*
- (4) have the capacity to deliver and settle transactions within the prescribed settlement cycle;
- (5) have the capacity to lend and borrow the designated securities at any time, with a view to ensuring stability in the market;
- (6) have enough buffer funds at all times.

## **82. Infrastructure**

The market maker shall have a robust information technology infrastructure and multiple record keeping systems.

*[SECRR(A) September 2008]*

### ***C5. Issuing Houses***

#### **83. Registration requirements**

- (1) An application for registration as an issuing house shall be filed on Form S.E.C. 3 contained in schedule III to these rules and regulations and shall be accompanied by:
  - (a) a minimum of 3 sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) copy of certificate of incorporation certified by the company secretary. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
  - (c) copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission which shall include among others the power to act as issuing house;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
  - (f) profile of the company;
  - (g) fidelity bond representing 25% of paid-up capital;
  - (h) sworn undertaking to keep proper records and render returns;
  - (i) evidence of minimum paid-up capital of N150 million;
  - (j) any other document required by the Commission from time to time.
- (2) The head of the issuing house activities must have practical experience in the packaging of public issues.
- (3) The Commission shall within sixty (60) days after the filing of an application, subject to the compliance with all registration requirements, pursuant to the Act and these rules and regulations, make known its decision to either grant, or after appropriate notice and opportunity for hearing, deny registration to the issuing house, unless the application is withdrawn by the applicant.
- (4) A notice under sub rule (3) of this rule shall contain the reasons why the Commission may not register an issuing house and shall stipulate the time (not being less than fourteen (14) days from the receipt of the notice) within which representations may be made to the Commission in respect thereof. The notice shall stipulate the time and place of the hearing referred to in sub rule (3).

#### **84. Functions**

Issuing houses shall have the following functions amongst others:-

- (1) providing financial advisory services for schemes and issuance of securities under the relevant provisions of the Act, CAMA or any other law;

- (2) acting as agent of issuer for purposes of issuances of securities and schemes under the relevant provisions of the Act, CAMA or any other law;
- (3) coordinating activities of other professionals and parties to an issue or scheme;
- (4) preparing the registration statement, the prospectus, the scheme document or any and other transaction documents;
- (5) any other roles ancillary to any of the above.

#### **85. Separate accounts for proceeds of issue**

- (1) The issuing house shall ensure that all proceeds of the issue are kept in a separate account in accordance with these rules and regulations.
- (2) An issuing house may act as a receiving banker in the same issue, subject to the following conditions—
  - (a) that the financial position of the applicant is good;
  - (b) that there are no adverse reports on the financial position of the applicant;
  - (c) that there are no pending investigations or other enforcement actions on the applicant, before the Commission;
  - (d) disclosure of the details of the relationship between the directors, major shareholders and principal officers of the issuing house, the receiving banker and the issuer;
  - (e) any other factor that may be considered by the Commission from time to time.

The Commission reserves the right to deny approval where the applicant does not meet any or all of the above conditions.

- (3) The issuing house shall pay to the issuer proceeds of the issue within one working day of clearance of the allotment proposal.

#### **86. Returns to be filed**

The issuing house shall make the following returns to the Commission:

- (1) allotment proposal;
- (2) statement of account as at the date of allotment;
- (3) evidence of transfer of the proceeds of the issue to the issuer;
- (4) certified copies of returns filed with the Corporate Affairs Commission;
- (5) semi-annual statement of activities in the capital market including staff movement;
- (6) completed Form S.E.C. QR3 as contained in schedule III;
- (7) evidence of publication of results of allotment in at least two national newspapers.

### ***C6. Underwriters***

#### **87. Definition and functions**

Underwriting is an arrangement whereby an underwriter undertakes, for a permissible commission, to pay an issuer of securities at a predetermined date, an amount based on the

price of the securities determined in conjunction with the issuer and the issuing house with a view to resale not as a form of investment. The functions of underwriter include underwriting of public issues either on a firm, standby or best effort basis.

## **88. Registration Requirements**

- (1) Where a corporate body not registered as an issuing house intends to be registered as an underwriter, it shall file Form S.E.C. 3 as contained in schedule III to these rules and regulations and shall be accompanied by:-
  - (a) a minimum of 2 sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) copy of certificate of incorporation certified by the Corporate Affairs Commission Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;
  - (c) copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission. which shall among others include power to act as underwriters in the capital market;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) sworn undertaking to abide by the Commission's rules and regulations;
  - (f) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
  - (g) profile of the company;
  - (h) fidelity bond representing 20% of paid-up capital (where underwriter is an insurance company, the fidelity bond shall be issued by another insurance company acceptable to the Commission);
  - (i) sworn undertaking to keep proper records and render returns;
  - (j) evidence of minimum paid-up capital of N100 million;
  - (k) any other document or information required by the Commission from time to time.
- (2) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of an underwriter.

## **89. Eligibility**

- (1) No person may act as underwriter in any public issue of securities unless such a person is registered by the Commission to perform the function.
- (2) The following may be registered as underwriters—
  - (a) banks;
  - (b) issuing houses;
  - (c) insurance companies;
  - (d) any other person as may be determined by the Commission from time to time.

- (3) Every mandate to act as underwriter in a public offer of security must be evidenced in an underwriting agreement. A copy of the mandate letter and underwriting agreement shall be filed with the Commission along with the offer documents.
- (4) Where an issue is sub-underwritten, a sub-underwriting agreement shall be filed with the Commission along with the offer documents for the public offer.
- (5) Where there is more than one underwriter, an agreement regulating the relationship between them shall be filed with the Commission.
- (6) The provisions of these rules shall be read in conjunction with the rules guiding public offer of securities and in particular rules 321 to 323 dealing with amount to be underwritten, underwriting commission and time amount underwritten is made available to the issuer.

## **90. Content of underwriting agreement**

An underwriting agreement shall contain, among others, the following:

- (1) names of the parties to the agreement;
- (2) type of underwriting commitment;
- (3) authorization clause;
- (4) the underwriting commission;
- (5) responsibility in case of default by an underwriter where there is more than one underwriter;
- (6) time of closing of the deal;
- (7) covenants and obligations of the parties;
- (8) indemnity clause;
- (9) conditions for subscription by underwriters;
- (10) arbitration and governing laws.
- (11) terms and regulations regulating the relationship between underwriters where there is more than one.

## ***C7. Fund/Portfolio Managers***

## **91. Registration Requirements**

- (1) An application for registration as fund/portfolio manager shall be filed on Form S.E.C. 3 and shall be accompanied by:-
  - (a) 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) a copy of Certificate of Incorporation certified by the Corporate Affairs Commission where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
  - (c) a copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission, which shall among others include power to act as fund/portfolio manager;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;

- (e) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
  - (f) Fidelity Bond representing 20% of paid-up capital;
  - (g) sworn undertaking to keep proper records and render returns;
  - (h) evidence of minimum paid-up capital of N20 million.
- (2) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of fund/portfolio manager.

## **92. Functions**

Fund/portfolio managers may perform the following functions amongst others:-

- (1) investment advisory services;
- (2) selection of securities for the fund/portfolio;
- (3) publication of financial market periodicals;
- (4) management of funds and portfolios on behalf of investors;
- (5) any other role ancillary to any of the above.

## **93. Books and records to be maintained**

- (1) Every fund/portfolio manager shall keep and maintain accurately the following books and records relating to his functions, namely:-
  - (a) journals, including cash receipts and disbursement records and any other records of original entry forming the basis of entries in any ledger;
  - (b) auxiliary ledgers reflecting assets, liabilities, reserves, capital, income and expenditure accounts;
  - (c) all cheque books including counterfoils of used cheques, bank statements, cancelled cheques and bank/cash reconciliation statements;
  - (d) all trial balances, financial statements, and internal audit working papers relating to the business of the manager;
  - (e) a list or other record of all accounts in which the manager is vested with any discretionary power with respect to the funds, securities or transactions of any client;
  - (f) all powers of attorney and any other evidence of the granting of any discretionary authority by any client or otherwise relating to the business of such manager;
  - (g) all written agreements or copies thereof entered into by the manager with any client or otherwise relating to the business of such manager;
  - (h) a copy of every notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security which the manager may circulate or distribute directly or indirectly to ten (10) or more persons (other than investment supervisory clients or persons connected with such manager) and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum indicating the reasons thereof;

- (i) a record of every transaction in a security in which the manager or any advisory representative of the manager has, or by reason of such transaction acquired any direct or indirect beneficial ownership.
- (2) The records and books referred to in sub rule (1) of this regulation shall state the title and amount of the security involved, the date and nature of the transaction, the price at which it was effected and the name of the broker, dealer or bank with or through whom the transaction was effected.
- (3) For the purposes of sub rule (1) of this rule, the term “**advisory representative**” shall mean any employee who makes any recommendation or who participates in the determination of which recommendation shall be made, or who in connection with his duties obtains any information concerning which securities are being recommended and includes any person in a controlling relationship to the manager and who obtains information concerning securities in respect of which recommendations are being made by the manager other than as a regular client of such manager.
- (4) A manager shall not be deemed to be in violation of any of the provisions of this regulation by reason only of his failure to record transactions in securities of any advisory representative, if he establishes that he instituted adequate procedures and used reasonable diligence to promptly obtain reports of the transactions required to be recorded.
- (5) A manager having custody or possession of securities or funds belonging to a client shall in addition to the requirements of sub rule (1) of this rule make and keep the following records:
  - (a) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such account;
  - (b) a separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase, sale, receipt or delivery and all debits and credits;
  - (c) copies of confirmations of all transactions effected by or for the account of any such client; and
  - (d) a record for each security in which any such client has interest, which shall show the name of each client having any interest in such security, the amount or interest of each client and the location of each such security.
- (6) Subject to the provision of sub rule (1) of this rule, every fund/portfolio manager who renders any investment, supervisory or management service to any client shall, with respect to the portfolio being invested, supervised or managed and to the extent that the information is reasonably available to or obtainable by the manager, make and keep true, accurate and current records—
  - (a) separately showing in respect of each such client the securities purchased or sold and the date, amount and price of each such purchase or sale;



- (b) for each security in which any such client has a current interest information from which the manager can promptly furnish the name of each client and the current amount of interest of such client.
- (7) Any books or records required by the provisions of this regulation may be maintained by the manager in such manner that the identity of any client to whom the manager renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation. Provided that this does not discharge the operator from full compliance of the “**Know your customer**” (KYC) procedures specified in the Anti-Money Laundering/Combating of Financing Terrorism (AML/CFT) Compliance manual as contained in Schedule XI of these rules and regulations.
- (8) All books or records required to be made under the provisions of sub rules (1) to (7) of this rule shall be maintained and preserved in a readily accessible place for a period of not less than six (6) years from the end of the year during which the last entry was made on such record, the first three (3) years in an appropriate office of the manager.
- (9) Partnership articles and any amendments thereto, Articles of Association, minute books and stock certificate books of the manager and of any predecessor shall be maintained in the principal office of the manager and preserved until at least three (3) years after the termination of the business.

#### **94. Advertisements**

- (1) For the purpose of this regulation, the term “**advertisement**” shall include any notice, circular, letter or other written or electronic medium of communication addressed to more than one person which offers—
  - (a) any analysis, report or publication concerning securities or which is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
  - (b) any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
  - (c) any other investment advisory service with regard to securities.
- (2) It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business for any fund/portfolio manager or investment adviser to directly or indirectly publish, circulate or distribute any advertisement which—
  - (a) refers directly or indirectly to any testimonial of any kind concerning any advice analysis report or other service rendered by the manager;
  - (b) refers directly or indirectly to any specific past recommendations of the manager which were or would have been profitable to any person, provided that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by the manager within the immediate

preceding period of not less than one (1) year of the advertisement, and the list shall if it is furnished separately:

- (i) state the name of each security recommended, the date and nature of each such recommendation, that is whether to buy, sell or hold the market price at that time, price at which the recommendation was to be acted upon and the market price of each security as of the most recent practicable date;
- (ii) contain the following cautionary note on the first page thereof in bold type: **“past performance is not an indication of future performance”**;
- (c) represents directly or indirectly that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell or when to buy or sell them;
- (d) represents directly or indirectly any graph, chart, formula or other device being offered which will assist any person in making his own decisions as to which securities to buy or sell or when to buy or sell them without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use;
- (e) contains any statement to the effect that any report, analysis or other service will be furnished free or without charge unless the report, analysis or other service actually is or shall be furnished free and without any condition or obligation directly or indirectly; or
- (f) contains any untrue statement of a material fact which is otherwise false or misleading.

**95. Custody or possession of funds or securities of clients**

- (1) It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business for any fund/portfolio manager to have custody or possession of any fund or securities in which any client has any beneficial interest to do any act or take any action directly or indirectly with respect to any funds or securities.
- (2) All funds and securities of clients managed by the fund manager shall vest in the custodian and trustee respectively.
- (3) All the funds and securities of clients shall be audited at least once every year by an auditor at a time which shall be chosen by the auditor, without prior notice to the manager.
- (4) A certificate of the auditor stating that he has made an examination of the funds and securities and describing the nature and extent of the examination shall be filed with the Commission by the fund/portfolio manager not later than three (3) months after the end of the funds' financial year.

## ***C8. Investment Advisers***

### **96. Registration Requirements**

#### ***Corporate Investment Adviser***

- (1) An application for registration as corporate investment adviser shall be filed on Form S.E.C. 3 and shall be accompanied by—
  - (a) Two (2) sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) a copy of certificate of incorporation certified by the Corporate Affairs Commission. where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
  - (c) a copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission which shall among others include power to act as investment adviser;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
  - (f) fidelity bond representing 20% of paid-up capital;
  - (g) sworn undertaking to keep proper records and render returns;
  - (h) evidence of minimum paid-up capital of N5 million.

#### ***Individual Investment Adviser***

- (2) An application for registration as an individual investment adviser shall be filed on Form S.E.C. 2 as provided in schedule III of these rules and regulations and shall be accompanied by the following:
  - (a) certified copy of certificate of registration of business name (where applicable);
  - (b) sworn undertaking to comply with the provisions of the Act and these rules and regulations as may be required from time to time by the Commission;
  - (c) evidence of minimum net worth of N500,000.
- (3) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of an investment adviser.

### **97. Functions**

- (1) Investment advisers may perform the following functions:
  - (a) investment advisory services;
  - (b) making recommendations as to types of securities to buy or sell;
  - (c) publication of financial market periodicals.
- (2) An investment adviser shall not engage in the maintenance or management of investors' funds.

- (3) An investment adviser shall keep proper records and file annual reports with the Commission.
- (4) An investment adviser shall not make claims and advertisement that are misleading or false in content contrary to the Act and these rules and regulations.

### ***C9. Registrars***

#### **98. Registration Requirements**

- (1) An application for registration as a Registrar shall be filed on Form S.E.C. 4 by:
  - (a) a minimum of two(2) sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) copy of Memorandum and Articles of Association of the company certified by the Corporate Affairs Commission. which shall among others include the power to act as Registrar;
  - (c) copy of Certificate of Incorporation certified by the Corporate Affairs Commission. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) copy of latest audited accounts or statement of affairs for companies in operation for less than one year;
  - (f) fidelity bond representing 20% of paid-up capital;
  - (g) sworn undertaking to keep proper records and render returns;
  - (h) information on facilities including
    - i. fire-proof cabinet;
    - ii. filing cabinets;
    - i. registers;
    - iv. information system and other back-up facilities;
  - (i) information relating to the following:
    - (i) control measures to ensure access to facilities by only authorized persons;
    - (ii) proposed clients;
  - (j) evidence of minimum paid-up capital of N50 million;

- (k) any other document or information required by the Commission from time to time.
- (2) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a Registrar.

## **99. Functions**

- (1) The Registrar shall pursuant to these rules and regulations perform the following functions amongst others:
  - (a) maintaining the register of members of a company and unit holders of collective investment schemes, and effecting appropriate changes in the register;
  - (b) issuing share/debenture/bond certificates;
  - (c) returning surplus monies and monies for rejected applications;
  - (d) preparing and dispatching dividend/interest warrants;
  - (e) distributing rights circulars and public offer documents;
  - (f) dispatching annual reports, accounts and notices of meetings;
  - (g) printing and dispatching securities certificates to new investors in respect of the transfers of existing securities;
  - (h) verifying the genuineness of share certificate and authenticating signature on transfer instruments in respect of existing securities;
  - (i) collecting interests on debenture and loan stocks from the issuer for onward dispatch to debenture or stockholders where applicable;
  - (j) any other function ancillary to all the above.
- (2) A Registrar shall not maintain the register of its subsidiary, associate or holding company, or any person that has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control over it.
- (3) A Registrar which is a subsidiary of an issuer shall not act as Registrar to the holding company's issue.
- (4) No capital market operator shall act as an issuing house and a Registrar in the same issue.
- (5) No Registrar shall maintain more than 50% of investors' funds in one (1) bank.  
*[SECRR(A) January, 2011]*
- (6) A Registrar of a public company may dispatch annual reports and notices of general meetings to shareholders by electronic means.  
*[SECRR(A) September, 2011]*

## **100. Types of registers to be kept**

- (1) Every registrar, subject to the Act and these rules and regulations shall maintain electronic register of members of client companies with adequate back-up.
- (2) The back-up shall be located in a safe place outside the premises of the registrar.

- (3) The registrar shall ensure proper and accurate entries into the register of members. Such entries shall correspond with the entries in the manual register, if any.
- (4) All entries in the register shall be maintained in a sequential order.
- (5) A manual register shall be in hardbound cover books and the pages shall be serially numbered. The pages shall neither be removed, defaced, torn nor destroyed.

**101. Entry in a register on transfer of existing securities**

Entries into a register in respect of transfer of existing securities shall contain the following information depending on the type of register applicable:

- (1) name of security;
- (2) number of securities dealt in;
- (3) dates certificates were received for verification;
- (4) dates deals were done on securities;
- (5) dates certificates were received for lodgment;
- (6) dates certificates were sent to company secretaries for signing and sealing;
- (7) dates certificates were returned to Registrars for dispatch to new shareholders;
- (8) dates certificates were finally dispatched to new shareholders;
- (9) any other relevant information.

**102. Entry of members' names**

- (1) Names and addresses of members shall be entered into the register within two (2) working days of—
  - (a) receipt of approval of allotment proposal in the case of public issues; or
  - (b) receipt of secondary market transaction data from a securities depository.
- (2) Entries of names of members shall be in alphabetical order beginning with surnames followed by other names as they appear in the application form.

**103. Custody of register**

The register shall be kept in a secure place under the custody of the registrar or his duly authorized representative.

**104. Issue and handling of certificates**

- (1) Every registrar shall issue securities certificates (where applicable) to—
  - (a) allottees of securities within two months of the allotment of securities in case of public issues;
  - (b) transferees of securities within three months of the receipt of the lodgment in secondary market transactions.
- (2) The registrar shall cross-check the names and addresses on certificates before dispatching the certificates to the shareholders.

(3) The registrar shall keep the certificates in a secure place until dispatched to the shareholders.

(4) Undelivered certificates shall be kept by the registrar in a secure place and the issuing company and unit scheme shall be informed on a half yearly basis.

After a period of one (1) year the registrar shall publish the names, addresses and certificate numbers of shareholders who are yet to claim their certificates.

Such publication shall be made once a year in at least two (2) national daily newspapers and evidence of compliance shall be filed with the Commission.

Upon request, the registrar shall provide shareholders with information as to the details of any unclaimed certificates that may have been issued in their name.

(5) Delivery of the certificates to the transferee shall be effected within seven (7) days from the date of receipt of the certificates from the company's secretary and details and evidence of dispatch of the certificates shall be forwarded to the Commission within seven (7) days of the dispatch.

(6) Sequential dates of the transfer process shall be kept by the registrar in a register to that effect.

(7) A broker shall upon receipt of a share certificate for verification from an investor on whom he has conducted a due diligence in accordance with rule 351, forward the certificate to the registrar within 24 hours;

(8) The registrar shall within ten (10) working days from the day of receipt of a share certificate from the broker, verify the signature of the shareholder or determine that the signature of the shareholder requires his bankers' confirmation;

(9) The broker shall confirm the verification status of all certificates lodged with the registrar after ten (10) days;

(10) Where the signature of the shareholder requires his banker's confirmation, the registrar shall return the certificate to the stockbroker. The stockbroker shall contact the shareholder within two (2) working days of receipt of a need for the shareholder's bankers confirmation.

*[SECRR(A) March, 2010]*

## **105. Return monies**

(1) Every issuing house shall, through the registrar to the issue, pursuant to the provisions of the Act, return surplus monies due to subscribers or purchasers of securities within five (5) working days of approval of allotment of securities or at such other time as may be approved by the Commission.

(2) Failure to dispatch return monies in compliance with rule 309(5), shall attract accrued interest which shall be paid to the unsuccessful applicants at a rate not below CBN MPR + 5%. *[SECRR(A) March, 2010]*

**106. Mode of return**

- (1) All return monies shall be paid electronically. Such monies may however be paid by return warrant where the subscriber has not provided bank details;
- (2) Warrants shall be dispatched by registered post or through a reputable courier service.

**107. Custody and transfer of unclaimed monies**

- (1) All unclaimed monies shall be kept in a special bank account and the registrar shall inform the issuer and the Commission accordingly;
- (2) Documentary evidence providing details of the account into which the cheque for return monies was paid shall be submitted to the Commission by the registrar;
- (3) A statement of the amount of return monies shall be submitted by the registrar to the Commission with a tabular record of the affected persons, their respective addresses and the amount due to each person within ten (10) working days of opening the account;
- (4) All unclaimed return monies shall after six ( 6) months be transferred by the registrar into an investors' protection fund established pursuant to the Act;
- (5) The affected investor shall thereafter apply to the fund to recover the amount due to him.

**108. Opening of account for Payment of dividend**

- (1) A separate interest yielding escrow account shall be opened pursuant to these rules and regulations by a registrar within 24hours of the approval of dividends at a general meeting (for final dividends) or a board meeting (for interim dividends) and evidence of such opening forwarded to the Commission and the company within 24 hours of the account being opened;
- (2) The total dividend declared by the company shall be paid en-bloc into the said account within 24hours after the opening of the account and evidence of such payment forwarded to the Commission and the registrar within 24hours;
- (3) The registrar shall be responsible for effecting dividend payment either by way of electronic transfer or by issuance and distribution of dividend warrant to the beneficiaries within the time limit prescribed in these rules and regulations;
- (4) Upon receipt of the notice of and money for dividend/interest from the company, the registrar shall prepare and dispatch warrants to security holders within 20 working days from the date of receipt thereof;
- (5) All dividend/interest warrants shall be signed by the registrar or any other person duly authorized by the company to act as registrar;



- (6) A statement of all unclaimed dividend/interest warrants shall be submitted by the registrar to the Commission in such form and at such time as the Commission shall prescribe;
- (7) The registrar shall make the list of unclaimed dividends available for inspection by shareholders or their representative in his offices and such list shall be attached to the annual report of the company.
- (8) The registrar shall forward a monthly statement of account certified by the bank to the Commission;
- (9) Failure to open and fully fund the account by the Company shall attract a penalty of N1 million per day and a further penalty of 5% above the MPR on the amount declared;
- (10) In the event of failure to effect dividend payment either by electronic transfer or dispatch of dividend warrant to beneficiaries within the time stipulated by these rules and regulations, the registrar shall be liable to a penalty of N1m for every day of default.

*[SECRR(A) January, 2011]*

#### ***C10. Trustees***

### **109. Registration Requirements**

- (1) An application for registration as trustee shall be filed on Form S.E.C. 4A and shall be accompanied by—
  - (a) a minimum of two (2) sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) copy of Memorandum and Articles of Association of the company certified by the Corporate Affairs Commission, which shall among others include the power to act as trustees;
  - (c) copy of certificate of incorporation certified by the Corporate Affairs Commission. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) latest copy of audited accounts or statement of affairs for companies in operation for less than one year;
  - (f) fidelity bond representing 10% of the paid-up capital;
  - (g) sworn undertaking to keep proper records and render returns;

- h) evidence of minimum paid-up capital of N40 million or any other sum as prescribed by the Commission from time to time;
  - (i) any other document or information required by the Commission from time to time.
- (2) One of the sponsored individuals shall be a lawyer experienced in trusteeship function.
  - (3) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a trustee.

## **110. Functions**

The functions of trustees shall be as follows:-

- (1) ***In respect of collective investment scheme:***
  - (a) monitoring of the activities of the fund manager and custodian on behalf of and in the interest of unit holders or fund contributors;
  - (b) ensuring that the custodian takes into custody all of the schemes assets and holds it in trust for the beneficiaries in accordance with the trust deed and custodial agreement;
  - (c) monitoring of the register of unit holders or contributors;
  - (d) ascertaining compliance with the provisions of the Trustee Investments Act, the Investments and Securities Act and the trust deed by the fund manager;
  - (e) ascertaining that monthly and other periodic returns/reports relating to the scheme or fund are sent by the fund manager to the Commission;
  - (f) taking all steps and executing all documents which are necessary to secure acquisitions or disposals properly made by the fund manager in accordance with the trust deed and custodial agreement;
  - (g) exercising any right of voting conferred on it as the registered holder of any investment and/or forward to the fund manager within a reasonable time all notices of meetings, reports, circulars, proxy solicitations and any other document of a like nature for necessary action;
  - (h) ensuring that a scheme is managed by the fund manager in accordance with the Act, these rules and regulations, the schemes' trust deed and custodial agreement;
  - (i) ensuring that the fees and expenses of a scheme are within the prescribed limits;
  - (j) acting at all times in the interest of and for the benefit of unit holders of the scheme.

(2) ***In respect of debt instruments***

- (a) Protect the interest of lenders and investors in such instruments.
- (b) Hold and enforce (where necessary) such securities on behalf of investors or lenders.
- (c) Hold and administer sinking funds where applicable.
- (d) Monitor the register of bonds/unit holders.
- (e) Perform all other functions stipulated in the requisite trust deed, ISA, CAMA, TIA and other legislations.

***C 11. Banker to an issue***

**111. Eligibility**

For the purpose of this function, only commercial/merchant banks are eligible.

**112. Registration Requirements**

- (1) An application for registration as banker to an issue/receiving banker shall be made on Form S.E.C. 3 contained in schedule III to these rules and regulations and shall be accompanied by:-
  - (a) a minimum of two sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) a copy of the certificate of incorporation certified by the Corporate Affairs Commission. Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;
  - (c) a copy of Memorandum and Articles of Association of the applicant certified by the Corporate Affairs Commission which shall among others include the powers to perform the functions of banker to an issue and receiving bank;
  - (d) copy of the latest audited accounts or audited statement of affairs for banks in operation for less than one year;
  - (e) profile of the bank covering among others, its history, organizational structure, shareholding structure, principal officer's type of services rendered and details of past and present activities;
  - (f) Fidelity bond issued by the Nigeria Deposit Insurance Corporation (N.D.I.C.);
  - (g) evidence of compliance with the minimum paid-up capital as stipulated by the Central Bank of Nigeria;
  - (h) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (i) full address of head office and branches (if any);

- (j) sworn undertaking to keep proper records and render returns as stipulated by the Commission;
  - (k) sworn undertaking to abide by the Act and the rules and regulations of the Commission;
  - (l) any other information or documents that may be required by the Commission from time to time.
- (2) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a banker to an issue/receiving banker.
  - (3) For the purpose of this function, mortgage bankers, micro finance banks and regional/specialized banks and such similar banks are not qualified to be registered as receiving bankers.

### **113. Functions**

Banker to an Issue shall have the following function amongst others:-

- (1) Acceptance of application monies from investors/receiving agents in respect of securities offers.;
- (2) Refund of application monies which are not approved by the Commission in the name of the registrar to the lead issuing house;
- (3) Refund of excess application monies in the name of the registrar to the issuing house within the stipulated days;
- (4) Remittance of approved allotment monies with accrued interest within the stipulated days;
- (5) Other services ancillary to the function.

## ***C 12. Rating Agency***

### **114. Registration Requirements**

- (1) For the purpose of these rules and regulations, a rating agency shall be a private or public limited company, incorporated in Nigeria under the Companies and Allied Matters Act or exempted from registration in accordance with these rules.

*( SECRR(A) February,2013)*

- (2) The Commission may consider on a case by case basis granting a foreign credit rating agency a registration exemption certificate to enable it participate in any transaction in the capital market, provided such credit rating agency is validly registered in a jurisdiction that has established regulatory and supervisory framework in accordance with the standards set out by IOSCO. Evidence of such registration, including such additional supporting documents as may be specified by the Commission from time to time, shall be filed along with the application for the registration exemption certificate.

*[SECRR(A) September, 2011]*

- (3) A rating agency in Nigeria that is affiliated to a foreign rating company shall supply the following information:-
- (a) evidence of registration of such company in the foreign country;
  - (b) profile of the foreign company and principal officers;
  - (c) audited accounts of the foreign company;
  - (d) affiliation agreement between the Nigerian company and the foreign company.
- (4) An application for registration as a rating agency shall be filed in Form S.E.C. 3A and shall be accompanied by:-
- (a) a minimum of 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
  - (b) a copy of the certificate of incorporation certified by the Corporate Affairs Commission;
  - (c) a copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission, which shall among others include the power to act as a rating agency;
  - (d) a copy of CAC Form containing particulars of the directors certified by the Corporate Affairs Commission.;
  - (e) a copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
  - (f) profile of the company covering among others, brief history of the company, organizational structure, shareholding structure, principal officers and detailed information about the promoters;
  - (g) application for registration of a minimum of two sponsored individuals one of whom shall be the chief executive officer. The two principal officers of the rating agency who shall be registered as sponsored officers must have a minimum of first degree of professional qualification in accounting, economics, statistics or banking and finance with not less than ten (10) years post-qualification experience;
  - (h) existing or proposed by-laws or rules, guidelines and code of conduct;
  - (i) details of rating criteria, methodology and principles;
  - (j) an undertaking to promptly furnish the Commission with copies of any amendments to its Memorandum and Articles of Association, certified by the Corporate Affairs Commission, code of conduct, guidelines, etc., within fourteen (14) working days of such alteration;

- (k) Provided that a certified copy of all relevant resolutions are forwarded to the Commission within two (2) days of the passing of the resolutions;
- (l) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time. Such returns shall include among others—
  - i. name(s) of company/securities/issue(s) rated;
  - ii. the rating given including any changes in previous rating (if any);
  - iii. rating methodology (including basic assumptions);
  - iv. an appropriate application/registration fee as determined by the Commission from time to time; and
  - v. sworn undertaking that the rating agency shall comply with the Act, the rules and regulations, the Companies and Allied Matters Act and any other relevant legislation(s).
- (5) The code of conduct for management and staff of the agency shall include:-
  - a) a provision prohibiting key officers of the rating firm from investing in clients' shares;
  - b) an undertaking to disclose to the Commission any shareholding interest of 5% and above of its directors and staff and their relatives in any issue to be rated;
  - c) a provision specifying any relationship with clients;
  - (d) provision for disclosure of its board of directors' interest in any of the rated issues;
  - (e) a sworn undertaking that undue advantage would not be taken of any unpublished price-sensitive information;
  - (f) a provision on disciplinary measures for any misconduct or non-compliance by management and staff.
- (6) Sworn undertaking that every employee of an agency shall display a high standard of professionalism and integrity in the conduct of his business.
- (7) Sworn undertaking that no rating would be carried out where adequate, accurate and timely material information had not been obtained.
- (8) A declaration that rating is an opinion and not a professional investment advice.
- (9) Evidence of minimum paid-up capital of N20 million.
- (10) Any other document or information required by the Commission from time to time.

- (11) Rule 83(3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of rating agencies.

## 115. Functions

Rating agencies shall have the following functions amongst others:

- ( 1) Provision of credit ratings to governments and other entities;
- ( 2) Provision of ratings to the debt and equities instruments;
- (3) Rating of the credit worthiness of collective investment schemes;
- (4) Other services ancillary to the function.

### *C.13 Custodian of Securities*

## 116. Definitions

**Client** means any person who has entered into an agreement with a custodian of securities for custodial services.

**Custody** means the safekeeping and administration of securities and other financial instruments on behalf of clients.

**Custody account** means an account of a client maintained by a custodian of securities.

**Custodian of securities** means a person who has custody, as a bailee, of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities.

For the purpose of this rule, custodian of securities shall also include persons having custody of dematerialized and other securities on behalf of its clients.

**Sub-custodian** means a custodian that holds securities on behalf of another custodian.

**Global custodian** means a custodian that provides custodial services in respect of securities traded and settled not only in the country in which the custodian is located but also in other countries.

**Custodial services** in relation to securities means safekeeping of securities of a client and providing services incidental thereto.

**Custody risk** means the risk of loss in the process of rendering custodial services.

**Delivery** means final transfer of a security or financial instrument.

**Delivery versus payment** means a link between securities transfers that ensure that delivery occurs if, and only if, payment occurs.

**Dematerialization** means the elimination of physical certificates or documents of title that represent ownership of securities so that securities exist only as book entry records.

**Failed transaction** means a securities transaction that does not settle on the contractual settlement date.

**Final settlement** means the discharge of an obligation by a transfer of funds and a transfer of securities that have become irrevocable and unconditional.

**Immobilization** means placement of securities in a central securities depository so that subsequent transfers can be made by book entry.

## **117. Registration requirements**

- (1) An application for registration as a custodian of securities shall be filed in the designated form and shall be accompanied by:-
  - (a) a sets of duly completed designated forms to be filed by a minimum of 3 sponsored individual;
  - (b) copy of certificate of incorporation certified by the Company Secretary;
  - (c) copy of Memorandum and Articles of Association certified by the Corporate Affairs Commission which shall include, among others, power to act as custodian of securities;
  - (d) copy of Corporate Affairs Commission's form containing names and particulars of directors and certified by the Corporate Affairs Commission ;
  - (e) copy of latest audited accounts or audited statement of affairs and management accounts for companies in operation for less than one year at the time of filing with the Commission;
  - (f) profile of the Company, its promoters and management;
  - (g) Fidelity bond of a value not less than 25% of paid up capital;
  - (h) sworn undertaking to keep proper records and render returns;
  - (i) sworn undertaking to abide by the provisions of the Act and these rules in the discharge of its functions as custodian of securities;
  - (j) specimen custodian agreement to be signed with its client;
  - (k) an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions, management and mitigation of custody risks, and the independence of its operations from its other business, if any;
  - (l) any other document that may be required by the Commission from time to time.
- (2) An Applicant for registration as custodian of securities shall meet the following additional requirements:
  - (a) necessary infrastructure, including vaults for safe custody of securities and information technology capability required to effectively discharge its functions;
  - (b) have in its employment persons with the required qualifications as specified under rule 20;
  - (c) be an entity duly licensed to carry out banking functions;



- (d) any other requirement as may be specified by the Commission from time to time;
- (3) A person who is carrying on business as custodian of securities before the coming into effect of these rules shall make an application to the Commission for registration within a period of three (3) months;
- (4) (a) A person referred to in sub-rule (3) who fails to make an application for registration within the period specified shall cease to carry on any activity as custodian of securities;
- (b) Such a person shall be subject to the directives of the Commission with regard to the transfer of records, documents or securities relating to its activities as custodian of securities in addition to any penalty that may be imposed.

## **118. Exemption**

The obligation in this rule to register as a custodian of securities and observe various other safeguards for the benefit of independent capital market investors do not apply to a person who performs custodial service only in the course, or as a necessary part of a profession or business not otherwise constituting investment business or in the course of holding securities as collateral or taking a legal charge over securities as a means of taking security for a loan.

## **119. Denial/withdrawal of registration**

Where an applicant for registration as a custodian of securities has been denied registration by the Commission or where a custodian of securities withdraws from the function, it shall:-

- (1) cease to carry on any activity as custodian of securities;
- (2) be subject to the directives of the Commission with regard to the transfer of records, documents or securities that may be in its custody or control relating to its activity as custodian of securities;
- (3) comply with withdrawal requirements prescribed in rule 33 of these rules;
- (4) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of custodian of securities.

## **120. Functions**

Registered custodian of securities shall have the following functions, amongst others:

- (1) maintaining accounts of securities of a client;
- (2) collecting the benefits, entitlement or rights accruing to the client in respect of securities;
- (3) keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client;
- (4) maintaining and reconciling records of the services referred to in sub-clauses (1) to (3) above;
- (5) Settlement of investment obligations;
- (6) ensuring compliance with fund-specific and other contractual obligations with clients.

**121. Code of conduct**

A custodian of securities shall abide by the code of conduct as set out in Schedule IX to these rules and regulations.

**122. Related functions**

- (1) Besides custody of securities, a custodian of securities shall not carry on any activity other than activities relating to rendering of financial services.
- (2) Where a custodian of securities is carrying on any activity besides that of custody of securities and transactions incidental thereto:
  - (a) all activities relating to its business as custodian of securities shall be separate and segregated from all other activities;
  - (b) its officers and employees engaged in providing custodial services shall not be engaged in any other activity carried on by it.

**123. Internal controls**

- (1) A custodian of securities shall have adequate internal control measures to prevent any manipulation of records and documents, including audits for securities and rights or entitlements arising from the securities held by it on behalf of its client.
- (2) A custodian of securities shall have appropriate safekeeping measures to ensure that such securities are protected from theft and other hazards.

**124. Monitoring, review, evaluation and inspection of systems and controls**

- (1) A custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's internal controls.
- (2) The custodian of securities shall cause to be inspected annually the mechanism referred to in (1) above, by an expert, and forward the report to the Commission within three months from the date of inspection.
- (3) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

**125. Prohibition of assignment**

A custodian of securities shall not assign or delegate its functions as a custodian of securities to any other person unless such person is a registered custodian or depository of securities and has the written consent of the client to do so.

## **126. Separate custody account**

A custodian of securities shall:

- (1) open a separate custody account in its record for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client or with the proprietary assets of the custodian;
- (2) separately identify in its records, investments held as collateral from the assets of the custodian and from other investments held in custody;
- (3) provide its clients at agreed intervals, with a record of their individual entitlements to investments and separately identify any investments which have been lent or which are held as collateral and are not available to be delivered.

## **127. Agreement with the client**

A custodian of securities shall enter into a written agreement with each client on whose behalf it is acting and every such agreement shall provide for the following matters, amongst others: -

- (1) title;
- (2) acceptance or release of securities from the custody account;
- (3) acceptance or release of monies from the custody account;
- (4) receipt of rights or entitlements relating to securities of the client;
- (5) the manner of registration of securities in respect of each client;
- (6) details of the insurance (if any) to be provided for by the custodian of securities;
- (7) arbitration clause;
- (8) fees;
- (9) reporting obligations of the custodian;
- (10) manner in which securities under custody can be used as collateral;.
- (11) treatment of non-market related losses in relation to custody assets;
- (12) a statement that the terms and conditions of the agreement are in conformity with the provisions of the Act, and the Commission's rules and regulations made thereunder;
- (13) other matters relevant and/or material to the custody contract.

## **128. Maintenance of records and documents/ furnishing of information**

- ( 1) A custodian of securities shall maintain details of the following records:-
  - (a) securities received and released on behalf of each client;

- (b) monies received and released on behalf of each client;
  - (c) rights or entitlements of each client arising from the securities held on behalf of the client;
  - (d) registration of securities in respect of each client;
  - (e) ledger for each client;
  - (f) instructions received from clients and communication with clients;
  - (g) reports submitted to the Commission;
  - (h) securities used as collateral;
  - (i) such other documents and/or reports that the Commission may require from time to time.
- (2) A custodian of securities shall notify the Commission of the place where the assets/records and documents referred to in (1) above are maintained.

**129. Preservation of records**

Without prejudice to the provisions of any enactment and these rules, a custodian of securities shall preserve the records and documents maintained for a minimum period of seven (7) years from the date of last entry.

**130. Disclaimer of liability**

A custodian of securities is prohibited from disclaiming responsibility for losses of investments due to fraud, willful default or negligence arising from its acts or omission or those of its agents appointed by it in the course of the performing its custodial services.

**131. Responsibility for shortfall in investment**

A custodian of securities shall be responsible for irreconcilable shortfalls in the quantity of investments identified on a reconciliation of customers' investments.

**132. Use of nominees**

A custodian who uses nominee(s) to hold its clients' investments shall disclose to the Commission in advance the names of the nominee(s) it intends to use and ensure that:

- (1) the nominee acts only in accordance with its clients' instructions;
- (2) each nominee is dedicated to the holding and to activities relating to the holding of investments;
- (3) it accepts responsibility in writing to its clients for any of the nominees used, to the same extent as for its own action; and
- (4) any report on compliance by the Custodian with rules and regulations relating to clients' assets covers the nominee(s) as well.

### **133. Safe keeping of documents**

A custodian or sub-custodian of securities shall ensure that:-

- (1) documents of or evidencing title are kept, or arrangement are made for them to be kept safe, until dispatched either to the client or in accordance with the clients' instructions;
- (2) it, or the appointed Sub-custodian acts only on instructions given in accordance with the agreed procedures;
- (3) where custodial records are kept electronically, take precautions necessary to ensure that continuity in record keeping is not lost or destroyed and that sufficient back up of records is available outside the principal place of business of the custodian.

*[SECRR(A) April, 2008]*

## ***C14. Depository and Participants***

### **(A) DEPOSITORY**

#### **134. Definition**

Depository means a custodian who holds securities on behalf of known investors but whose name appears on the issuers register as a fiduciary nominee for the benefit of the investor and who operates a system of central handling of securities of a particular class of an issuer deposited within its system and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of certificates.

#### **135. Registration requirements**

An application for registration of a depository company shall be made in the designated form and shall be accompanied by:

- (1) Copy of certificate of incorporation certified by the company secretary;
- (2) Two copies of the Memorandum and Articles of Association certified by the Corporate Affairs Commission, which shall include among other powers, the power to act as a depository;
- (3) Certified copy of Corporate Affairs Commission's Form showing names and particulars of the directors of the company;
- (4) Copy of the latest audited accounts or statement of affairs and management accounts for companies in operation for less than one (1) year and management accounts not more than thirty(30) days old as at the time of filing;
- (5) a set of duly completed designated forms to be filed by a minimum of 3 sponsored individuals;
- (6) Two copies of existing or draft rules and regulations;

- (7) Sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the depository;
- (8) Information relating to the following facilities:
  - a) computerization/back up
  - b) telephone and other electronic facilities
  - c) settlement procedure
- (9) Information relating to internal control measures in relation to dematerialized certificates and the strong room;
- (10) Software maintenance agreement;
- (11) Fidelity bond of a value not less than 25% of paid up capital;
- (12) Sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (13) Sworn undertaking to comply with and enforce compliance by its participants with the provisions of the Act and these rules and regulations;
- (14) Information as to the organization of the company including the organizational and shareholding structure, members of the board/council, principal officers as well as rules and procedures;
- (15) Evidence of minimum paid up capital of N5 billion;
- (16) Any other document or information that may be required by the Commission from time to time.

### **136. Functions, Duties and Responsibilities**

A central securities depository shall:

- (1) enforce its rules, provisions of the Act and the rules and regulations made thereunder;
- (2) supervise compliance by participants with the depository rules;
- (3) hold all securities of the same kind deposited with it by a participant collectively in a separate central securities depository;
- (4) maintain a central securities account with due regard to the interests of the participant and its clients;
- (5) notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;
- (6) balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer;

- a) in respect of each kind of certificated security, not less than once every six(6) months;
- b) in respect of each kind of un-certificated security:
  - i) if that aggregate has not changed, not less than once every month.
  - ii) if that aggregate has changed, on the business day after such change;
- (7) administer and maintain a record of un-certificated securities deposited with it;
- (8) be entitled to access the records of un-certificated securities administered and maintained by its participants;
- (9) disclose to participants and issuers the fees and charges required by it for its services;
- (10) on request disclose to –
  - a) the Commission information about the securities held by a participant in a central securities account;
  - b) an issuer information about the securities issued by that issuer and held by participants in central securities account;
- (11) if a participant ceases to be a participant, notify the Commission thereof as soon as possible;
- (12) conduct its business in a prudent manner and with due regard to the right of the participants, clients and issuers.

### **137. Eligibility**

An application for registration as a depository shall not be considered unless the sponsor is one of the following:

- (1) a financial institution licensed by the appropriate regulatory agency;
- (2) a recognized securities exchange registered by the Commission;
- (3) a body corporate engaged in the provision of financial services where not less than 75% of the equity capital is held by any of the institutions mentioned in (1) and (2) above.

A sponsor under this rule is a person who, acting alone or in partnership with others, holds not less than 30% of the equity capital of the depository.

### **138. Ownership structure**

- (1) An individual acting alone or in partnership shall at all times hold not more than 35% of the equity capital of a depository.
- (2) A participant at all times hold not more than 5% of the equity capital of the depository.

### **139. Eligible securities for de-materialization**

A depository shall in its rules state the specific securities which are eligible to be held in dematerialized form and shall include the following:

- (1) Shares, scripts, stocks, bonds, debentures, debenture stock or other securities of like nature in or of any incorporated company or body corporate;
- (2) Units of mutual funds, rights under collective investment schemes and venture capital funds, commercial papers, certificate of deposit, securitized debt, money market instruments and government securities.

### **140. Agreement between depository and issuer**

- (1) An issuer of securities shall enter into an agreement with a depository to enable an investor dematerialize the securities provided that no agreement shall be required to be entered into where depository itself is the issuer of securities.
- (2) Where the issuer has appointed a registrar to the issue, the depository shall enter into a tripartite agreement with the issuer and the registrar to the issue in respect of the securities to be held in dematerialized form.

### **141. Depository rules**

The depository rules shall, amongst others, provide for:

- (1) equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interest of issuers and investors;
- (2) arrangements for certificated securities to be converted to un-certificated securities and for issuers to issue un-certificated securities;
- (3) adequate steps to be taken by the securities depository, or a person to whom the securities depository has delegated its investigation and disciplinary functions to investigate and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the Act, the rules and regulations made thereunder, and the depository rules and shall require a report on the disciplinary proceedings to be furnished to the Commission within thirty (30) days after the completion of such proceedings;
- (4) requirements in respect of a participants' financial soundness and valid financial cover that the participant shall hold in respect of:
  - (a) the participant's actual and potential liabilities;
  - (b) conditional and contingent liabilities to the securities depository; and
  - (c) liabilities which existed before, or after a person has ceased to be a participant;



- (5)
  - (a) dividends paid and other payments made by issuers in respect of securities are paid by issuers to participants or investors and, if applicable, by participants to investors;
  - (b) all notices regarding rights and other benefits accruing to the owners of securities deposited with the securities depository are conveyed to participants and beneficial owners; and
  - (c) rights of participants or beneficial owners are not in any way diminished by the fact that securities held by them or on their behalf are collectively in a securities depository;
- (6) where a participant agrees, or is otherwise required to:
  - (a) receive moneys in respect of securities on behalf of beneficial owners from a securities depository or issuer, such monies are paid to the beneficial owners concerned;
  - (b) convey to all beneficial owners information regarding rights and other benefits accruing to the securities held on their behalf, such information is in fact conveyed; and
  - (c) give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;
- (7) a participant, on written request from a client to withdraw securities or an interest in securities held in a securities depository, to deliver a certificate or written instrument evidencing the same number of securities held in a securities depository on behalf of client in the securities depository, as long as client has sufficient unencumbered credit balance of those securities with the participant concerned;
- (8) a participant's securities depository accounts not to show a debit balance;
- (9) the manner in which a securities depository or a participant shall keep records of clients or owners or beneficial owners of securities and limited or other interests in securities;
- (10) the manner in which participants shall give instructions to the securities depository;
- (11) the purpose for which the depository may issue directives;
- (12) the manner in which a participant shall hold and administer securities;
- (13) a declaration that the rules are binding on the securities depository, a participant, an issuer or securities deposited in the depository, their officers, employees and clients.

**142. Systems and procedures**

A depository shall have systems and procedures which will enable it to co-ordinate with the issuer, the registrar and the participants, to reconcile the records of ownership of securities with the issuer, registrar and participants on a daily basis.

**143. Connectivity**

A depository shall maintain continuous electronic means of communication with all its participants, issuers, registrars, clearing houses and other depositories.

**144. Transfer to be effected after payment**

A depository shall have a mechanism in place to ensure that the interest of the persons buying and selling securities held in the depository are adequately protected and shall register the transfer of a security in the name of the transferee only after it is satisfied that payment for such transfer has been made.

**145. Withdrawal by participant**

A depository shall allow any participant to withdraw or transfer its account where the request for such withdrawal or transfer complies with the conditions stipulated for that purpose in the rules of the depository.

**146. Evaluation of Systems and Controls**

- (1) A depository shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls;
- (2) The depository shall cause to be inspected annually, the mechanisms referred to in (1) above by an expert and forward the report to the Commission within three (3) months from the date of inspection;
- (3) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

**147. Risk management**

A depository shall take adequate measures, including insurance, to protect the interests of beneficial owners against risks on account of its activities as a depository.

**148. Safety of Records**

A depository shall ensure that the integrity of its records and data processing systems is maintained at all times and take all necessary precautions to ensure that records are not lost, destroyed or tampered with as well as ensure that sufficient back up of records are kept at all times off-site the office of the depository.

#### **149. Records to be maintained**

- (1) A depository shall maintain the following records and documents:
  - (a) records of securities dematerialized and rematerialized;
  - (b) the names of the transferor, transferee and dates of transfer of securities;
  - (c) a register and index of beneficial owners;
  - (d) details of the holdings of securities of beneficial owners at the end of each day;
  - (e) records of instruction received from and communication with participants, issuers, registrars and beneficial owners;
  - (f) records of approval, notice, entry and cancellation of pledge, or hypothecation;
  - (g) register of participants indicating their details;
  - (h) such other records as may be specified by the Commission for carrying on the activities as a depository.
- (2) A depository shall notify the Commission of the place where the records and documents are maintained.
- (3) Without prejudice to any enactment and these rules, a depository shall preserve the records and documents required to be maintained for a minimum period of seven (7) years from the date of last entry in the records or date the document was made.

#### **150. Prohibition of assignment**

No depository shall assign or delegate to any other person its functions as a depository without the approval of the Commission.

### **(B) PARTICIPANT**

#### **151. Definition**

Participant means a person that holds in custody and administers securities or an interest in securities and that has been accepted as a participant in accordance with the rules and regulations of the depository and registered by the Commission.

#### **152. Registration requirements**

- (1) An application for the registration of a participant shall be made to the Commission in the designated form to be endorsed by each depository on which the applicant proposes to act as a participant and shall be accompanied by the following:
  - (a) a copy of the certificate of incorporation certified by the company secretary.

- (b) copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission;
  - (c) latest copy of audited accounts or audited statement of affairs by the auditors for companies and management accounts not more than thirty (30) days old in operation for less than one(1) year;
  - (d) a set of duly completed designated forms to be filed by a minimum of 3 sponsored individuals;
  - (e) information relating to the following facilities:
    - i. computerization/back up
    - ii. telephone and other electronic facilities
  - (f) information relating to internal control measures in relation to dematerialized certificates and the strong room;
  - (g) software maintenance agreement;
  - (h) fidelity bond of a value not less than 25% of paid up capital;
  - (i) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
  - (j) sworn undertaking to comply with and enforce compliance by its staff/beneficial owners with the provisions of the Act and these rules and regulations;
  - (k) information as to the organization of the company including the organizational and shareholding structure, members of the board/council, principal officers as well as internal controls;
  - (l) an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions;
  - (m) demonstrate an ability to settle trade on a delivery versus payment basis;
  - (n) any other document that may be required by the Commission from time to time.
- (2) An application for registration as participant shall be forwarded to the Commission by the sponsoring depository in the designated form not later than thirty (30) days after receipt from the applicant together with the depository's recommendations and a certificate that the participant complies with the eligibility criteria including adequate infrastructure as provided in these rules and regulations and the rules of the depository.

### **153. Functions**

A participant shall:-

- (1) settle trades on behalf of its clients;
- (2) if securities are deposited with it, deposit them with a central securities depository unless the client expressly directs otherwise in writing;
- (3) maintain a securities account for a client in respect of securities deposited;
- (4) reflect the number or nominal value of each kind of securities deposited in a securities account;
- (5) administer and maintain a record of all securities deposited with it in accordance with depository rules;
- (6) record all securities of the same kind deposited with it in a sub-register if so required by the depository rules;
- (7) disclose to clients the fees and charges required by it for its services;
- (8) notify a client in writing or as otherwise agreed to by the client or an entry made in the client's securities account;
- (9) on request disclose to:
  - a) the Commission information about the securities recorded in a securities account;
  - b) an issuer information about the securities issued by that issuer and recorded in a securities account;
- (10) have a central securities account with a central securities depository, and may:
  - a) deposit securities with or withdraw securities from that central securities depository; or;
  - b) transfer, pledge or cede an interest in securities through that central securities depository;
- (11) exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client; and
- (12) balance and reconcile the aggregate of the securities account with the central securities accounts on a daily basis.

### **154. Eligibility**

For registration as a participant in a depository, the applicant shall meet any of the following requirements:

- (1) a bank duly licensed by the Central Bank of Nigeria(CBN);

- (2) a custodian of securities registered by the Commission;
- (3) a clearing corporation of a recognized securities exchange;
- (4) a stockbroker registered by the Commission with a minimum paid up capital of N2 billion, provided that where a stockbroker seeks to act as a participant in more than one depository, it shall comply with the above requirements separately for each of such depository;
- (5) a non-banking finance company with a minimum paid up capital of not less than N2 billion;
- (6) a registrar and share transfer agent registered by the Commission with a minimum paid up capital of N2 billion.

**155. Agreement by participant**

A participant shall enter into an agreement with its client before acting as a participant on its behalf, in the manner specified in the rules of the depository.

**156. Separate accounts**

- (1) Separate accounts shall be opened by every participant in the name of each client and the securities of each client shall be segregated, and shall not be mixed up with the securities of other clients or with the participants' own securities.
- (2) A participant shall register the transfer of securities to or from a client's account only on receipt of instructions from the client and thereafter confirm the same to the client in the manner prescribed by the rules of the depository.
- (3) Every entry in the client's account shall be supported by electronic instructions or any other mode of instruction received from the client in accordance with the agreement with the client.

**157. Statement of accounts**

A participant shall provide statements of account to its clients showing details of transactions on their behalf at such time as provided in the agreement with the client.

**158. Transfer or withdrawal by Client**

A participant shall allow a client to transfer or withdraw his account in such manner as specified in the agreement with the client.

**159. Connectivity for participant**

A participant shall maintain continuous electronic means of communication with each depository in which it is a participant during the normal business hours of the depository.

**160. Monitoring, reviewing, evaluation and inspection of internal system and controls.**

- (1) A participant shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls and systems.

- (2) The participant shall cause to be inspected annually the mechanism referred to in (1) above by an expert and forward the report to the depository within three (3) months from the date of the inspection.
- (3) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the depository.

#### **161. Reconciliation for participant**

A participant shall reconcile its records with every depository in which it is a participant on a daily basis.

#### **162. Returns**

A participant shall submit quarterly returns to the Commission and every depository in which it is a participant in the format specified by the Commission and the rules of the depository.

#### **163. Records to be maintained**

- (1) A participant shall maintain the following records and documents:
  - (a) records of all the transactions entered into with a depository and with a client;
  - (b) details of securities dematerialized, rematerialized on behalf of clients with whom it has entered into an agreement;
  - (c) records of instructions received from clients and statements of account provided to clients; and
  - (d) records of approval, notice, entry and cancellation of pledge or hypothecation.
- (2) A participant shall make available for the inspection of the depository in which it is a participant, all the records referred to in (1) above. For effective exercise of the inspection, the participant shall allow persons authorized by the depository in which it is a participant, to enter its premises during normal office hours and inspect its records.
- (3) A participant shall notify the Commission of the place where the records and documents are maintained.
- (4) Without prejudice to any enactment and these rules, a participant shall preserve the records and documents for a minimum period of seven (7) years from the date of last entry in the records or date the document was made.
- (5) A participant who enters into an agreement with more than one depository shall maintain the records mentioned in (1) above in respect of each depository.

#### **164. Safety of records**

Where records are kept electronically by the participant, it shall ensure that the integrity of the data processing systems is maintained at all times and take all precautions necessary to

ensure that the records are not lost, destroyed and tampered with and shall ensure that sufficient back up of records is available at all times, off site from the participant's office.

**165. Prohibition of assignment**

A participant shall not assign or delegate its functions as participant to any other person without the approval of the depository.

**166. Agreement by issuer**

An issuer whose securities are eligible to be held in a dematerialized form in a depository shall enter into an agreement with the depository, provided that no agreement shall be required to be entered into where the depository itself is the issuer of securities.

**167. Handling of share transfer and maintenance of records to be at a single point**

All matters relating to transfer of securities, maintenance of records, register of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by the Registrar to the issue who is registered with the Commission.

**168. Redress of grievances**

An issuer or its agent or any person who is registered as an intermediary by the Commission shall redress the grievances of clients within thirty (30) days from the date of receipt of complaint and inform a depository about the number and nature of grievances redressed by it and the number of grievances pending before it every quarter.

**169. Surrendering of certificate of securities to be dematerialized**

- (1) A client who has entered into an agreement with a participant, shall inform the participant of the details of the certificate of securities to be dematerialized and shall surrender such certificate to the participant;
- (2) The participant shall:
  - (a) on receipt of information from the client under (1) above, forward such details of the certificate of securities to the depository and confirm to the depository that an agreement has been entered into between it and the client;
  - (b) maintain records of beneficial owners whose securities have been surrendered, the number of securities and other details of the certificates of securities received;
  - (c) within seven (7) days of the receipt of certificate of securities referred to in (a) above, furnish the issuer with details specified in (b) above along with the certificate of securities;
- (3) The issuer or its agent shall within fifteen (15) days of receipt of the certificate of securities from the participant confirm to the depository that the securities comprised in the said certificate have been listed on a stock exchange or exchanges and shall also after due verification immediately cancel the certificate of the depository as the



registered owner and shall forward a record of this fact to the depository and to every stock exchange where the securities are listed.

- (4) Immediately upon receipt of information from the issuer under sub rule (3) above, the depository shall enter in its records the name of the person who has surrendered the certificate of security as the client, as well as the name of the participant from whom it has received under sub rule (2)(a) above and thereafter send notice thereof to the participant.
- (5) The issuer or its agent shall maintain a record of certificates of securities which have been dematerialized.

#### **170. Reconciliation for issuer or its agent**

An issuer or its agent shall reconcile the records of dematerialized securities with all the securities issued by the issuer on a daily basis.

#### **171. Connectivity for Issuer or its agent**

An issuer or its agent shall establish continuous electronic means of communication with the depository with which it has entered into an agreement during the normal business hours of the depository.

#### **172. Information**

An issuer whose securities are dematerialization in a depository, shall give information to the depository about the date of the following:

- (1) closure of register;
- (2) record dates;
- (3) payment of interest or dividend;
- (4) annual general meeting;
- (5) redemption of debentures;
- (6) conversion of debentures;
- (7) such other information at the time and in the manner as may be specified by the depository in its; rules or in the agreement with the issuer.

#### **173. Creation of Pledge or hypothecation**

- (1) If a beneficial owner intends to create a pledge on a security owned by him, he shall make an application to the depository through the participant who has his account in respect of such securities.
- (2) The participant shall make a note in its records of the notice of pledge and forward the application to the depository.
- (3) The depository after confirmation from the pledgee that the securities are available for pledge with the pledgor, shall within fifteen (15) working days of the receipt of the application create and record the pledge and send notice of it to the participants of the pledgor and the pledge.

- (4) On the receipt of the notice under sub rule (3) above, the participants of the pledgor and pledgee shall inform the pledgor and pledgee respectively of the creation of the pledge.
- (5) The pledge created under sub rule (3) may be cancelled by the depository if the pledgor or pledge makes an application for cancellation through its participant,  
  
Provided that no pledge shall be cancelled by the depository without the concurrence of the pledge.
- (6) On the cancellation of the pledge, the depository shall notify the participant of the pledgor.
- (7) On the foreclosure of the pledge, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.
- (8) No transfer of securities in respect of which a notice of pledge is in force shall be effected by a participant without the concurrence of the pledgee.

**174. Investment advice**

- (1) A depository or a participant or any of their employees shall not render any investment advice about a security in the publicly accessible media, unless a disclosure of interest, including long or short position in the said security has been made, while rendering such advice.
- (2) Where an employee of the depository or participant is rendering such advice, he or she shall disclose the interest of his or her family members and the employer including long or short position in the said securities.

**175. Code of conduct**

A participant shall abide by the Code of conduct as set out in schedule IX to these rules and regulations.

*[SECRR(A) April, 2008]*

***C15 . Securities Clearing and Settlement company***

**176. Registration Requirements**

(1) An application for registration of securities clearing and settlement company shall be made in Form S.E.C. 5C contained in schedule III to these rules and regulations and accompanied by:-

- (a) copy of certificate of incorporation certified by the company secretary;
- (b) two copies of the Memorandum and Articles of Association certified by the Corporate Affairs Commission.;

- (c) latest copy of audited accounts or statement of affairs signed by its auditors and management accounts that are not more than thirty (30) days old as at the time of filing with the Commission;
  - (d) two copies of existing or proposed rules and regulations, and code of conduct;
  - (e) sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the clearing company;
  - (f) information relating to clearing facilities including:-
    - i. computerization/back-up facilities;
    - ii. telephone and other electronic facilities;
  - (g) information relating to settlement facilities including settlement procedure;
  - (h) information relating to internal control measures in respect of access to demobilized materials and the strong room;
  - (i) software maintenance agreement;
  - (j) Fidelity bond representing 25% of paid-up capital;
  - (k) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
  - (l) sworn undertaking to comply with and enforce compliance by its members with the provisions of the Act and these rules and regulations;
  - (m) an application for registration of at least three (3) principal officers of the company on Form S.E.C. 2;
  - (n) information as to the organization of the company including the organizational and shareholding structure, profile of promoters, members of the council/board, principal officers as well as rules and procedures;
  - (o) minimum paid-up capital requirement of N500 million;
  - (p) any other document required by the Commission from time to time.
- (2) Rule 182 (2), (3) and (4) shall apply in case of denial or suspension of registration of an agency.

#### **177. Functions**

Securities clearing and settlement systems include full set of institutional arrangements for confirmation, clearance and settlement of securities trades.

##### **(1) *Confirmation of trade***

A securities clearing and settlement company shall provide in its rules the period for final confirmation of trades.

**(2) *Settlement of trade***

A securities clearing and settlement company shall provide in its rules the period for final settlement of transactions.

**(3) *Securities lending***

Lending and borrowing of securities shall be provided in the rules of the securities clearing and settlement company

**(4) *Delivery versus payment***

A Securities Clearing and Settlement Company shall link securities transfers to funds transfers so as to achieve delivery versus payment.

**(5) *Operational system and business continuity***

A securities clearing and settlement company shall;

- (a) have appropriate systems, controls and procedures that are reliable and secure and have adequate scalable capacity;
- (b) have adequate offsite disaster recovery facilities and procedures.

**(6) *Protection of customer's securities***

A securities clearing and settlement company shall adopt proper accounting and safe keeping procedures to ensure full protection of clients' securities. Adequate management controls and independent audit of information systems shall be maintained.

**(7) *Evaluation of systems and controls***

- (a) A securities clearing and settlement company shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls;
- (b) The securities clearing and settlement company shall cause to be inspected annually, the mechanism referred to in (1) above by an expert and forward the report to the Commission within three (3) months from the date of inspection;
- (c) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

**(8) *Communication Procedures and Standards***

A securities clearing and settlement company shall adopt and apply consistent communication procedures and standards relating to securities message, securities identification and participant identification. In the case of cross-border transaction, it shall adopt and apply the international numbering and messaging standard.

*[SECRR(A) April, 2008]*

## **PART D**

### **Capital Market Experts or Professionals**

#### **178. Registration Requirements**

- (1) The following experts/professionals whose opinion impact directly on capital market transactions are subject to registration by the Commission:
- a) legal practitioners;
  - b) accountants;
  - c) auditors;
  - d) engineers;
  - e) estate valuers;
  - f) property managers
  - g) any other expert/professional that may be determined by the Commission from time to time.
- (2) An application for registration as a capital market expert/professional shall be filed as follows:

##### **A. CORPORATE BODIES (LIMITED LIABILITY COMPANIES)**

The application by the corporate body shall be accompanied by:-

- i. set of duly completed Form SEC 3
- ii. two sets of duly completed Form SEC 2 to be filed by at least two sponsored individual one of whom shall be the principal officer;
- iii. curriculum vitae of the sponsored individuals including details of activities stated in order of time from secondary school till date;
- iv. a copy of the certificate of incorporation of the company certified by the company secretary. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorized officer of the Commission;
- v. profile of the company indicating details of past and current activities;
- vi. two copies of the Memorandum and Articles of Association certified by the Corporate Affairs Commission.;
- vii. a signed copy of the audited account or audited statement of affairs;
- viii. full postal address of immediate past employer of sponsored individuals;
- ix. sworn undertaking to keep proper records and render returns as may be specified by the Commission from time to time;
- x. evidence of minimum paid-up capital of N5 million.

## ***B. FIRMS AND PERSONS CARRYING ON BUSINESS IN THEIR TRUE NAMES***

- (1) application shall be made in Form SEC 2 accompanied by the following:-
  - (a) certified copy of certificate of business name (where applicable);
  - (b) curriculum vitae of at least two officers (known as sponsored individuals including details of activities arranged in order of time from secondary school till date;
  - (c) profile of the firm including details of past and current activities;
  - (d) a copy of the partnership deed (where applicable);
  - (e) full postal and electronic address of immediate past employer of sponsored individuals;
  - (f) sworn undertaking to keep proper records and render returns as may be specified by the Commission from time to time;
  - (g) evidence of minimum net worth of N2,000,000 for partnership and in the case of an individual N500,000;
- (2) a sworn statement that the requirements of the Act have been complied with.
- (3) Where valuation of property is involved, the consultants shall make a sworn statement that the information contained in the valuation report is true and fair and in compliance with the standard prevalent in the industry
- (4)
  - (a) all sponsored individuals of market experts/professionals are required to attach a copy of evidence of payment of their annual practicing fee to the application;
  - (b) professional indemnity insurance policy.
  - (c) Rule 83 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a capital market expert/professional.

### **179. Reporting accountants**

The reporting accountant shall have the following functions, amongst others:

- (1) Review of the entity's audited accounts or statement of affairs (where applicable) and issue a report. In the course of this assignment, he shall—
  - (a) Review the statutory auditors work papers files for a five (5) year period. However, where the company has existed for less than five (5) years, he shall review the audited statements for the number of years the entity has been in existence
  - (b) Review the financial statements by computing ratios, identifying significant trends and investigating unusual variations;

- (c) Discuss with the entity's management and auditors, all significant issues, e.g. changes in profit trend, company or group structure, subsidiaries and general organization;
  - (d) Ascertain that the accounting policies adopted are in compliance with Nigerian and international accounting standards as well as the consistency of their application;
  - (e) Where there are material differences between his report and that of the auditors to state so in the report and make adjustments or reclassifications as may be necessary to the financial statements;
  - (f) Consider and investigate post balance sheet events such as major contracts and litigations so that the significant ones are properly reflected in the financial information reported on;
  - (g) Review the offer/scheme document to ensure consistency of financial information.
- (2) Circularize the banks and major customers of the entity to ascertain the actual indebtedness so as to make sure that it is actually disclosed in the offer document.
- (3) Prepare his report, addressed jointly to the directors of the entity and the issuing house(s) and thereafter disclose same in the prospectus. The report shall address
- (a) the financial information based on the audited financial statements of the entity. This includes—
    - i. Profit and loss accounts, dividends and retained earnings information;
    - ii. Balance sheet;
    - iii. cash flow statement;
    - iv. Notes to the financial information;
  - (b) **profit forecast shall be at the discretion of the Issuer.** (*SECRR(A)February, 2013*)
- (4) Where the reporting accountant knowingly fails to point out any discrepancies in the work done by the auditor, he shall be liable for any loss occasioned thereby and may be reported to his professional body for disciplinary action.

## **180. Legal practitioner**

The legal practitioner shall have the following functions, amongst others:

- (1) Review the statutory corporate documents of an issuer and other transaction parties to ensure that they have the necessary legal capacity and authority to enter into a transaction;
- (2) Carry out due diligence to ensure that all information material to a transaction are disclosed in the transaction documents;
- (3) Advise on the legal structure of the transaction and on legal risks associated with it;

- (4) negotiate, draft and review all legal documentations required for a transaction including but not limited to the prospectus, offer/scheme documents, trust deeds, vending agreements, powers of attorney/consents and underwriting agreements;
- (5) Advise parties on disclosure obligations and general observance of and compliance with sound corporate governance principles, rules and regulations as they relate to a transaction;
- (6) Advise on compliance with the requirements of the Corporate Affairs Commission, the Securities and Exchange Commission, the listing requirements of the Nigerian Stock Exchange and other relevant industry specific regulatory requirements;
- (7) Certify or obtain certification of compliance with all statutory requirements by the issuer and other parties to a transaction;
- (8) Make all statutory filings and provide confirmations (legal opinion) as to the enforceability and effectiveness of transaction documents;
- (9) File necessary applications in Court in support of transactions;
- (10) Any other roles ancillary to any of the above.

## **181. Estate surveyors**

### **(1) Functions**

Registered estate surveyors and valuers shall have the following functions amongst others:

- (a) Valuation of interests in land and building;
- (b) Valuation for compulsory acquisition and compensation;
- (c) Sale or purchase of interests in land and buildings, plant and machinery, furniture, fixtures & fittings;
- (d) Letting of premises (furnished or unfurnished);
- (e) Management of property;
- (f) Time charge for estate surveyors and valuers on project management and valuation coordination .

### **(2) Valuation service covers, but not limited to the following:**

- (a) Open market operation (sale, purchase, rental) valuation:

Advice on the worth of an interest in property which buyers, sellers or losses would agree to when the property is offered in the open market.

### **(b) Insurance valuation:**

Giving of advice to the insurer and the insured on the insurance sum of any asset which forms the basis for the determination of premium to be paid.



**(c) Mortgage valuation:**

Determination of the worth of an interest in a property for the purpose of offering it as collateral security for enjoyment of loan/ credit facilities.

**(d) Balance sheet and investment valuation:**

Assisting companies to determine the true worth of their assets in the preparation of their financial statements and company account including balance sheets, profit and loss accounts.

**(e) Rating valuation:**

Acting on behalf of local government (rating authority), corporate organizations and private individuals to determine the worth of a property for the purpose of assessing the rate payable on it.

**f) Valuation for compensation / condemnation:**

Carrying out valuations to determine the compensation payable in the event of compulsory acquisition by the government or injuries damage to landed assets.

**(3) Other property services include, but are not limited to:**

**(a) Agency**

- i. Sales by auction, bidding or private treaty.
- ii. Purchase for and on behalf of clients.
- iii. Leasing of properties, that is, landlord and tenant (representative).

**(b) Property Development and building-to-suit;**

**(c) Market and Feasibility studies-Investment Analysis;**

**(d) Project management;**

**(e) Land use Analysis and Resources Management.**

**PART E**

**Regulation of Securities Exchanges and Transactions on Exchanges,  
Capital Trade Points and other Self-Regulatory Organizations**

***E1. General Provisions***

**182. Registration Requirements**

- (1) Application for registration as securities exchange shall be filed on Form S.E.C. 5 as provided in schedule III to these rules and regulations and shall be accompanied by:-

- (a) copy of the certificate of incorporation certified by the company secretary.
  - (b) 2 copies of the Memorandum and Articles of Association and amendments (if any) certified by the Corporate Affairs Commission.;
  - (c) latest copy of audited accounts or statement of affairs signed by its auditors and management accounts that are not more than thirty(30) days old as at time of filing with the Commission;
  - (d) 2 copies of existing or proposed by-laws or rules, code of conduct, code of dealing, etc., which are referred to as **“rules of the exchange”**;
  - (e) 2 copies of the listing requirements of the exchange;
  - (f) sworn undertaking to promptly furnish the Commission with copies of any amendments to the rules of the exchange and the listing requirements;
  - (g) information relating to market facilities including—
    - (i) Trading floors/facilities;
    - (ii) Quotation board;
    - (iii) Information board/ticker tape;
  - (h) detailed information about the trading system to be adopted;
  - (i) information as to its organization including structure and profile of members of its council/board as well as rules and procedures;
  - (j) instruction and inspection manual of members activities;
  - (k) detailed information about the promoters and principal officers of the exchange;
  - (l) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
  - (m) sworn undertaking to comply with and to enforce compliance by its members with the provisions of the Act and these rules and regulations;
  - (n) an application for registration of at least three (3) principal officers of the exchange on Form S.E.C. 2;
  - (o) minimum paid-up capital requirement of N500 million;
  - (p) any other document required by the Commission from time to time for the protection of investors.
- (2) The Commission may not register an exchange nor allow its registration to remain in force if the rules of the exchange do not provide for expulsion, suspension or discipline of members for conduct or procedure inconsistent with just and equitable principles of the trade.

- (3) The Commission shall within sixty(60) days after the filling of an application pursuant to the Act and these rules and regulations make known its decision to either grant, or after appropriate notice and opportunity for hearing, deny registration to an exchange, unless the application is withdrawn by the applicant.
- (4) A notice under sub rule (3) of this regulation shall contain the reasons why the Commission may not register an exchange and shall stipulate the time (not being less than fourteen (14) days for other applicants and twenty-one (21) days for capital trade point, from the receipt of the notice) within which representation may be made to the Commission in respect thereof. The notice shall stipulate the time and place of the hearing referred to in sub rule (3).

**183. Approval of appointment of chief executive and principal officers of a securities exchange**

- (1) (a) A chief executive officer of a securities exchange shall hold office for a period of five(5) years in the first instance and may be re-appointed for a further period of five(5) years and no more;
- (b) The appointment of a chief executive and principal officers of a securities exchange shall be subject to the approval of the commission before the appointment becomes effective;
- (c) the chief executive officer and the other principal officers of a securities exchange shall be registered by the Commission as sponsored individuals;
- (d) The chief executive and other principal officers of a securities exchange shall:
  - i. Be persons of proven integrity with no record of criminal conviction.
  - ii. Hold at least a university degree or equivalent in either economics, law, accountancy, finance and business administration and any other relevant field.
  - iii. have at least ten (10) years cognate experience in either a securities exchange, securities market regulator, securities market operator or fifteen(15) years' experience in any other segment of the financial services industry.
  - iv. Not have operated an institution that has failed or been declared bankrupt or has had its operating license revoked as a result of mismanagement or corporate governance abuses.
  - v. Not have been found liable for financial impropriety or any other misdemeanor by any court, panel, regulatory agency or any professional body or previous employer.
  - vi. Any other criteria which the Commission may, in public interest, determine from time to time.
- (2) In assessing the suitability of the chief executive officer and other principal officers, the securities exchange shall have regard to the protection of public interest and the integrity of the market.

- (3) In this rule “**Principal Officer**” means the chief executive officer and the executive management team of a securities exchange.

**184. Approval of appointment/election of members of the governing council or board of a securities exchange**

- (1) Governing council or board of a securities exchange:
- (a) the exchange shall have a governing council or board;
  - (b) the council or board shall comprise of, among others, the chief executive officer of the exchange;
  - (c) the council or board shall consist of at least 3 dealing members of proven integrity;
  - (d) membership of the council or board shall be subject to prior approval of the commission;
- (2) A securities exchange shall have a code of conduct for its council members or board which shall be approved by the Commission, and shall contain amongst others the following provisions, to wit, that the council members or board shall:
- (a) not be a staff of a quoted company and its subsidiaries;
  - (b) not have been convicted of a criminal offence by any court of law within and outside Nigeria;
  - (c) shall disclose ownership, either directly or indirectly or through a related party of 5% or more of the shares of a quoted company;
  - (d) exercise reasonable care, good faith, integrity, transparency and diligence in the conduct of the affairs of the securities exchange;
  - (e) fully disclose, at the earliest opportunity, information at his/her disposal that would have significance in council decision-making;
  - (f) Promptly and fully disclose positions of conflicts of interest, whether of an actual or potential nature and whether involving his/her personal or business affairs. The member shall immediately disclose it to the council in writing in the event that he/she becomes aware of a conflict of interest associated with a particular issue being handled or to be handled by the council;
  - (g) have a duty to act in the best interest of the investors;
  - (h) have demonstrated sufficient knowledge of the operations of the capital market;
  - (i) Respect the confidentiality of sensitive information at the disposal of the council or exchange.

## ***E2. Securities Exchanges***

### **185. Permission to trade in securities listed on other exchanges**

Pursuant to the provisions of the Act, a securities exchange shall by its rules permit the trading of a security not listed on it; provided that such security has been registered and listed on any recognized securities exchange. The securities exchange may impose conditions for granting such “**permitted trading status**” and file same with the Commission.

### **186. Notices to members of Securities Exchanges**

- (1) A securities exchange shall file with the Commission, before issuing to its members, a copy of any notice, circular, list, bulletin, etc.,
- (2) Such notices, circulars, lists, bulletins, etc., shall be addressed to the Director-General and delivered at the Commission’s head office;
- (3) Where the Commission does not respond to the said material within five (5) working days of the receipt thereof, the securities exchange may issue it to its members;
- (4) A facsimile or other electronic copy of such notice may be sufficient provided that there is evidence of receipt.

### **187. Securities exchanges to require disclosure of material or price sensitive information likely to affect financial condition**

- (1) All information likely to affect the financial condition of a company shall be made available to the securities exchange by the company and the securities exchange shall disclose it on the trading floor immediately the information is made available.
- (2) Information relating to the following shall specifically be disclosed by the company:
  - a) Changes in the board of the company;
  - b) The death or resignation of a principal officer;
  - c) Significant drop or increase in company’s inventory;
  - d) Major fire outbreak;
  - e) Major theft or major destruction of the company’s assets or disruption of production;
  - f) Any changes in the rights attached to any class of listed securities into which they are convertible;
  - g) The results of any new issues and the effect, if any, of further issues on outstanding options, warrants and convertible securities.

### **188. Report on securities traded**

(1) Every exchange shall, within five (5) working days after the end of each calendar month, file with the Commission, a report on the securities sold on the exchange during such month stating—

- (a) the number of shares sold and the aggregate naira amount;
- (b) the principal amount of bonds sold and the aggregate naira amount;

- (c) the number and value of rights sold;
  - (d) any other information concerning such securities.
- (2) (a) The chief executive of a securities exchange shall after the end of each quarter of each year, that is to say, 31st March, 30th June, 30th September and 31st December, forward to the Commission a written report on the activities of the exchange during the preceding quarter;
- (b) The Commission shall forward to the minister every written report received in accordance with sub rule (1) of this rule and with such written comments as may be made thereon.

### **189. Floor trading**

- (1) No member of a securities exchange, shall execute, any transaction in any securities listed or quoted on such exchange, for any account in which such a member has an interest or for any such account with respect to which such a member has discretion as to time of execution, choice of security to be bought or sold or whether any such transaction shall be one of purchase or sale.
- (2) The provisions of sub rule (1) of this rule shall not apply to:-
- (a) any transaction by a registered specialist;
  - (b) any transaction for the account of an odd lot dealer;
  - (c) any transaction for stabilization approved by the Commission;
  - (d) any transaction made with the prior approval of a floor official of such exchange to allow maintenance of a fair and orderly market in a security or any purchase or sale to reverse any transaction;
  - (e) any transaction to offset a transaction made in error; or
  - (f) any transaction effected in conformity with a plan designed to eliminate floor trading activities and which plan has been adopted by an exchange and declared effective by the Commission.
- (3) For the purposes of this rule:-
- (a) a plan filed with the Commission by an exchange shall not become effective unless the Commission, having due regard for the maintenance of fair and orderly markets in the public interest and for the protection of investors, declares the plan to be effective; and
  - (b) the term **“on the floor of the Exchange”** includes the trading floor, the room, lobbies and other premises immediately adjacent thereto for the use of members generally, other rooms, lobbies and premises and made available, primarily for use by members generally, the telephone and other facilities in any such place such as automated/electronic/computerized trading systems.

## **190. Trading Rules**

- (1) (a) All trading on the floor of an exchange shall be presided over by a chairman who shall be a senior management staff of an exchange and registered by the Commission. He shall preside over the daily trading sessions on the floor of an exchange and shall be bound in the performance of his duties by the rules of the exchange and the principles of equity and fairness required under the Act and these rules and regulations.

### **(b) *Qualifications of the chairman***

The qualification of the chairman shall be as in rule 20 of these rules and regulations. In addition he shall possess a minimum of a diploma/certificate in computer science and one year practical experience in an electronic trading system.

- (2) Where brokers make a cross deal on securities on the floor, the exchange shall permit the brokers to do so up to such numbers of the securities brought to the floor provided there are sufficient funds in their trading accounts.
- (3) (a) The exchange shall keep a record of all daily transactions and activities on the floor of the exchange and the exchange shall make such record available for examination by the Commission on request;
- (b) The presiding officer shall also keep records of attendance of dealing members;
- (c) He shall report all impropriety on the floor to the chief executive of the securities exchange immediately the occur or are brought to his notice.
- (4) The exchange shall submit daily official list to the Commission.
- (5) (a) The price movement of securities shall be based on market forces, individual company's incidental macro and micro economic factors and preferences of clients;
- (b) Recognized securities exchanges shall take reasonable steps to avoid arbitrage in the trading of securities.
- (6) The presiding officer shall display the official list at least one (1) hour before trading commences.

## **191. Disposal of reports and documents filed with the Securities Exchanges, etc.**

- (1) Any application, reports, documents, or portion thereof other than investigation and disciplinary reports which have been filed with the securities exchange or any association or body of securities dealers for more than six(6) years pursuant to the provisions of these rules and regulations may be destroyed, or otherwise disposition shall only be done under a retention schedule cleared with the Commission by the securities exchange or any association or body of securities dealers.
- (2) For the purposes of this rule, the retention schedule filed with the Commission by the exchange or any association or body of securities shall not become effective

unless the Commission, having due regard for public interest and for the protection of investors, declares the schedule to be effective.

- (3) The Commission in its declaration may limit the application, reports and documents to which it shall apply and may impose any other terms and conditions to the schedule and the period of its effectiveness which it may deem necessary or appropriate in the public interest or for the protection of investors.

#### **192. Reports of proposed rule changes by a securities exchange**

- (1) An exchange shall file with the Commission, three copies of a report of any proposed amendment or repeal of or any addition to its rules within thirty(30) days (or such shorter period as the Commission may authorize) before any action is taken on such amendments, revocation or addition by its members or by any governing body thereof.
- (2) If any change is made in a proposed amendment, revocation or addition after the report is filed with the Commission, the thirty(30) days period shall commence from the time the Commission is notified of such change unless the change does not, after the substance of the proposed amendment, revocation or addition or the change is made in conformity with a suggestion by the Commission.

#### **193. Effectiveness of listing and exchange certification**

- (1) An application filed for the listing of a security on an exchange shall be deemed to apply to the listing of the entire class of the security and listing shall become effective:-
  - (a) as to the securities or amounts of such class when issued upon listing; and
  - (b) without further application for listing upon issuance as to additional securities or amount of such class then or thereafter authorized.
- (2) The provisions of this regulation shall not affect the right of an exchange to require the issuer of a listed security to file documents with or pay fees to the exchange in connection with the modification of such security or the issuance of additional shares or amounts.
- (3) If a class of security is issuable in two or more series with different terms, each series shall be deemed a separate class for the purposes of these rules and regulations.

#### **194. Requirements as to certification of listing and quotation of individual companies**

- (1) Certification that a security has been approved by an exchange for listing pursuant to the provisions of these rules and regulations shall be made by the governing council of the exchange.
- (2) The certificate shall specify:-
  - a) the approval of the securities exchange listing the security;



- b) the title of the security so approved;
  - c) the date of filing with the securities exchange of the application for and of any amendments thereto; and
  - d) any conditions imposed on the certification with the exchange, promptly notifying the Commission of the partial or complete satisfaction of any of the conditions.
- (3) The certification may be made by a recognized electronic medium and in such case shall be confirmed in writing.
  - (4) All certificates in writing and all amendments thereto shall be filed with the Commission in duplicate and at least one (1) copy shall be normally signed by the appropriate exchange authority.

**195. Date of receipt of certificate of listing by Commission**

The date of receipt by the Commission of the certification approving a security for listing shall be the date on which the original written certification is received by the Commission.

**196. Operation of certification on subsequent amendment**

If an amendment to the application for listing of a security is filed with an exchange, after the receipt by the Commission of the certification of the exchange approving the security for listing, the certification, unless withdrawn, shall be deemed made with reference to the application as amended.

**197. Withdrawal of certification**

An exchange may by notice to the Commission, withdraw its certification prior to the time the listing to which it relates first becomes effective pursuant to the provisions of rule 190 of these rules and regulations.

**198. Suspension of trading**

- (1) An exchange may, in accordance with its rules, suspend from trading a security listed thereon and the Exchange shall within 24 hours notify the Commission of any such suspension, the effective date and the reasons therefore.
- (2) During the continuance of the period of suspension an exchange shall notify the Commission of any change in the reasons for the suspension/further suspension.
- (3) The issuer of a suspended security may appeal to the Commission for a review.
- (4) Upon the restoration to trading of any security suspended under this regulation, the exchange shall notify the Commission of the effective date.
- (5) Suspension of trading shall not terminate the listing of any security.

## **199. Removal from listing**

- (1) An exchange may delist any security in accordance with its rules and regulations but in any event shall notify the Commission seven (7) days prior to taking such action:

Provided however, that where such an event occurs as a result of an order of a court or other governmental authority, the order shall be final, except where appeals are pending.

- (2) The issuer of the delisted security may within ten (10) days appeal to the Commission for review of the decision of the exchange.

The Commission shall within ten (10) days dispense with the appeal provided that during the pendency of the appeal the decision appealed against shall be stayed.

- (3) The issuer of a security listed on an exchange may file an application to withdraw the security from listing on any exchange in accordance with the rules of that exchange and notify the Commission accordingly. The exchange shall within ten (10) days consider and dispose of the application and notify the Commission when such application is approved.

## **200. Fraud and misrepresentation**

No broker or dealer shall purchase or sell any security by means of any manipulative, deceptive or other fraudulent device or contrivance or make any fictitious quotation.

## **201. Identification of quotation**

- (1) For the purposes of these regulations:-

(a) the term **“inter-dealer quotation system”** means any system of general circulation to brokers/dealers which regularly disseminates quotations of identified brokers /dealers but shall not include a quotation sheet which contains only quotations prepared and distributed by a broker or dealer in the regular course of his business

(b) the term **“quotation”** means any bid or offer or any indication of interest in any bid or offer; and

(c) the term **“correspondent”** means a broker who has a direct line of communication to another broker or dealer located in a different city or geographical area.

- (2) It shall constitute an attempt to include the purchase or sale of a security in a fictitious quotation within the meaning of rule 198 or 199 of these regulations for any broker or dealer to furnish or submit, directly or indirectly, any quotation for security to an inter-dealer quotation system, unless the inter-dealer quotation system is furnished or submitted:-

a) by a correspondent broker or dealer for the account or on behalf of another broker or dealer and if so, the identity of the other broker or dealer; or

b) in furtherance of one or more other arrangements between or among brokers or dealers and if so, the identity of each broker or dealer participating in any such arrangement or arrangements:-

Provided however, that the provisions of this paragraph shall not apply if only one of the brokers or dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer quotation system.

## **202. Review of decisions of Securities Exchanges**

Any company, enterprise, registrar, issuing house, stock broker or dealer or any other person or institution engaged or involved in the issuing, sale or buying or other trading in securities of companies and enterprises covered by the provisions of the Act and the rules and regulations thereof directly affected by any direction, order or decision made under any by-law, rule or regulation of an exchange or any other S.R.O. may apply to the Commission for a review pursuant to the provisions of the Act and these rules and regulations.

## **203. Dealing members**

- (1) The rules of an exchange may permit a member of the exchange to be licensed as a dealing member and in such a situation the rules shall:-
  - (a) require that members meet the minimum capital requirements prescribed by the Commission;
  - (b) require as a condition for licensing as a dealing member that the member shall engage in dealings that assist in the maintenance of a fair and orderly market, and that the exchange may suspend or revoke the license of the dealing member if the exchange finds any substantial or continued failure by a dealing member to engage in such dealings;
  - (c) include procedures for the effective and systematic surveillance of the activities of dealing members.
- (2) Every exchange shall file with the Commission copies of the rules relating to the provisions of paragraphs (a) and (b) of sub rule (1) of this regulation and any change in or addition to the rules shall take effect in the manner provided for by the rules of the exchange and the provisions of the Act and the rules and regulations made there under, except that such change or addition shall not continue in effect after the Commission would have entered an order disapproving the change or addition on the grounds of its inconsistency with public interest or inadequate protection of investors.
- (3) The Commission shall not disapprove of any change or addition unless it has given written notice to the exchange of its intention to do so, and such notice shall be given within fifteen(15) days after the filing of copies of the rules thereof.
- (4) The exchange shall within thirty (30) days after receipt of the notice, present to the Commission any evidence or arguments with respect to such change or addition.

- (5) The Commission may, after consideration of all the relevant materials presented in writing or at a hearing, enter an order disapproving the change or addition or permit the change or addition to continue in effect wholly or in a modified form:

Provided, however that the validity, force or effect of any act or omission by any exchange or a member prior to the entry of the order of disapproval shall not be effected thereby.

- (6) For the purpose of this regulation, the term “**Rules of an Exchange**” means its constitution, Articles of Incorporation, by-laws, rules or instruments corresponding thereto whatever the name and its stated policies.
- (7) The licensing of a dealing member by an exchange shall not be effective for purposes of trading unless and until such a member has been registered by the Commission.
- (8) (a) Pursuant to the Act and rule 25 (1) of these rules and regulations, the rules of a securities exchange shall permit any of its licensed dealing members to be licensed as a dealing member of any other recognized securities exchange or capital trade point or association.
- (b) A securities exchange shall not make any rule to prohibit or penalize any of its dealing members from trading in any listed securities on any other recognized exchange where such security is by the rules of that exchange permitted to be traded. This is without prejudice to the provisions of any Memorandum of Understanding (M.O.U.) between securities exchanges on the subject-matter and such MOU be filed with the Commission within five(5) days of execution .

**204. Records to be maintained by the Securities Exchange members, etc.**

- (1) Every member of an exchange or any association or body of securities dealers recognized by the Commission who transacts business or securities directly with the public or other members of an exchange or such association or body and every broker or dealer who transacts business in securities through the medium of any member, and every broker or dealer registered pursuant to the provisions of the Act shall make and keep current the following books and records (whether manually or electronically) relating to his business:-

- (a) records of original entry containing itemized daily records of:-

- (i) all purchases and sales of securities;
- (ii) all receipt and deliveries of securities (including certificate numbers);
- (iii) all receipts and disbursements of cash and all other debits and credits; and

such records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and name or other designation of the person from whom purchased or received or to whom sold or delivered;

- (b) ledger (or other records) reflecting all assets and liabilities, income and expenditure and capital accounts;

- (c) ledger accounts (or other records) itemizing separately the account of every customer and each member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account, and all other debits and credits to such accounts; and for the purposes of this paragraph, ledgers (or other records) shall reflect the following:-
  - (i) securities in the transfer process;
  - (ii) dividends and interest received;
  - (iii) monies borrowed and loaned (together with a record of the collateral and any substitution in the collateral); and
  - (iv) securities not received and delivered;
- (d) a memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities whether executed or not executed and such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and to the extent feasible, the time of execution or cancellation; and orders entered pursuant to the exercise of discretionary power by the member, broker or dealer or any employee thereof shall be so designated;
- (e) a memorandum of each purchase and sale of securities for the account of a member, broker or dealer showing the price and to the extent feasible, the date of execution and in addition whether the purchase or sale is with a customer other than a broker or dealer;
- (f) a memorandum of each order received showing the date and time of receipt, the terms and conditions of the order and the account in which it was entered;
- (g) copies of confirmation of all purchases and sales of securities, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the member, broker or dealer;
- (h) a record in respect of each cash account with the member, broker or dealer containing the name and address of the beneficial owner of the account, provided that, in the case of a joint account or the account of a company, the records required shall be those in respect of the person or persons authorized to transact business for the account;
- (i) a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date; provided that the trial balance and computation shall be prepared concurrently at least once a month;
- (j) a questionnaire or application for employment executed by each (associated person) of the member, broker or dealer which questionnaire or application shall be approved in writing by an authorized representative of the member,

broker or dealer and shall contain at least the following information in respect of that person:-

- (i) his name, address and the date of his first appointment or other association with the member, broker or dealer;
- (ii) his date of birth;
- (iii) the educational institutions attended by him and qualifications obtained;
- (iv) a complete consecutive statement of all his previous employment for at least the preceding ten (10) years, including his reasons for leaving each prior employment and whether the employment was part-time or full-time;
- (v) a record of any refusal of membership or registration and of any disciplinary action taken or sanctions imposed upon him by any government agency, the securities exchange or any association or body of securities dealers, or violation of any law, (whether municipal or international);
- (vi) a record of any permanent or temporary injunction entered against him or any member, broker or dealer with which he has associated in any capacity at the time the injunction was entered;
- (vii) a record of arrest, indictments or convictions for any felony or any misdemeanor, except traffic offences; and
- (ix) a record of any other name or names by which he has been known or which he has used.

(2) For the purpose of sub rule (1) of this rule, the term **“instruction”** shall include instructions between partners and employees of a member, broker or dealer who transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

## **205. Records to be preserved by certain Securities Exchange members, etc.**

- (1) Every member, broker or dealer shall preserve for a period of not less than six(6) years, all the records required to be made pursuant to paragraphs (a), (b), (c) and (d) of sub rule (1) of rule 204.
- (2) Every person subject to this rule shall preserve for a period of not less than three (3) years, in an easily accessible place:-
  - (a) all records required to be made pursuant to paragraphs (e), (f), (g), (h) and (i) of sub rule (1) of rule 204;
  - (b) all cheque books, bank statements, cancelled cheques and bank/cash reconciliations;

- (c) all bills receivable or payable, paid or unpaid relating to the business of such members, broker or dealer;
  - (d) originals of all communications received and copies of all communications sent by such member, broker, dealer (including inter-office memoranda) relating to his business;
  - (e) all trial balances, computations received of aggregate indebtedness not affecting capital, financial statements, branch office reconciliations, internal audit working papers and external auditor's management report file relating to the business of the member, broker, dealer;
  - (f) all written agreements entered into by such member, broker or dealer relating to his business.
- (3) Every member, broker or dealer shall preserve during the life of the business and its predecessor, all partnership articles or in the case of a company, all Articles of Incorporation, minute books and share certificate books.
- (4) Every member, broker or dealer shall maintain for six (6) years in an easily accessible place, all records required under paragraph (j) of sub rule (1) of rule 204, after the associated person has terminated his employment and any other connection with the member, broker or dealer, so however that—
- (a) after a record or other document has been preserved for four (4) years, a photograph thereof on film or electronic copy may be substituted therefore; or
  - (b) if a person who has been subject to the provisions of rule 204 of these rules and regulations ceases to transact business in securities directly with the public and the exchange or ceases to transact business in securities through the medium of a member of the exchange or ceases to be registered, such person for the remainder of the period of time specified in this rule, continues to preserve the records which he therefore preserved pursuant to this rule.

## **206. Filing of reports**

- (1) The provisions of this rule shall apply to every dealing member of a recognized securities exchange or of any association or body of securities dealers who transacts business in securities directly with the public and other members of the exchange, every broker or dealer (other than a member) who transacts business in securities through the medium of any member of a securities exchange or any other recognized body of securities dealers registered pursuant to the Act.
- (2) Subject to the provisions of this rule, a member, broker or dealer shall file with the Commission, annual reports of financial conditions in such detail as may fully disclose the nature and amount of assets and liabilities of such a person.

- (3) A report shall be filed as of a date within each accounting year except that:-
- (a) the first report shall be as of a date within three (3) months after the date on which the member, broker or dealer becomes subject to these rules and regulations, that is, the date when registration becomes effective; and
  - (b) a member, broker or dealer succeeding to and continuing the business of another member, broker or dealer need not file as of a date in the accounting year in which the succession occurs if the predecessor has filed a report in accordance with this rule.
- (4) The reports shall be filed in duplicate not more than thirty (30) days after the date of the report of the financial condition.
- (5) For the purposes of sub rule (2) of this rule, an annual report shall be filed in Form S.E.C. AR-1 prescribed in schedule III to these rules and regulations.

## **207. Nature and form of reports**

A report of financial condition filed pursuant to rule 263 of these rules and regulations shall be prepared and filed in accordance with the following requirements, that is:

- (a) the report of a member, broker or dealer shall be certified by an accountant qualified to certify accounts under the provisions of the Companies and Allied Matter Act ; provided, however, that such report need not be certified if, since the date of the previous financial statement or report filed pursuant to rule 205, such a member, broker or dealer has not transacted a business in securities directly with any member of the public or members of any securities exchange;
- (b) a member, broker or dealer who files a report which is not certified shall include in the oath or affirmation required by sub rule (c) of this rule a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements;
- (c) there shall be attached to the report a duly attested oath or affirmation certifying that to the best of the knowledge and belief of the person making the oath or affirmation—
  - (i) the financial statement and supporting schedule are true and correct; and
  - (ii) neither the member, broker/dealer nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified as that of a customer;
- (d) the oath or affirmation shall be made before a person duly authorized to administer the oath or affirmation and if the member, broker or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor, if a partnership by a general partner or if a corporation, by a duly authorized officer.



**208. Use of statements filed with the commission and the Securities Exchange**

Any member, broker or dealer who is subject to the provisions of rule 205 of these rules and regulations may file in lieu of the report required therein a copy of any financial statement which he is, or has been required to file with an exchange of which he is a member: Provided that:-

- (a) the copy so included reflects his financial conditions as of a date not more than thirty (30) days prior to the filing with the Commission; and
- (b) the report as filed with the Commission meets the requirements of this regulation and contains the information called for.

**209. Extension of time for filing reports**

- (1) In the event that any member, broker or dealer finds that he cannot file his report for any year within the time specified in rule 206 and 207 of these rules and regulations without undue hardship, he may file with the Commission an application for an extension of time to a specified date which shall not be more than three (3) months after the date as at which his financial condition is reported.
- (2) The application shall state the reasons for the requested extension and shall also contain an agreement to file the report on or before the specified date.
- (3) An application filed pursuant to sub rule (1) of this rule shall be deemed granted, unless the Commission within thirty(30) days after receipt thereof, enters an order denying the application.

***E3. Capital Trade Points***

**210. Registration Requirements**

- (1) An application for registration as a capital trade point shall be made on Form S.E.C. 5B contained in schedule III to these rules and regulations accompanied by—
  - (a) copy of the certificate of incorporation certified by the Corporate Affairs Commission;.
  - (b) two copies of the Memorandum and Articles of Association certified by the Corporate Affairs Commission.;
  - (c) latest copy of audited accounts or statement of affairs signed by its auditors and management accounts that are not more than thirty (30) days old as at time of filing with the Commission;
  - (d) two copies of existing or proposed by-laws or rules, code of conduct, code of dealing, etc.;
  - (e) two copies of the listing requirements of the capital trade point;
  - (f) sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the capital trade point and the listing requirements;

(g) information relating to market facilities including—

- (i) trading floors/facilities;
- (ii) Quotation board;
- (iii) Information board/ticker tape, where applicable;
- (h) detailed information about the trading system to be adopted;
- (i) information as to its organization including structure and profile of members of its Council/Board as well as Rules and Procedures;
- (j) instruction and inspection manual of members activities;
- (k) detailed information about the promoters and principal officers of the capital trade point;
- (l) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (m) sworn undertaking to comply with and enforce compliance by its members with the provisions of the Act and these rules and regulations;
- (n) an application for registration of at least three (3) principal officers, two of whom must be knowledgeable in and have sufficient experience of capital market operations, on Form S.E.C. 2;
- (o) minimum paid-up capital requirement of N20 million;
- (p) any other document required by the Commission from time to time.

(2) Rule 182 (2), (3) and (4) shall apply in case of denial or suspension of registration of a capital trade point.

**211. Permission to trade in securities listed on other securities exchanges**

Pursuant to the provisions of the Act, a securities exchange shall by its rules permit the trading of a security not listed on it; provided that such security has been registered and listed on any recognized securities exchange. The securities exchange may impose conditions for granting such “**permitted trading status**” and file same with the Commission.

**212. Notices to members of securities exchanges**

- (1) A securities exchange shall file with the Commission, before issuing to its members, a copy of any notice, circular, list, bulletin, etc.,
- (2) Such notices, circulars, lists, bulletins, etc., shall be addressed to the Director-General and delivered at the Commission’s head office.
- (3) Where the Commission does not respond to the said material within five (5) working days of the receipt thereof, the securities exchange may issue it to its members.

- (4) A facsimile or other electronic copy of such notice may be sufficient provided that there is evidence of receipt.

**213. Securities exchanges to require disclosure of material or price sensitive information likely to affect financial condition**

- (1) All information likely to affect the financial condition of a company shall be made available to the securities exchange by the company and the securities exchange shall disclose it on the trading floor immediately the information is made available.
- (2) Information relating to the following shall specifically be disclosed by the company:
- (a) Changes in the board of the company;
  - (b) The death or resignation of a principal officer;
  - (c) Significant drop or increase in company's inventory;
  - (d) Major fire outbreak;
  - (e) Major theft or major destruction of the company's assets or disruption of production;
  - (f) Any changes in the rights attached to any class of listed securities into which they are convertible;
  - (g) The results of any new issues and the effect, if any, of further issues on outstanding options, warrants and convertible securities.

**214. Report on securities traded**

- (1) Every exchange shall, within five (5) working days after the end of each calendar month, file with the Commission, a report on the securities sold on the exchange during such month stating:-
- (a) the number of shares sold and the aggregate naira amount;
  - (b) the principal amount of bonds sold and the aggregate naira amount;
  - (c) the number and value of rights sold;
  - (d) any other information concerning such securities.
- (2) (a) The chief executive of a securities exchange shall after the end of each quarter of each year, that is to say, 31st March, 30th June, 30th September and 31st December, forward to the Commission a written report on the activities of the exchange during the preceding quarter.
- (b) The Commission shall forward to the minister every written report received in accordance with sub rule (1) of this rule and with such written comments as may be made thereon.

## 215. Floor trading

- (1) No member of a securities exchange, shall execute, any transaction in any securities listed or quoted on such Exchange, for any account in which such a member has an interest or for any such account with respect to which such a member has discretion as to time of execution, choice of security to be bought or sold or whether any such transaction shall be one of purchase or sale.
- (2) The provisions of sub rule (1) of this rule shall not apply to:-
  - (a) any transaction by a registered specialist;
  - (b) any transaction for the account of an odd lot dealer;
  - (c) any transaction for stabilization approved by the Commission;
  - (d) any transaction made with the prior approval of a floor official of such exchange to allow maintenance of a fair and orderly market in a security or any purchase or sale to reverse any transaction;
  - (e) any transaction to offset a transaction made in error; or
  - (f) any transaction effected in conformity with a plan designed to eliminate floor trading activities and which plan has been adopted by an exchange and declared effective by the Commission.
- (3) For the purposes of this rule:-
  - (a) a plan filed with the Commission by an exchange shall not become effective unless the Commission, having due regard for the maintenance of fair and orderly markets in the public interest and for the protection of investors, declares the plan to be effective; and
  - (b) the term **“on the floor of the Exchange”** includes the trading floor, the room, lobbies and other premises immediately adjacent thereto for the use of members generally, other rooms, lobbies and premises and made available, primarily for use by members generally, the telephone and other facilities in any such place such as automated/electronic/computerized trading systems.

## 216. Trading rules

- (1) (a) All trading on the floor of an exchange shall be presided over by a chairman who shall be a senior management staff of an exchange and registered by the Commission. He shall preside over the daily trading sessions on the floor of an exchange and shall be bound in the performance of his duties by the rules of the exchange and the principles of equity and fairness required under the Act and these rules and regulations.

(b) *Qualifications of Chairman*

The qualification of the Chairman shall be as in rule 20 of these rules and regulations. in addition he shall possess a minimum of a diploma/certificate in computer science and one year practical experience in an electronic trading system.

- (2) Where brokers make a cross deal on securities on the floor, the exchange shall permit the brokers to do so up to such numbers of the securities brought to the floor provided there are sufficient funds in their trading accounts.
- (3) (a) The exchange shall keep a record of all daily transactions and activities on the floor of the exchange and the exchange shall make such record available for examination by the commission on request.
  - (b) The presiding officer shall also keep records of attendance of dealing members.
  - (c) He shall report all impropriety on the floor to the chief executive of the securities exchange immediately the occur or are brought to his notice.
- (4) The exchange shall submit daily official list to the Commission.
- (5)(a) The price movement of securities shall be based on market forces, individual company's incidental macro and micro economic factors and preferences of clients.
  - (b) Recognized securities exchanges shall take reasonable steps to avoid arbitrage in the trading of securities.
- (6) The presiding officer shall display the official list at least one hour before trading commences.

**217. Disposal of reports and documents filed with the securities exchanges, etc.**

- (1) Any application, reports, documents, or portion thereof other than investigation and disciplinary reports which have been filed with the securities exchange or any association or body of securities dealers for more than six (6) years pursuant to the provisions of these rules and regulations may be destroyed, or otherwise disposition shall only be done under a retention schedule cleared with the Commission by the securities exchange or any association or body of securities dealers.
- (2) For the purposes of this rule, the retention schedule filed with the Commission by the exchange or any association or body of securities shall not become effective unless the Commission, having due regard for public interest and for the protection of investors, declares the schedule to be effective.
- (3) The Commission in its declaration may limit the application, reports and documents to which it shall apply and may impose any other terms and conditions to the schedule and the period of its effectiveness which it may deem necessary or appropriate in the public interest or for the protection of investors.

**218. Reports of proposed rule changes by a securities exchange**

- (1) An exchange shall file with the Commission, three copies of a report of any proposed amendment or repeal of or any addition to its rules within thirty (30) days (or such shorter period as the Commission may authorize) before any action is taken on such amendments, revocation or addition by its members or by any governing body thereof.
- (2) If any change is made in a proposed amendment, revocation or addition after the report is filed with the Commission, the thirty (30) days period shall commence from the time the Commission is notified of such change unless the change does not affect the substance of the proposed amendment, revocation or addition or the change is made in conformity with a suggestion by the Commission.

**219. Effectiveness of listing and exchange certification**

- (1) An application filed for the listing of a security on an exchange shall be deemed to apply to the listing of the entire class of the security and listing shall become effective—
  - (a) the securities or amounts of such class in issue upon listing; and
  - (b) without further application for listing upon allotment of additional amounts of such class then or thereafter authorized.
- (2) The provisions of this regulation shall not affect the right of an exchange to require the issuer of a listed security to file documents with or pay fees to the exchange in connection with the modification of such security or the issuance of additional shares or amounts.
- (3) If a class of security is issuable in two or more series with different terms, each series shall be deemed a separate class for the purposes of these rules and regulations.

**220. Requirements as to certification of listing and quotation of individual companies**

- (1) Certification that a security has been approved by an exchange for listing pursuant to the provisions of these rules and regulations shall be made by the governing council of the exchange.
- (2) The certificate shall specify—
  - (a) the approval of the securities exchange listing the security;
  - (b) the title of the security so approved;
  - (c) the date of filing with the securities exchange of the application for and of any amendments thereto; and
  - (d) any conditions imposed on the certification with the exchange, promptly notifying the Commission of the partial or complete satisfaction of any of the conditions.
- (3) The certification may be made by a recognized electronic medium and in such case shall be confirmed in writing.

- (4) All certificates in writing and all amendments thereto shall be filed with the Commission in duplicate and at least one copy shall be normally signed by the appropriate exchange authority.

**221. Date of receipt of certificate of listing by Commission**

The date of receipt by the Commission of the certification approving a security for listing shall be the date on which the original written certification is received by the Commission.

**222. Operation of certification on subsequent amendment**

If an amendment to the application for listing of a security is filed with an exchange, after the receipt by the Commission of the certification of the exchange approving the security for listing, the certification, unless withdrawn, shall be deemed made with reference to the application as amended.

**223. Withdrawal of certification**

An exchange may by notice to the Commission, withdraw its certification prior to the time the listing to which it relates first becomes effective pursuant to the provisions of rule 190 of these rules and regulations.

**224. Suspension of trading**

- (1) An exchange may, in accordance with its rules, suspend from trading a security listed thereon and the exchange shall within 24 hours notify the Commission of any such suspension, the effective date and the reasons therefore;
- (2) During the continuance of the period of suspension an exchange shall notify the Commission of any change in the reasons for the suspension/further suspension;
- (3) The issuer of a suspended security may appeal to the Commission for a review;
- (4) Upon the restoration to trading of any security suspended under this regulation, the exchange shall notify the Commission of the effective date;
- (5) Suspension of trading shall not terminate the listing of any security.

**225. Removal from listing**

- (1) An exchange may delist any security in accordance with its rules and regulations but in any event shall notify the Commission seven (7) days prior to taking such action:

Provided however, that where such an event occurs as a result of an order of a court or other governmental authority, the order shall be final, except where appeals are pending.

- (2) The issuer of the delisted security may within ten (10) days appeal to the Commission for review of the decision of the exchange.

The Commission shall within ten (10) days dispense with the appeal provided that during the pendency of the appeal the decision appealed against shall be stayed.

- (3) The issuer of a security listed on an exchange may file an application to withdraw the security from listing on any exchange in accordance with the rules of that exchange and notify the Commission accordingly. The exchange shall within ten (10) days consider and dispose of the application and notify the Commission when such application is approved.

**226. Review of decisions of Self-Regulatory Organizations (S.R.O.)**

Any company, enterprise, Registrar, issuing house, stock broker or dealer or any other person or institution engaged or involved in the issuing, sale or buying or other trading in securities of companies and enterprises covered by the provisions of the Act and the rules and regulations thereof directly affected by any direction, order or decision made under any by-law, rule or regulation of an exchange or any other S.R.O. may apply to the Commission for a review pursuant to the provisions of the Act and these rules and regulations.

**227. Dealing members**

- (1) The rules of an exchange may permit a member of the exchange to be licensed as a dealing member and in such a situation the rules shall:
  - (a) require that members meet the minimum capital requirements prescribed by the Commission;
  - (b) require as a condition for licensing as a dealing member that the member shall engage in dealings that assist in the maintenance of a fair and orderly market, and that the Exchange may suspend or revoke the license of the dealing member if the Exchange finds any substantial or continued failure by a dealing member to engage in such dealings;
  - (c) include procedures for the effective and systematic surveillance of the activities of dealing members.
- (2) Every exchange shall file with the Commission copies of the rules relating to the provisions of paragraphs (a) and (b) of sub rule (1) of this regulation and any change in or addition to the rules shall take effect in the manner provided for by the rules of the exchange and the provisions of the Act and the rules and regulations made there under, except that such change or addition shall not continue in effect after the Commission would have entered an order disapproving the change or addition on the grounds of its inconsistency with public interest or inadequate protection of investors.
- (3) The Commission shall not disapprove of any change or addition unless it has given written notice to the Exchange of its intention to do so, and such notice shall be given within fifteen (15) days after the filing of copies of the rules thereof.
- (4) The exchange shall within thirty (30) days after receipt of the notice, present to the Commission any evidence or arguments with respect to such change or addition.
- (5) The Commission may, after consideration of all the relevant materials presented in writing or at a hearing, enter an order disapproving the change or addition or permit the change or addition to continue in effect wholly or in a modified form:



Provided, however that the validity, force or effect of any act or omission by any exchange or a member prior to the entry of the order of disapproval shall not be effected thereby.

- (6) For the purpose of this regulation, the term “**rules of an exchange**” means its constitution, Articles of Incorporation, by-laws, rules or instruments corresponding thereto whatever the name and its stated policies.
- (7) The licensing of a dealing member by an exchange shall not be effective for purposes of trading unless and until such a member has been registered by the Commission.
- (8) (a) Pursuant to the Act and rule 25 of these rules and regulations, the rules of a securities exchange shall permit any of its licensed dealing members to be licensed as a dealing member of any other recognized Securities Exchange or capital trade point or association.
- (b) A securities exchange shall not make any rule to prohibit or penalize any of its dealing members from trading in any listed securities on any other recognized exchange where such security is by the rules of that exchange permitted to be traded. This is without prejudice to the provisions of any Memorandum of Understanding (M.O.U.) between securities exchanges on the subject-matter and such MOU be filed with the Commission within five (5) days of execution .

**228. Records to be maintained by the securities exchange members, etc.**

- (1) Every member of an exchange or any association or body of securities dealers recognized by the Commission who transacts business or securities directly with the public or other members of an exchange or such association or body and every broker or dealer who transacts business in securities through the medium of any member, and every broker or dealer registered pursuant to the provisions of the Act shall make and keep current the following books and records (whether manually or electronically) relating to his business:
  - (a) records of original entry containing itemized daily records of—
    - (i) all purchases and sales of securities;
    - (ii) all receipt and deliveries of securities (including certificate numbers);
    - (iii) all receipts and disbursements of cash and all other debits and credits; andsuch records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and name or other designation of the person from whom purchased or received or to whom sold or delivered;
  - (b) ledger (or other records) reflecting all assets and liabilities, income and expenditure and capital accounts;
  - (c) ledger accounts (or other records) itemizing separately the account of every customer and each member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account, and all other debits and credits to such accounts; and for the purposes of this paragraph, ledgers (or other records) shall reflect the following:

- (i) securities in the transfer process;
  - (ii) dividends and interest received;
  - (iii) monies borrowed and loaned (together with a record of the collateral and any substitution in the collateral); and
  - (iv) securities not received and delivered;
- (d) a memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities whether executed or not executed and such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and to the extent feasible, the time of execution or cancellation; and orders entered pursuant to the exercise of discretionary power by the member, broker or dealer or any employee thereof shall be so designated;
- (e) a memorandum of each purchase and sale of securities for the account of a member, broker or dealer showing the price and to the extent feasible, the date of execution and in addition whether the purchase or sale is with a customer other than a broker or dealer;
- (f) a memorandum of each order received showing the date and time of receipt, the terms and conditions of the order and the account in which it was entered;
- (g) copies of confirmation of all purchases and sales of securities, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the member, broker or dealer;
- (h) a record in respect of each cash account with the member, broker or dealer containing the name and address of the beneficial owner of the account, provided that, in the case of a joint account or the account of a company, the records required shall be those in respect of the person or persons authorized to transact business for the account;
- (i) a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date; provided that the trial balance and computation shall be prepared concurrently at least once a month;
- (j) a questionnaire or application for employment executed by each (associated person) of the member, broker or dealer which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information in respect of that person:
- (i) his name, address and the date of his first appointment or other association with the member, broker or dealer;
  - (ii) his date of birth;

- (iii) the educational institutions attended by him and qualifications obtained;
  - (iv) a complete consecutive statement of all his previous employment for at least the preceding ten (10) years, including his reasons for leaving each prior employment and whether the employment was part-time or full-time;
  - (v) a record of any refusal of membership or registration and of any disciplinary action taken or sanctions imposed upon him by any government agency, the securities exchange or any association or body of securities dealers, or violation of any law, (whether municipal or international);
  - (vi) a record of any permanent or temporary injunction entered against him or any member, broker or dealer with which he has associated in any capacity at the time the injunction was entered;
  - (vii) a record of arrest, indictments or convictions for any felony or any misdemeanor, except traffic offences; and
  - (ix) a record of any other name or names by which he has been known or which he has used.
- (2) For the purpose of sub rule (1) of this rule, the term **“instruction”** shall include instructions between partners and employees of a member, broker or dealer who transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

**229. Records to be preserved by certain securities exchange members, etc.**

- (1) Every member, broker or dealer shall preserve for a period of not less than six (6) years, all the records required to be made pursuant to paragraphs (a), (b), (c) and (d) of sub rule (1) of rule 228.
- (2) Every person subject to this rule shall preserve for a period of not less than three (3) years, in an easily accessible place:-
  - (a) all records required to be made pursuant to paragraphs (e), (f), (g), (h) and (i) of sub rule (1) of rule 228;
  - (b) all cheque books, bank statements, cancelled cheques and bank/cash reconciliations;
  - (c) all bills receivable or payable, paid or unpaid relating to the business of such members, broker or dealer;
  - (d) originals of all communications received and copies of all communications sent by such member, broker, dealer (including inter-office memoranda) relating to his business;
  - (e) all trial balances, computations received of aggregate indebtedness not affecting capital, financial statements, branch office reconciliations, internal audit working papers and external auditor's management report file relating to the business of the member, broker, dealer;

- (f) all written agreements entered into by such member, broker or dealer relating to his business.
- (3) Every member, broker or dealer shall preserve during the life of the business and its predecessor, all partnership articles or in the case of a company, all articles of incorporation, minute books and share certificate books.
- (4) Every member, broker or dealer shall maintain for six (6) years in an easily accessible place, all records required under paragraph (j) of sub rule (1) of rule 228, after the associated person has terminated his employment and any other connection with the member, broker or dealer, so however that—
  - (a) after a record or other document has been preserved for 4 years, a photograph thereof on film or electronic copy may be substituted therefore; or
  - (b) if a person who has been subject to the provisions of rule 228 of these rules and regulations ceases to transact business in securities directly with the public and the Exchange or ceases to transact business in securities through the medium of a member of the Exchange or ceases to be registered, such person for the remainder of the period of time specified in this rule, continues to preserve the records which he therefore preserved pursuant to this rule.

### **230. Filing of report**

- (1) The provisions of this rule shall apply to every dealing member of a recognized securities exchange or of any association or body of securities dealers who transacts business in securities directly with the public and other members of the exchange, every broker or dealer (other than a member) who transacts business in securities through the medium of any member of a securities exchange or any other recognized body of securities dealers registered pursuant to the Act.
- (2) Subject to the provisions of this rule, a member, broker or dealer shall file with the Commission, annual reports of financial conditions in such detail as may fully disclose the nature and amount of assets and liabilities of such a person.
- (3) A report shall be filed as of a date within each accounting year except that—
  - (a) the first report shall be as of a date within three (3) months after the date on which the member, broker or dealer becomes subject to these rules and regulations, that is, the date when registration becomes effective; and
  - (b) a member, broker or dealer succeeding to and continuing the business of another member, broker or dealer need not file as of a date in the accounting year in which the succession occurs if the predecessor has filed a report in accordance with this rule.
- (4) The reports shall be filed in duplicate not more than thirty (30) days after the date of the report of the financial condition.
- (5) For the purposes of sub rule (2) of this rule, an annual report shall be filed in Form S.E.C. AR-1 prescribed in schedule III to these rules and regulations.

### **231. Nature and form of reports**

A report of financial condition filed pursuant to rule 263 of these rules and regulations shall be prepared and filed in accordance with the following requirements, that is:

- (a) the report of a member, broker or dealer shall be certified by an accountant qualified to certify accounts under the provisions of the Companies and Allied Matter Act; provided, however, that such report need not be certified if, since the date of the previous financial statement or report filed pursuant to rule 205, such a member, broker or dealer has not transacted a business in securities directly with any member of the public or members of any securities exchange;
- (b) a member, broker or dealer who files a report which is not certified shall include in the oath or affirmation required by sub rule (c) of this rule a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements;
- (c) there shall be attached to the report a duly attested oath or affirmation certifying that to the best of the knowledge and belief of the person making the oath or affirmation—
  - (i) the financial statement and supporting schedule are true and correct; and
  - (ii) neither the member, broker/dealer nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified as that of a customer;
- (d) the oath or affirmation shall be made before a person duly authorized to administer the oath or affirmation and if the member, broker or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor, if a partnership by a general partner or if a corporation, by a duly authorized officer.

### **232. Use of statements filed with the Commission and the securities exchanges**

Any member, broker or dealer who is subject to the provisions of rule 205 of these rules and regulations may file in lieu of the report required therein a copy of any financial statement which he is, or has been required to file with an exchange of which he is a member:

Provided that

- (a) the copy so included reflects his financial conditions as of a date not more than thirty (30) days prior to the filing with the Commission; and
- (b) the report as filed with the Commission meets the requirements of this regulation and contains the information called for.

### **233. Extension of time for filing reports**

- (1) In the event that any member, broker or dealer finds that he cannot file his report for any year within the time specified in rule 206 and 207 of these rules and regulations without undue hardship, he may file with the Commission an application for an extension of time to

a specified date which shall not be more than three (3) months after the date as at which his financial condition is reported.

- (2) The application shall state the reasons for the requested extension and shall also contain an agreement to file the report on or before the specified date.
- (3) An application filed pursuant to sub rule (1) of this rule shall be deemed granted, unless the Commission within thirty (30) days after receipt thereof, enters an order denying the application.

#### ***E4. Inter-Dealer Broker***

##### **234. Definitions**

**Inter-Dealer Broker (IDB)** means a brokerage firm operating in the bonds or OTC derivatives market, which acts as an intermediary between major dealers in the capital market (brokers and market makers).

**IDB authorized user** means an authorized user who is registered only to act as a matched principal or name give-up inter-dealer broker to facilitate transactions in securities between:

- a) authorized users: or
- b) authorized users and their clients, as approved by the relevant market association;

**IDB authorized user services** means the services an IDB authorized user offers to facilitate transactions in securities;

**Matched Principal** means an IDB authorized user that does not disclose to the market the identities of the parties to a trade facilitated by that IDB authorized user;

**Name Give-up** means an IDB authorized user that discloses the identity of each party to the other when the trade price is agreed.

##### **235. Registration Requirements**

- (1) An application for registration as inter-dealer broker shall be filed with the Commission on the appropriate SEC form and shall be accompanied with:
  - (a) A minimum of two sets of completed Form SEC 2 to be filed by the sponsored individuals;
  - (b) A copy of Certificate of Incorporation certified by the company secretary;
  - (c) A copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission which among others shall include the power to act as inter-dealer broker;
  - (d) A copy of the CAC form stating the particulars of directors certified by the Corporate Affairs Commission;

- (e) A copy of the latest audited accounts or audited statement of affairs for companies in operation for less than one year and management accounts that are not more than thirty (30) days old as at time of filing;
  - (f) Profile of the company covering among others, brief history of the company, organizational structure, shareholding, principal officers, and its operational manual etc;
  - (g) Sworn undertaking to comply with the provisions of the ISA, the rules and regulations made pursuant thereto and to render such returns and keep such proper records as may be specified by the Commission from time to time;
  - (h) Evidence of minimum paid up share capital of N50 Million;
  - (i) Evidence of payment to the Commission of N5,000.00 application fee and N100, 000 registration fee;
  - (j) Evidence of a trading platform in compliance with the minimum requirement as specified by the Commission from time to time;
  - (k) Evidence of a minimum of two (2) sponsored individuals who shall comply with the relevant rules on qualification of sponsored individuals;
  - (l) Evidence of payment of N1,000.00 (one thousand naira only for each officer being sponsored).
- (2) An inter-dealer broker shall for the purpose of registration comply with the provisions of rule 26-28 of the rules and regulations.
  - (3) An inter-dealer broker shall convey any change in information, which affects the status of the company to the Commission as required by rule 32 of these rules and regulations.
  - (4) The Commission shall within sixty (60) days after the filing of an application pursuant to the Act and these rules and regulations, make known its decision to either grant, or after appropriate notice and opportunity for hearing deny registration, unless the application is withdrawn by the applicant.
  - (5) A notice under sub-rule (4) of this rule shall contain the reasons and grounds upon which the Commission is considering not to register and shall stipulate the time (not being less than fourteen (14) days from the receipt of the notice) within which representations may be made to the Commission in respect thereof. The notice shall stipulate the time and place of the hearing referred to in sub-rule (4).
  - (6) An authorized inter dealer broker shall provide to the Commission the register of its authorized users.

**236. Granting of Inter Dealer Broker authorized user registration.**

- (1) An IDB authorized user registration shall not be granted to a nominee or agent of the applicant and such registration shall be reflected in the register in the name of the successful applicant and;

- (2) Notwithstanding anything to the contrary contained in the rules, an IDB authorized user shall not be permitted to render, or offer to render, its services to any member of the market association prior to such IDB authorized user having obtained membership of the prescribed market association.

**237. Obligations of an IDB authorized user:**

An IDB authorized user shall:-

- (1 ) enter into written agreements with members of a market association who receive its services, and the agreement shall stipulate all the material terms of the services which the IDB authorized user offers to any particular Market Association member. Such agreements shall be submitted to the Commission for approval;
- (2) Ensure transparency in its services;
- (3) Publish on the screen (or disclose where services are not screen based):
  - (a) Identity of the security;
  - (b) Price for the transaction, and;
  - (c) Size of the resultant transaction.
- (4) Maintain records of all telephone transaction for a period of at least ninety(90) days;
- (5) Not trade with another IDB authorized user;
- (6) Report any suspicion of market abuse to the Commission.
- (7) hold fidelity cover for fraud, misappropriation by a director, officer, trader or other person involved in the management or administration of trading, that the IDB authorized user deems appropriate;
- (8) comply with the reporting requirements stipulated by the rules for trades facilitated by that IDB authorized user;
- (9) comply with the settlement requirements stipulated by the rules for trades facilitated by that IDB authorized user;
- (10) ensure that for all trades being facilitated by that IDB authorized user, the trade information is displayed in the manner stipulated by the rules;
- (11) provide a description, as stipulated by the rules, to the Commission of the services it offers to authorized users, which information may be published by the Commission;
- (12) notify the Commission immediately of any change of auditors.

**238. Restrictions on an IDB authorized user:**

- (1) An IDB authorized user shall not intentionally take any proprietary or trading position in any securities trading, provided that any positions taken unintentionally shall be closed out immediately.



(2) A matched principal IDB authorized user shall always keep the identity of its authorized users using its services anonymous; Provided that their identity shall be disclosed to the Commission as and when required.

(3) A name give-up IDB authorized user shall keep the identity of the authorized users using its services anonymous until the counterparty to the trade has accepted all remaining terms of the trade.

(4) An IDB authorized user shall appoint a compliance officer who shall be registered with the Commission.

**239. Access to services offered by an IDB authorized user**

(1) An IDB authorized user may only offer services to:

- a) The relevant market association's members; and
- b) Clients disclosed to and approved by the relevant market association.

(2) An IDB authorized user shall:

- a) Maintain a list of the parties to whom it shall offer its services;
- b) Not offer its services to parties not included on the list; and
- c) Provide the list to the Commission, which at all times shall be current.

**240. Registration and functions of officers of an IDB authorized user**

An IDB authorized user's compliance officer shall:-

- (1) Be an employee of the IDB authorized user;
- (2) Be of good character and high business integrity;
- (3) Comply with the minimum educational requirements as provided in rule 20 of these rules and regulations.
- (4) Ensure compliance by the IDB authorized user concerned, with the ISA, these rules and regulations, the code of corporate governance and any directive by the Commission.
- (5) Ensure compliance by the IDB authorized user with the financial requirements stipulated by the rules and regulations.
- (6) Ensure that the required returns are submitted to the Commission as stipulated by the rules and regulations.
- (7) Be independent and report to the Commission any apparent breaches by the IDB authorized user, its officers, and employees.

- (8) Take steps to rectify a breach or to eliminate any error regarding any trade facilitated by the IDB authorized user, if requested to do so by the Commission.
- (9) Notify the Commission in writing of any change in the particulars of an officer as provided for by these rules within five (5) working days of registration of the changes with the appropriate authority;
- (10) Notify the Commission in writing if any of its officers, traders and employees have been found guilty of any improper conduct by any exchange, current or previous employer, professional association, including the relevant market association, or by a court or has been censured by a supervisory or regulatory authority;
- (11) Submit a monthly compliance report to the Commission.

**241. Data**

- (1) All data specified by the Commission relating to trades facilitated by an IDB authorized user shall only be distributed in accordance with the requirements as set out in these rules from time to time;
- (2) An IDB authorized user shall not show any price or trade related information to parties who are not included in the list of members of the trade association unless approved by the Commission.
- (3) An IDB authorized user shall ensure that trades facilitated by it are reported correctly and timeously to ensure the integrity of the data flow to the Commission.
- (4) The Commission may, from time to time request details of a bid or offer that was placed on the screen and the details of the related trade from the IDB authorized user.

**242. Penalty**

Failure to comply with the provisions of this part of these rules and regulations shall render the IDB authorized user liable to a penalty as may be stipulated by the Commission.

*[SECRR(A) May ,2010]*

**E5. Over the Counter Market**

**243. Registration Requirements**

- (1) An application for registration as an over the counter market shall be made on Form S.E.C. 5A contained in schedule III to these rules and regulations accompanied by
  - a) copy of the certificate of incorporation certified by the company secretary.
  - b) two copies of the Memorandum and Articles of Association certified by the Corporate Affairs Commission.;

- c) latest copy of audited accounts or statement of affairs signed by its auditors and management accounts that are not more than thirty (30) days old as at filing with the Commission;
  - d) copy of existing or proposed by-laws or rules, code of conduct, code of dealing, etc.;
  - e) sworn undertaking to promptly furnish the Commission with copies of any amendments to the rules of the association;
  - f) information relating to market facilities including—
    - (i) computerization and telephone systems;
    - (ii) Quotation board;
    - (iii) Information board/ticker tape;
  - g) detailed information about the trading system to be adopted;
  - h) information as to its organization including structure and profile of members of its council/board as well as rules and procedures;
  - i) instruction and inspection manual of members activities;
  - j) detailed information about the promoters and principal officers of the association;
  - k) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
  - l) undertaking to comply with and enforce compliance by its members with the provisions of the Act and these rules and regulations;
  - m) application for registration of at least three principal officers of the association on Form S.E.C. 2;
  - o) minimum paid-up capital requirement of N50 million; *[SECRR(A) September, 2011]*
  - p) any other document required by the Commission from time to time.
- (2) Rule 182 (2), (3) and (4) shall apply in case of denial or suspension of registration of association.

#### **244. Rules of Over the counter market relating to quotations rules**

In cases where an over the counter market adopts or proposes to adopt any rules providing for or regulating a system for the quotation or bid or offering or other prices of securities, it shall incorporate in the rules, provisions to the effect:

- (1) that in so far as the rules prescribe the conditions of access to the system, the rules shall be designed to promote just and equitable principles of trade to remove impediments to, and perfect the mechanism of a free and transparent market; and,

(2) not permit unfair discrimination between customers, issuers, broker or dealers, to produce fair and informative quotations both at the wholesale and retail levels;

(3) to prevent fictitious or misleading quotation, and to promote orderly procedures for collection and publishing quotations and to assure that any disciplinary action taken pursuant to the rules shall not be excessive or repressive having due regard to the public interest.

**245. Over-the-counter market**

- (1) a **“customer”** shall not include a broker/dealer;
- (2) a transaction shall be deemed to be completed:
  - a) in the case of a customer who purchases a security through or from a broker or dealer except as provided in subparagraph (b) of this sub rule, the time when the customer receive shares or his money, pays the broker or dealer any part of the purchase price, or if payment is effected by book-keeping, the time entry is made by the broker or dealer for any part of the purchase price;
  - b) in the case of a customer who purchases a security through or from a broker or dealer and who makes payment therefore prior to the time when payment is requested or notification is given that payment is due, the time when the broker or dealer delivers the security to or into the account of the customer;
  - c) in the case of a customer who sells a security through or to a broker or dealer except as provided in subparagraph (d) of this sub rule the time where cash or securities are returned if the security is not in the custody of the broker or dealer at the time of sale, the time when security is delivered to the broker or dealer and if the security is in the custody of the broker/dealer the time when the broker/dealer transfers the security from the account of the customer; and
  - d) in the case of a customer who sells a security through or to a broker or dealer and who delivers the security to the broker or dealer prior to the time when the delivery is requested or notification is given that delivery is due, the time when the broker or dealer makes payment to or into the account of the customer.

**246. Fraud and misrepresentation**

No broker or dealer shall purchase or sell any security by means of any manipulative, deceptive or other fraudulent device or contrivance or make any fictitious quotation.

**247. Identification of quotation**

- (1) For the purposes of these regulations:-
  - (a) the term **“inter-dealer quotation system”** means any system of general circulation to brokers/dealers which regularly disseminates quotations of identified brokers

- /dealers but shall not include a quotation sheet which contains only quotations prepared and distributed by a broker or dealer in the regular course of his business ;
- (b) the term **“quotation”** means any bid or offer or any indication of interest in any bid or offer; and
  - (c) the term **“correspondent”** means a broker who has a direct line of communication to another broker or dealer located in a different city or geographical area.
- (2) It shall constitute an attempt to include the purchase or sale of a security in a fictitious quotation within the meaning of rule 198 or 199 of these regulations for any broker or dealer to furnish or submit, directly or indirectly, any quotation for security to an inter-dealer quotation system, unless the inter-dealer quotation system is furnished or submitted:-
- (a) by a correspondent broker or dealer for the account or on behalf of another broker or dealer and if so, the identity of the other broker or dealer; or
  - (b) in furtherance of one or more other arrangements between or among brokers or dealers and if so, the identity of each broker or dealer participating in any such arrangement or arrangements:

Provided however, that the provisions of this paragraph shall not apply if only one of the brokers or dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer quotation system.

#### **248. Review of decisions of over the counter market**

Any company, enterprise, Registrar, issuing house, stock broker or dealer or any other person or institution engaged or involved in the issuing, sale or buying or other trading in securities of companies and enterprises covered by the provisions of the Act and the rules and regulations thereof directly affected by any direction, order or decision made under any by-law, rule or regulation of an exchange or over the counter market. may apply to the Commission for a review pursuant to the provisions of the Act and these rules and regulations.

#### **249. Dealing members**

- (1) The rules of an exchange may permit a member of the over the counter market to be licensed as a dealing member and in such a situation the rules shall:-
- (a) require that members meet the minimum capital requirements prescribed by the Commission;
  - (b) require as a condition for licensing as a dealing member that the member shall engage in dealings that assist in the maintenance of a fair and orderly market, and that the Exchange may suspend or revoke the license of the dealing member if the Exchange finds any substantial or continued failure by a dealing member to engage in such dealings;
  - (c) include procedures for the effective and systematic surveillance of the activities of dealing members.

- (2) Every exchange shall file with the Commission copies of the rules relating to the provisions of paragraphs (a) and (b) of sub rule (1) of this regulation and any change in or addition to the rules shall take effect in the manner provided for by the rules of the over the counter market and the provisions of the Act and the rules and regulations made there under, except that such change or addition shall not continue in effect after the Commission would have entered an order disapproving the change or addition on the grounds of its inconsistency with public interest or inadequate protection of investors.
- (3) The Commission shall not disapprove of any change or addition unless it has given written notice to the over the counter market of its intention to do so, and such notice shall be given within fifteen(15) days after the filing of copies of the rules thereof.
- (4) The over the counter market shall within thirty (30) days after receipt of the notice, present to the Commission any evidence or arguments with respect to such change or addition.
- (5) The Commission may, after consideration of all the relevant materials presented in writing or at a hearing, enter an order disapproving the change or addition or permit the change or addition to continue in effect wholly or in a modified form:  
  
Provided, however that the validity, force or effect of any act or omission by any exchange or a member prior to the entry of the order of disapproval shall not be effected thereby.
- (6) For the purpose of this regulation, the term “**rules of an exchange**” means its constitution, Articles of Incorporation, by-laws, rules or instruments corresponding thereto whatever the name and its stated policies.
- (7) The licensing of a dealing member by an over the counter market shall not be effective for purposes of trading unless and until such a member has been registered by the Commission.
- (8) (a) Pursuant to the Act and rule 25 (1) of these rules and regulations, the rules of a over the counter market shall permit any of its licensed dealing members to be licensed as a dealing member of any other recognized securities exchange or capital trade point or association.  
  
(b) A over the counter market e shall not make any rule to prohibit or penalize any of its dealing members from trading in any listed securities on any other recognized exchange where such security is by the rules of that exchange permitted to be traded. This is without prejudice to the provisions of any Memorandum of Understanding (M.O.U.) between securities exchanges on the subject-matter and such MOU be filed with the Commission within five (5) days of execution .

## **250. Records to be maintained by over the counter market members**

- (1) Every member of an over the counter market or any association or body of securities dealers recognized by the Commission who transacts business or securities directly with the public or other members of an over the counter market or such association or body who transacts business in securities through the medium of any member, registered pursuant to the provisions of the Act shall make and keep current the following books and records (whether manually or electronically) relating to his business:

- (a) records of original entry containing itemized daily records of—
  - (i) all purchases and sales of securities;
  - (ii) all receipt and deliveries of securities (including certificate numbers);
  - (iii) all receipts and disbursements of cash and all other debits and credits; andsuch records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and name or other designation of the person from whom purchased or received or to whom sold or delivered;
- (b) ledger (or other records) reflecting all assets and liabilities, income and expenditure and capital accounts;
- (c) ledger accounts (or other records) itemizing separately the account of every customer and each member, and partners thereof, all purchases, sales, receipts and deliveries of securities for such account, and all other debits and credits to such accounts; and for the purposes of this paragraph, ledgers (or other records) shall reflect the following:-
  - (i) securities in the transfer process;
  - (ii) dividends and interest received;
  - (iii) monies borrowed and loaned (together with a record of the collateral and any substitution in the collateral); and
  - (iv) securities not received and delivered;
- (d) a memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities whether executed or not executed and such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and to the extent feasible, the time of execution or cancellation; and orders entered pursuant to the exercise of discretionary power by the member, broker or dealer or any employee thereof shall be so designated;
- (e) a memorandum of each purchase and sale of securities for the account of a member, broker or dealer showing the price and to the extent feasible, the date of execution and in addition whether the purchase or sale is with a customer other than a broker or dealer;
- (f) a memorandum of each order received showing the date and time of receipt, the terms and conditions of the order and the account in which it was entered;
- (g) copies of confirmation of all purchases and sales of securities, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the member, broker or dealer;

- (h) a record in respect of each cash account with the member, broker or dealer containing the name and address of the beneficial owner of the account, provided that, in the case of a joint account or the account of a company, the records required shall be those in respect of the person or persons authorized to transact business for the account;
- (i) a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date; provided that the trial balance and computation shall be prepared concurrently at least once a month;
- (j) a questionnaire or application for employment executed by each (associated person) of the member, broker or dealer which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information in respect of that person:
  - (i) his name, address and the date of his first appointment or other association with the member, broker or dealer;
  - (ii) his date of birth;
  - (iii) the educational institutions attended by him and qualifications obtained;
  - (iv) a complete consecutive statement of all his previous employment for at least the preceding ten (10) years, including his reasons for leaving each prior employment and whether the employment was part-time or full-time;
  - (v) a record of any refusal of membership or registration and of any disciplinary action taken or sanctions imposed upon him by any government agency, the securities exchange or any association or body of securities dealers, or violation of any law, (whether municipal or international);
  - (vi) a record of any permanent or temporary injunction entered against him or any member, broker or dealer with which he has associated in any capacity at the time the injunction was entered;
  - (vii) a record of arrest, indictments or convictions for any felony or any misdemeanor, except traffic offences; and
  - (ix) a record of any other name or names by which he has been known or which he has used.

(2) For the purpose of sub rule (1) of this rule, the term “**instruction**” shall include instructions between partners and employees of a member, broker or dealer who transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

## **251. Records to be preserved by certain Over the counter market members**

- (1) Every member shall preserve for a period of not less than six (6) years, all the records required to be made pursuant to paragraphs (a), (b), (c) and (d) of sub rule (1) of 204.



- (2) Every person subject to this rule shall preserve for a period of not less than three (3) years, in an easily accessible place:-
- (a) all records required to be made pursuant to paragraphs (e), (f), (g), (h) and (i) of sub rule (1) of 204;
  - (b) all cheque books, bank statements, cancelled cheques and bank/cash reconciliations;
  - (c) all bills receivable or payable, paid or unpaid relating to the business of such members;
  - (d) originals of all communications received and copies of all communications sent by such member, (including inter-office memoranda) relating to his business;
  - (e) all trial balances, computations received of aggregate indebtedness not affecting capital, financial statements, branch office reconciliations, internal audit working papers and external auditor's management report file relating to the business of the member;
  - (f) all written agreements entered into by such member, relating to his business.
- (3) Every member shall preserve during the life of the business and its predecessor, all partnership articles or in the case of a company, all Articles of Incorporation, minute books and share certificate books.
- (4) Every member shall maintain for six(6) years in an easily accessible place, all records required under paragraph (j) of sub rule (1) of 204 after the associated person has terminated his employment and any other connection with the member, so however that:-
- (a) after a record or other document has been preserved for four (4) years, a photograph thereof on film or electronic copy may be substituted therefore; or
  - (b) if a person who has been subject to the provisions of rule 204 of these rules and regulations ceases to transact business in securities directly with the public and the exchange or ceases to transact business in securities through the medium of a member of the exchange or ceases to be registered, such person for the remainder of the period of time specified in this rule, continues to preserve the records which he therefore preserved pursuant to this rule.

## **252. Filing of reports**

- (1) The provisions of this rule shall apply to every dealing member of a recognized over the counter market or of any association or body of securities dealers who transacts business in securities directly with the public and other members of the exchange, every broker or dealer (other than a member) who transacts business in securities through the medium of any member of a securities exchange or any other recognized body of securities dealers registered pursuant to the Act.
- (2) Subject to the provisions of this rule, a member shall file with the Commission, annual reports of financial conditions in such detail as may fully disclose the nature and amount of assets and liabilities of such a person.

- (3) A report shall be filed as of a date within each accounting year except that—
- (a) the first report shall be as of a date within three (3) months after the date on which the member becomes subject to these rules and regulations, that is, the date when registration becomes effective; and
  - (b) a member succeeding to and continuing the business of another member need not file as of a date in the accounting year in which the succession occurs if the predecessor has filed a report in accordance with this rule.
- (4) The reports shall be filed in duplicate not more than thirty (30) days after the date of the report of the financial condition.
- (5) For the purposes of sub rule (2) of this rule, an annual report shall be filed in Form S.E.C. AR-1 prescribed in schedule III to these rules and regulations.

### **253. Nature and form of reports**

A report of financial condition filed pursuant to rule 263 of these rules and regulations shall be prepared and filed in accordance with the following requirements, that is:

- (1) the report of a member shall be certified by an accountant qualified to certify accounts under the provisions of the Companies and Allied Matter Act; provided, however, that such report need not be certified if, since the date of the previous financial statement or report filed pursuant to rule 263, such a member has not transacted a business in securities directly with any member of the public or members of any over the counter market;
- (2) a member who files a report which is not certified shall include in the oath or affirmation required by sub rule (3) of this rule a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements;
- (3) there shall be attached to the report a duly attested oath or affirmation certifying that to the best of the knowledge and belief of the person making the oath or affirmation—
  - (a) the financial statement and supporting schedule are true and correct; and
  - (b) neither the member nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified as that of a customer;
- (4) the oath or affirmation shall be made before a person duly authorized to administer the oath or affirmation and if the member is a sole proprietorship, the oath or affirmation shall be made by the proprietor, if a partnership by a general partner or if a corporation, by a duly authorized officer.

### **254. Use of statements filed with the Commission and the Over the counter market**

Any member who is subject to the provisions of rule 205 of these rules and regulations may file in lieu of the report required therein a copy of any financial statement which he is, or has been required to file with an exchange of which he is a member: Provided that—

- (1) the copy so included reflects his financial conditions as of a date not more than thirty (30) days prior to the filing with the Commission; and
- (2) the report as filed with the Commission meets the requirements of this regulation and contains the information called for.

**255. Extension of time for filing reports**

- (1) In the event that any member finds that he cannot file his report for any year within the time specified in rule 206 and 207 of these rules and regulations without undue hardship, he may file with the Commission an application for an extension of time to a specified date which shall not be more than three (3) months after the date as at which his financial condition is reported.
- (2) The application shall state the reasons for the requested extension and shall also contain an agreement to file the report on or before the specified date.
- (3) An application filed pursuant to sub rule (1) of this rule shall be deemed granted, unless the Commission within thirty(30) days after receipt thereof, enters an order denying the application.

**E6. Commodity and Futures Exchanges**

**256. Definitions**

For the purpose of these rules and regulations, the following terms shall have the meanings hereby assigned to them unless the context otherwise requires:-

**associated person** means any natural person who is associated in any of the following capacities with:-

- a) a future commission merchant as a partner, officer, employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:-
  - (i) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity); or
  - (ii) the supervision of any person or persons so engaged;
- b) an introducing broker as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), or the option customers' orders (other than in a clerical capacity) or the supervision of any person or persons so engaged; or
- c) a commodity pool operator/fund manager as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:-
  - (i) the solicitation of funds, securities, or property for a participation in a commodity pool; or

- (ii) the supervision of any person or persons so engaged; or
- d) a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves;-
  - (i) the solicitation of a client's or prospective client's discretionary account; or
  - (ii) the supervision of any person or persons so engaged; and
- e) a leverage transaction merchant as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves the solicitation or acceptance of leverage customers' orders (other than in a clerical capacity) for leverage transactions;

**business day** means any day other than a Saturday, Sunday or national public holiday. In all notices required by the rules and regulations in this chapter to be given in terms of business days, the rule for computing time shall be to exclude the day on which notice is given and include the day on which the act of which notice is given shall take place;

**clearing member** means any person who is a member of, or enjoys the privilege of clearing trades in his own name through the clearing organization of a contract market;

**clearing organization** means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any contract market;

**commodity** means and includes agricultural produce, livestock and its derivative products, extractive minerals and all other goods and articles, except all services, rights and interests in which contracts for future delivery are presently or in the future dealt in;

**commodity futures exchange** means any exchange or association, whether incorporated or unincorporated, or persons who shall be engaged in the business of buying or selling any commodity/futures contracts or receiving the same for sale on consignment;

**commodity option transaction** means any transaction or agreement in interstate commerce which is, or is held out to be of the character of, or is commonly known to the trade as, an "**option**", "**indemnity**", "**bid**", "**offer**", "**call**", "**put**", "**advance guaranty**", or "**decline guaranty**" and which is subject to regulation under the Act and these rules and regulations;

**commodity pool/fund manager** means any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or

property, whether directly through capital contribution, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery or commodity option on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order;

**commodity trading advisor** means any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writing or electronic media, as to the value of, or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market;

**contract market** means a commodity/futures exchange;

**contract of sale** includes sales, purchases, agreements of sale or purchase and agreements to sell or purchase;

**controlled account** an account shall be deemed to be controlled if a holder of a power of attorney or otherwise actually directs trading for such account;

**customer and commodity customer** have the same meaning and refer to a customer trading in any commodity named in the definition of commodity herein;

**customer funds** means all money, securities, and property received by any commodity futures market operator or by a clearing organization from, for, or on behalf of customers or option customers—

(a) in the case of commodity customers, to margin, guarantee, or secure contracts for future delivery on or subject to the rules of a contract market and all monies accruing to such customers as the result of such contracts; and

(b) in the case of option customers, in connection with a commodity option transaction on, or subject to the rules of a contract market:-

(i) to be used as a premium for the purchase of a commodity by an option customer;

(ii) as a premium payable to an option customer;

(iii) to guarantee or secure performance of a commodity option by an option customer; or

(iv) representing accruals (including, for purchasers of a commodity option, the market value of such commodity option) to an option customer;

**delivery month** means the month of delivery specified in a contract of sale of any commodity for future delivery;

**floor broker** means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on, or subject

to the rules of any contract market and shall include any person required to register as a floor broker under the Act;

**floor trader** means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account any commodity for future delivery on, or subject to the rules of any contract market and shall include any person required to register as a floor trader by rule or regulation of the Commission pertaining to the operation of an electronic trading system;

**foreign board of trade** means any board of trade, exchange or market located outside Nigeria, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into;

**foreign futures or foreign options secured amount** means all money, securities and property held by, or held for, or on behalf of a future commission merchant from, for or on behalf of foreign futures or foreign options customers—

- (a) in the case of foreign futures customers, money, securities and property required by a futures commission merchant to margin, guarantee, or secure open foreign futures contracts plus or minus any unrealized gain or loss on such contracts;
- (b) in the case of foreign options customers in connection with open foreign options transactions money, securities and property representing premiums paid or received;
- (c) other funds required to guarantee or secure open transactions plus or minus any unrealized gain or loss on such transactions;

**future delivery:** this term does not include any sale of a cash commodity for deferred shipment or delivery;

**futures commission merchant** means—

- (1) individuals, associations, partnerships, corporations and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on, or subject to the rules of any contract and that, in, or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result there from; and
- (2) shall include any person required to register as a futures commission merchant under the Act;

**guarantee agreement** means an agreement of guaranty in the appropriate form executed by a registered futures commission merchant and by an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement;

**introducing broker** means:-

- (1) any person who, for compensation or profit, whether directly or indirectly, is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, who does not accept any money, securities to property (or extend credit in lieu thereof), to margin, guarantee, or secure any trades or contracts that result or may result there from; and
- (2) includes any person required to register as an introducing broker by virtue of of these rules and regulations, provided that the term “introducing broker” shall not include:-
  - (a) any futures commission merchant, floor broker, or associated person, acting in his capacity as such;
  - (b) any commodity trading advisor, who acting in his capacity as a commodity trading advisor, is not compensated on a per-trade basis or who solely manages discretionary accounts pursuant to a power of attorney; and
  - (c) any commodity pool operator who acting in his capacity as a commodity pool operator, solely operates commodity pools;

**member of an exchange** means and includes individuals, associations, partnerships, corporations and trusts owning or holding membership in, or admitted to membership representation on a contract market or given members’ trading privileges thereon;

**Minister of Finance** means the Federal Minister of Finance or any person to whom authority has lawfully been delegated, or to whom authority may hereafter lawfully be delegated to act in his stead;

**net deficit** means the debit balance which would be obtained by combining the commodity margin balance of any person with the net profit or loss, if any, accruing on the open trades or contracts or commodity option transactions of such person;

**net equity** means the balance which would be obtained by combining the commodity margin balance of any person with the net profit or loss, or if any, accruing on the open trades or contracts or commodity option transactions of such person;

**open contracts** means contracts of purchase or sale of any commodity made by, or for any person on, or subject to the rules of a board of trade for future delivery during a specified month or delivery period which have not been fulfilled by delivery nor offset by other contracts of sale or purchase in the same commodity and delivery month;

**option customer** includes any person who directly or indirectly, purchases or grants (sells), or otherwise acquires or disposes of any interest in a commodity option for value;

**person** includes individuals, associations, partnerships, corporations, and trusts;

**physical** means any goods, articles, services, rights or interests upon which a commodity option may be traded in accordance with the Act and these rules and regulations;

**premium** means the amount agreed upon between the purchaser and seller, or their agents, for the purchase or sale of a commodity option on, or subject to the rules of a contract market;

**proprietary account** means a commodity futures or commodity option trading account carried in the books and records of an individual, a partnership, corporation or other type of association:

- (a) for one of the following persons; or
- (b) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons—
  - i. such individual himself, or such partnership, corporation or association itself;
  - ii. in the case of a partnership, a general partnership in such partnership;
  - iii. in the case of a limited partnership, a limited or special partner in such partnership whose duties include:
    - (a) the management of the partnership business or any part thereof;
    - (b) the handling of the trades or customer funds of customers or option customers of such partnership;
    - (c) the keeping of records pertaining to the trades or customer funds of customers or option customers of such partnership; or
    - (d) the signing or co-signing of cheques or drafts on behalf of such partnership;
  - iv. in the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;
  - v. an employee of such individual, partnership, corporation or association whose duties include:
    - (a) the management of the business of such individual, partnership, corporation or association or any part thereof;
    - (b) the handling of the trades or customer funds of customers or option customers of the individual, partnership, corporation or association;
    - (c) the keeping of records pertaining to the trades of funds of customers or option customers or such individual, partnership, corporation or association; or



- (d) the signing or co-signing of cheques or drafts on behalf of such individual, partnership, corporation or association;
- vi. a spouse or minor dependent living in the same household of any of the foregoing persons;
- vii. a business affiliate that directly or indirectly controls such individual, partnership, corporation or association;
- viii. a business affiliate that, directly or indirectly, is controlled by, or is under common control with such individual, partnership, corporation or association;

**strike price** means the price per unit at which a person may purchase or sell the contract of sale or a commodity for future delivery of the physical commodity which is the subject of a commodity option.

#### **257. Registration requirements**

- (1) All commodity and futures exchanges and branches thereof shall register with the Commission as provided in Part E of these rules and regulations.
- (2) For the purpose of these rules and regulations, a rating agency shall be a private or public limited company, incorporated in Nigeria under the Companies and Allied Matters Act or exempted from registration in accordance with these rules.

*[SECRR(A) FEBRUARY, 2013]*

#### **258. Governing council or board**

- (1) The exchange shall have a governing council.
- (2) The governing council or board shall be composed of 70 percent dealing members and 30 percent ordinary members of high integrity and knowledgeable in options, commodities and futures exchange market dealings.
- (3) The functions, composition and powers, etc. of the governing council or board shall be as stated in the rules of the exchange and approved by the Commission.

#### **259. Code of Conduct**

The exchange shall have a code of conduct, approved by the Commission, for its staff and members provided that they shall also be required to comply with the code of conduct for capital market operators approved by the Commission and contained in Schedule IX of these rules and regulations.

**260. Floor brokers/futures commission merchants/floor traders, introducing brokers and associated persons**

***Registration Requirements***

- (1) All floor brokers, futures commission merchants, introducing brokers and associated persons wishing to operate in the commodity/futures market shall register with the Commission.
- (2) An application for registration as a market operator shall be filed on the form prescribed in Part C5 rule 83 of these rules and regulations.
- (3) The application, shall contain the information and be accompanied by the documents required under rule 83 of these rules and regulations.

**261. Separation of account**

- (1) All monies received from clients should be promptly deposited in a segregated account;.
- (2) A floor trader or futures commission merchant shall maintain account(s) for its clients separate from its operations account(s). Thus, all customers' funds shall be separately accounted for as belonging to commodity or option customers. Such funds when deposited with any bank, trust company, clearing organization or another operator, shall be deposited under an account name that clearly identifies them as such;
- (3) Under no circumstances shall any portion of a client's monies be withdrawn except for purpose of payment of deposits and margins to the clearing house, payment of debts due to the members from a client, or reimbursement of monies expended by the members on behalf of such client, monies drawn on the clients' authority, monies properly requested for payment in connection with any physical deliveries of futures transactions on the Exchange or any other market;
- (4) No member shall use or is permitted to use monies belonging to one client to margin or finance the trades or positions of any other client or the member concerned;
- (5) Any person who fails, refuses or neglects to comply with the foregoing provisions shall be guilty of an offence and shall be liable to a penalty of N500,000 and a further sum of N5,000 for every day the default persists.;
- (6) Any operator who violates this provision shall be liable to the payment of interest at the ruling Nigerian Inter-bank Offer Rate (N.I.B.O.R.) on the aggregate credit balance on client's accounts.

**262. Commodity futures trading adviser**

***Registration Requirements***

- (1) All commodity trading advisers, whether individual or corporate shall register with the Commission in accordance with the provisions of these rules and regulations.
- (2) An application for registration as a commodity trading adviser, shall be filed on the forms prescribed in rule 67.

## **263. Clearing and Settlement Agency**

### ***Registration Requirements***

- (1) The Commission shall register a clearing and settlement agency only if it appears to the Commission that the agency is organized in a manner as to be able to comply with the provisions of the Act and rules and regulations as stipulated by the Commission and effectively carry out the functions of a clearing and settlement agency.
- (2) Every clearing and settlement agency which files an application for registration on the prescribed form shall file with such application in duplicate an audited statement of its financial condition with management accounts that are not more than sixty (60) days old in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the clearing and settlement agency within sixty (60) days of the date on which the statement is filed.

## **264. Registration of commodities, futures, options contracts**

- (1) Pursuant to the provisions of the Act, all commodity/futures, options contracts proposed to be offered for sale stipulated therein shall be registered with the Commission by the clearing corporation filing an application with the Commission which shall contain information to indicate the type and general character of the commodity/futures contract including price, quality, quantity, location, etc.
- (2) It shall be unlawful for any broker or dealer to effect any transaction in any commodity/futures contract unless such commodity/futures contract is registered with the Commission and the exchange or through any association or body recognized by the Commission being an association or body set up for the promotion and further development of the market.
- (3) A commodity/futures contract may be registered by the clearing corporation on the commodity/futures exchange or with any association or body of commodity/futures securities dealers recognized.

## **265. Periodic returns**

- (1) The operators registered herein shall make quarterly or other periodic returns of their operations as may be prescribed by the Commission from time to time.
- (2) The following persons shall file reports with the Commission with respect to such commodities options, futures transactions on such forms at such time and in accordance with such directions as may be prescribed from time to time by the Commission—
  - (a) commodity/futures exchange;
  - (b) floor traders, brokers and future commission merchants;
  - (c) commodity trading advisers;
  - (d) commodity pool operators;
  - (e) clearing agency .

## **266. Fees**

- (1) The fees chargeable by the exchange, clearing and settlement agency in respect of all transactions with it shall be as the Commission may, from time to time, prescribe by notice published in two widely read national daily newspapers.
- (2) All fees/commissions chargeable by the exchange, clearing and settlement agency and other operators shall be cleared with the Commission before they come into effect.

## **267. Maintenance of adequate records of affairs and transactions**

- (1) Every market operator/self-regulatory body involved in trading in commodities and futures contract shall maintain correct and adequate records of its affairs and all transactions it is involved in as prescribed by the Commission from time to time.
- (2) The Commission may, whenever it deems it necessary, prescribe the nature, form, manner and content of the records to be kept by any or all of the persons referred to in this Regulation and it shall be the duty of any such persons to comply.
- (3) The Commission may, pursuant to the relevant section of the Act, at any time it deems fit examine the records and affairs of or call for information from any market operator or any person or institution covered by the provisions of the Act.
- (4) Any person who fails, refuses or neglects to comply with requirements in accordance with the foregoing provisions of this regulation shall be liable to a penalty of N500,000 and a further sum not exceeding N5,000 for every day the default persists.
- (5) All operators in the market shall keep accurate, complete and systematic records together with all pertinent data memoranda of all transactions relating to any trade or contracts in commodity futures.
- (6) Such records shall include current ledgers or other similar records, which show or summarizes, with appropriate references to supporting documents, each transaction affecting its assets, liability, income expenses and capital accounts.
- (7) All books and records required to be kept by a market operator shall be maintained and preserved in a readily accessible place for a period of not less than ten years from the end of the year during which the last entry was made on such records, the first five (5) years in its operating office.

## **268. Business records**

### **(1) *Business records***

All market operators, commodities/futures, option exchanges as well as clearing houses shall maintain and keep accurate and current, the following books and records relating to their businesses in an orderly manner at their main business offices, that is—

- (a) a journal or journals, including cash receipts and disbursement records and any other records of original entry forming the basis of entries in any ledger;

- (b) renewal and auxiliary ledger reflecting assets, liabilities, reserve, capital, income and expenses accounts;
- (c) all cheque books including counterfoils of used cheque, bank statements, cancelled cheque and cash reconciliation of the market operator or clearing house;
- (d) all trial balances, financial statements, and internal audit working papers relating to the business of the market operator or clearing houses;
- (e) a list of other records of all accounts in which the market operator or clearing house is vested with any discretionary power with respect to the funds, contracts or transactions of any client;
- (f) all powers of attorney and any other evidence of the granting of any discretionary authority by any client or otherwise relating to the business of such market operator or clearing house;
- (g) all written agreements or copies thereof entered into by the market operator or clearing house with any client or otherwise relating to the business of such market operator or clearing house;
- (h) a record of every transaction in a security in which the commodity/futures trading adviser or any advisory representative of the commodity/futures trading adviser has or by reason of such transaction acquired any direct or indirect beneficial ownership, except:-
  - (i) transactions effected in any account over which neither the commodity/futures trading adviser nor any advisory representative of the commodity/futures adviser has any direct or indirect influence or control; and
  - (ii) transactions in contracts which are direct obligations of the Federal Republic of Nigeria;
- (i) subject to relevant provisions of these regulations, every market operator shall preserve for a period of not less than ten (10) years, the first five (5) years in an easily accessible place, all pertinent records which shall, among others, include:-
  - (i) all cheque books, bank statements, cancelled cheques and cash reconciliations;
  - (ii) all bills receivable or payable (or copies thereof) paid or unpaid, relating to the business of such operator;
  - (iii) originals of all communication received and copies of all communication sent by such operator, (including inter-office memoranda or communications) relating to his business;
  - (iv) all trial balances, computation of aggregate indebtedness not affecting capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers relating to the business of such operator;

- (v) all guarantees of accounts and all powers of attorney and other evidence of the granting of discretionary authority given in respect of an account and copies of resolutions empowering an agent to act on behalf of a corporation, and;
- (vi) all written agreements (or copies thereof) entered into by such operator relating to his business as such, including agreements in respect of any account;
- (j) every operator shall preserve for a period of not less than five (5) years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account;
- (k) every operator shall preserve during the life of the enterprise and any successor enterprise, all partnership articles, minute books, or in the case of a company, all articles of incorporation, minute books and share certificate books;
- (l) all proposed contract market rules relating to terms and conditions of trade/market and any rule affecting the contract, require prior approval of the Commission and must be submitted for same prior to their taking effect;
- (m) the exchange shall file with the Commission for prior approval any proposed amendment to its rules thereof;
- (n) such other documents as maybe prescribed by the Commission from time to time.

(2) ***Specific business records***

- (i) Specifically, records required to be kept shall also include information listed under each operator as follows:-

**(a) commodities/futures trading advisers:-**

copy of every notice, circular, advertisements, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific contract which the market operator may circulate or distribute directly or indirectly to 10 or more persons and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the market operator indicating the reasons thereof;

**(b) commodity pool operators/fund managers—**

- (i) an itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and as applicable, price or premium delivery month or expiration date, whether a put or a call, strike price, underlying contract for future commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized;

- (ii) any subsidiary ledger or other equivalent records for each participant in the pool showing the participant's name and address and all funds, securities and other property that the pool received from or distributed to the participant;
  - (iii) adjusting entries and any other records of original entry or their equivalent forming the basis of entries in any ledger;
  - (iv) copies of each confirmation of a commodity interest transaction of the pool, each purchase and sale statement and each monthly statement for the pool received from a future commission merchant;
  - (v) the original or a copy of each report, letter, circular, memorandum, publication, writing advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity pool operator/fund manager to any existing or prospective pool participant or received by the pool operator from any commodity trading adviser of the pool, showing the first date of distribution or receipt if not otherwise shown on the document;
  - (vi) an itemized daily record of each commodity interest transaction of the commodity pool operator/fund manager and each principal thereof, showing the transaction date, commodity interest and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price underlying contract for future commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized;
  - (vii) each information of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity pool operator/fund manager relating to a personal account of the commodity pool operator/fund manager, and (ii) each principal of the pool operator/fund manager relating to a personal account of such principal;
- (c) **futures commission merchants—**
- (i) each futures commission merchant which invests customers' funds and each clearing organization, which invests customers' funds of its clearing members' customers or option customers, shall keep a record showing the following—
    - (a) the date on which such investments were made;
    - (b) the name of the person through whom such investments were made;

- (c) the amount of money so invested;
  - (d) a description of the obligations in which such investments were made;
  - (e) the identities of the depositories or other such places where such obligations are segregated;
  - (f) the date on which such investments were liquidated or otherwise disposed of and the amount of money received from such disposition, if any; and
  - (g) the name of the person to or through whom such investments were disposed of;
- (ii) each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer and to each foreign futures and options customers as at the close of the last business day of each month or as at any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance, since the previous statement period, but in any event not less frequently than once every three months, a statement which clearly shows for a commodity customer—
- (a) the open contracts with prices at which required;
  - (b) the net unrealized profits or losses in all open contracts marked to the market;
  - (c) any customer funds carried with the futures commission merchant; and
  - (d) a detailed accounting of all financial charges and credits to such customers' accounts during the monthly reporting period;

**(d) clearing agency:-**

each clearing organization which receives documents from its clearing members representing investment of customers' funds shall keep a record showing separately for each clearing member the following:

- i the date on which such documents were received from the clearing member;
- ii. a description of such documents; and
- iii. the date on which such documents were returned to the clearing member or the details of disposition by other means.



## **269. Fraud, and other malpractices**

- (1) It shall be unlawful for any person howsoever involved in commodity/futures/options trading to directly or indirectly—
  - (a) employ any device, scheme or artifice to defraud or capable of defrauding any person or institutions;
  - (b) make, utter, or present any untrue statement of a material fact;
  - (c) omit to disclose a material fact/information necessary to clarify any statement which may otherwise be misleading in the light of the circumstances under which it was made;
  - (d) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of or dealing in any commodity or futures;
  - (e) deal in futures and contracts based on the securities of a company of which he is an insider;
  - (f) deal in the future/contract based on the commodities of any board of which he is an insider.
- (2) For the purposes of sub rule (1) of this regulation, dealing by an insider apply to dealings at a recognized exchange and off-the-market dealings in advertised commodities. Insider dealing occurs where a person or group of persons who are in possession of some confidential price sensitive information not generally available to the public, utilizes such information to buy or sell commodities and futures for their own account or makes such information available to a third-party (either knowingly or unknowingly) who uses it to avoid a loss for his benefit.

## **270. Floor/pit trading**

- (1) No member of the commodity exchange shall, while trading, initiate directly or indirectly any transaction in any commodity admitted to trading on such exchange for any account in which a member has an undisclosed interest, or for any account with respect to which a member has discretion as to the time or execution, the choice of security to be bought or sold, the total amount of any security to be bought or sold, or whether a sale or purchase transaction.
- (2) The provisions of sub rule (1) shall not apply to:-
  - (a) any transaction made with the prior approval of the exchange to permit a member to contribute to the maintenance of a fair and orderly market in a security or any purchase or sale or reverse any transaction;
  - (b) any transaction to offset a transaction made in error;

- (c) any transaction effected in conformity with a plan designed to eliminate floor trading activities that are not beneficial to the market and which plan has been adopted by an exchange and declared effective by the Commission.

**271. Exchange members**

The rules of a commodity/futures exchange may permit a member of the exchange to be licensed as a dealing member and in such a situation the rules shall, among others:-

- (1) prescribe adequate minimum capital requirements in compliance with the rules and regulations of the commission;
- (2) require that the member shall engage in a course of dealings that may assist in the maintenance, so far as is practicable, of a fair and orderly market, and that the exchange may suspend or cancel the registration of the member if there is a finding by the exchange of any substantial or continued failure by the exchange member to engage in such a course of dealings;
- (3) include procedures for the effective and systematic surveillance and investigation of the activities of dealing members.

**272. Minimum financial requirements**

- (1) Any person or persons wishing to operate in the commodity/futures/options market shall comply with the minimum financial and related reporting requirements as prescribed in rules 26 and 27 of these rules and regulations and as may be specified by the Commission from time to time.
- (2) A registered operator shall maintain capital adequacy in accordance with the rules, conditions and procedures stipulated by the Commission from time to time.

**273. Crop market information, letters reports: copies required.**

Each futures commission merchant and each member of a contract market shall upon request furnish or cause to be furnished to the Commission a true copy of any letter, circular, telegram, e-mail, telefax or report published or given general circulation by such futures commission merchant or member which provides commodities or market information or conditions that affect or tend to affect the price of any commodity, and the true source of, or authority for the information contained therein.

**274. Information required concerning warehouses, depositories, and other similar entities**

Each exchange shall file with the Commission a list of all warehouses, depositories and other similar entities in which, or out of which, commodities are deliverable in satisfaction. Such warehouses, depositories and other similar entities shall conform to specifications as shall be determined by the Commission.

**275. Records and reports of warehouses, depositories and other similar entities: Inspection of premises.**

Each exchange shall require the operators of warehouses, depositories and other similar entities whose receipts are deliverable in satisfaction of commodity futures contracts or options on physicals made on or subject to the rules of such contract market:-

- (a) to keep records showing the stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market in store in such warehouses, depositories and other similar entities by kinds, by classes, and by grades, if stored under conditions requiring such designation or identification, and including also lots and parcels stored in specifically leased space of the warehouse, depository or other similar entity;
- (b) upon call from the Commission to report the stocks of commodities in other similar entities and to furnish information concerning stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market about to be transferred or in the process of being transferred or otherwise moved into or out of such warehouses, depositories and other similar entities as well as any other information concerning commodities stored in such warehouse, depositories and other similar entities which are or may be available for delivery on futures contracts or options on physicals;
- (c) to permit visitation of the premises and inspection of the books and records of such warehouses, depositories and other similar entities by duly authorized representatives of the Commission and to keep all books, records, papers and memoranda relating to the storage and warehousing of commodities in such entity for a period of five (5) years from the date thereof

**276. Delivery of commodities conforming to specified standards**

Each contract market shall require that all contracts of sale of any commodity for future delivery on or subject to the rules of such contract market shall provide for the delivery there under of commodities of grades conforming to specified standards. Such standards shall have been officially and adopted and published by the exchange. In the event of a change in such standards, all contracts made on and after the effective date of the adoption of the revised standard by the exchange shall be changed: -

Provided that this shall not be construed to prevent the closing of trades made prior to the effective date of such adoption by the exchange.

***E7. Self-Regulatory Organizations (S.R.O.) and Trade Associations***

**277. Registration Requirements**

- (1) An application for registration of a self-regulatory organizations (S.R.O.) and trade association shall be made in SEC Form 5D contained in schedule III of these rules and regulations and shall be accompanied by:

- (a) Copy of the certificate of incorporation duly certified by a Notary Public or commissioner for oath.
  - (b) Two copies of the Memorandum and Articles of Association certified by the CAC.
  - (c) Copy of existing or proposed by-laws, rules or code of conduct of the trade association including the following provisions:
    - i. For the exclusion from its membership, persons who are not of good character and who do not possess a high degree of business integrity.
    - ii. For the expulsion, suspension or discipline of members for conduct inconsistent with just and equitable principles in the transactions of business or for contravention of or failure to comply with the rules of the association or where applicable, the rules of a self-regulatory organizations (S.R.O.) and trade association or the provisions of the Act.
    - iii. With respect to a fair representation of persons in the retention of members of the board of the trade Association and the administration of its affairs, amongst other provisions as the Commission may demand from time to time.
  - (d) Sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules, bye-laws or constitution of the Association.
  - (e) Latest audited accounts or statement of affairs signed by the auditor.
  - (f) Information as to its organization including structure and profile of members of the self-regulatory organizations (S.R.O.) and trade association
  - (g) Instruction and inspection manual of members activities.
  - (h) Detailed information on the promoters and principal officers of the trade Associations.
  - (i) Sworn undertaking to keep such records and render such return as may be specified by the Commission from time to time.
  - (j) Sworn undertaking to comply with and enforce compliance by its members with the provisions of the Act and the rules and regulations.
  - (k) Any other document required by the Commission from time to time.
- (2) Subject to the powers of the Commission, self-regulatory organizations (S.R.O.) and Trade Association shall, as part of its primary responsibilities call for information from, inspect and conduct inquiries and audit of its members.
  - (3) Rules 182(2) (3) and (4) shall apply in case of demand or suspension of registration of a self-regulatory organizations (S.R.O.) and trade association.

## **278. Regulation**

Pursuant to Section 13(O) ISA 2007, every self-regulatory organizations (S.R.O.) and trade association shall in respect of their members carry out the following functions:

- (1) Make rules and issue guidelines for the regulation of its members;
- (2) Make trading rules where applicable;
- (3) Enforce its rules and the rules and regulations of the Commission in relation to its members;
- (4) Carry out periodic inspection and examine the records and affairs of or call for information from any of its members.
- (5) Take disciplinary actions on erring members including investigation of infractions;
- (6) Impose sanctions as specified in its rules;
- (7) File quarterly returns to the Commission on their enforcement activities;
- (8) Notify the Commission within seven (7) days of any disciplinary action taken against its members;
- (9) File annual report of its activities which shall include the report of its external auditors;
- (10) any other responsibilities as may be assigned from time to time by the Commission.

## **PART F**

### ***Registration of Securities***

## **279. Registrable securities**

- (1) (a) All securities of public companies and other entities shall be registered by the Commission.
- (b) “**Entity**” in this rule means investment trust companies, other collective investment schemes, government and its agencies and supranational bodies.
- (c) All securities subject to registration by the Commission may be offered through the following methods:
  - i. offer for subscription;
  - ii. offer for sale;
  - iii. rights issue;
  - iv. bonus issue;
  - v. debt - equity conversion

- vi. private placement by public companies and other entities;
  - vii. offer by introduction.
  - viii. debenture/loan stock.
  - ix. State and Local government bonds
  - x. Sukuk *[SECRR(A) Febuary,2013]*
- d) Securities arising from conversion of a private company to public limited company shall be registered by the Commission

## **(2) *Registration Requirements***

A security shall be registered with the Commission by the issuer filing an application on Form S.E.C. 6 as provided in schedule III to these rules and regulations accompanied by—

- (a) a copy of the resolution(s) by the general meeting authorizing the offer and certified by the Corporate Affairs Commission where a photocopy is forwarded it shall be certified by the Corporate Affairs Commission or the company secretary;
- (b) 2 copies of the Memorandum and Articles of Association (including amendments thereto) of the issuer certified by the Corporate Affairs Commission;
- (c) a copy of certificate of incorporation of the issuer certified by the by the CAC. Where a copy has already been filed with the Commission a photocopy of the certificate of incorporation certified by the company secretary may be forwarded;
- (d) a signed copy of audited accounts for the preceding five (5) years or number of years for which the issuer company has been in operation, (if less than five (5) years) or audited statement of affairs (in the case of a new company) disclosing the following information:
  - i. financial statements;
  - ii. date of incorporation;
  - iii. authorized share capital;
  - iv. paid-up capital which shall not be less than the minimum subscription level prescribed by the Companies and Allied Matters Act (C.A.M.A.);
  - v. profile of promoters/directors;
  - vi. profile of management staff;
  - vii. a summary of the objectives and business of the company;
  - viii. The latest audited accounts shall not be more than nine months old for corporate bodies or twelve months old for states, local governments and Federal Government agencies and Supranational bodies.

- (e) 2 copies each of the draft prospectus/rights circular/placement memorandum and abridged prospectus;
  - (f) 2 copies of the draft trust deed, where applicable;
  - (g) 2 copies of the draft underwriting agreement and sub-underwriting agreement, where applicable;
  - (h) 2 copies of draft vending agreement, between issuer and the issuing house. Where there are joint issuing houses, the terms of their relationship should be incorporated in the vending agreement;
  - (i) letters of consent given by the parties to the issue, sworn to before a Notary Public or Commissioner for Oaths. Where the consent is contained in a power of attorney, it shall be executed and stamped.
  - (j) evidence of technical agreement (if any) reached between the issuer and technical partner(s), advisers/consultants;
  - (k) a copy of C.A.C form containing the particulars of directors, certified by Corporate Affairs Commission.;
  - (l) a copy of the mandate letter by the issuer to the issuing house;
  - (m) evidence of payment of registration and filing fees;
  - (n) a certificate of exemption from a recognized stock exchange (where applicable);
  - (o) where applicable, a feasibility report on the project to be financed (for debt issue);
  - (p) State government official gazette or local government by-law containing the instrument authorizing the issue of the bond (applicable to State and Local government bonds);
  - (q) Irrevocable letter of authority, otherwise known as irrevocable standing payment order (I.S.P.O.) applicable to state and local government bonds;
  - (r) rating report by a registered rating agency (applicable to a debt instrument);
  - (s) any other document required by the Commission under these rules and regulations.
- (3) Where the issuer had already filed such documents with SEC (e.g. Memorandum and Articles of Association (Memart )or certificate of incorporation or certificate of increase in share capital, etc.) such issuer need not file the documents in subsequent transactions provided, there is an undertaking that there is no change in the document already filed with the Commission. *[SECRR(A) March ,2010]*
- (4) All securities required to be registered pursuant to the Act shall be registered with the Commission by the issuer filing an application as in sub rule (1) above and the

application shall in addition contain information to indicate the type and general character of the securities including the following:

- (a) the nominal value, the rate of dividends if fixed and whether cumulative or non-cumulative;
- (b) a brief description of the preference shares if any;
- (c) in the case of debt instruments, the rate of interest, the date of maturity or if the issue matures severally, a brief indication of the serial maturities;
- (d) if the payment of principal or interest is contingent, an appropriate indication of such contingency, a brief indication of the priority of the issue and if convertible, a statement to that effect;
- (e) the organizational and financial structure and nature of business of the company, including any risk factors;
- (f) the directors, officers and underwriters if any, and each security holder of record, holding more than 5 percent of any class of any equity or N50,000 in value of whichever is higher;
- (g) the bonus and profit sharing arrangements;
- (h) the management and service contracts;
- (i) write up from the issuing house on the issue;
- (j) schedule of claims and litigation;
- (k) bridging loan agreement and schedule of other material contracts where applicable;
- (l) evidence of property ownership or transfer;
- (m) any other document or information required by the Commission from time to time.

- (5) Where it is intended to list the security on the securities exchange or with any association or body of security dealers recognized by the Commission, the issuer shall in addition to sub rules (1) and (2) above file with the Commission such copies of the duplicate and originals of the application to the securities exchange, association or body of security dealers and a certificate that an application to the effect has been made.
- (6) The copies of the approved prospectus shall be signed by the directors of the issuer and other parties to a public offer and together with other offer documents, shall be forwarded to the Commission for registration within 48 hours of the signing of the prospectus. Where a party will not be available to sign the prospectus, he shall execute a power of attorney in favor of any other available party to sign on his behalf. This shall be filed with the offer documents.
- (7) Where the securities registered by the Commission under this part will not be offered to the public within a period of six months after the registration, the issuer shall revert to the Commission for a revalidation of the registration before it is offered to the public.



- (8) Any other material information.

### **3. SHELF REGISTRATION**

(1) ***Definition***

Shelf Registration is a filing undertaken by issuers intending to access the market in the near future. It permits issuers to disclose certain information in a core disclosure document that is updated on a regular basis.

(2) ***Scope of Securities***

Shelf Registration shall be applicable to all types of registerable securities as defined in the Act.

(3) ***Eligibility for use of the shelf registration***

- i) Unless otherwise indicated by the Commission, all entities qualified under the law for purposes of issuance of Municipal bond, Supranational institutions, SPVs, public companies (which have been listed on a securities exchange for a minimum period of twelve months) and other entities covered under the Act are eligible to issue, offer for subscription or purchase, or issue an invitation to the public or a select few subscribers for or purchase securities in accordance with a shelf registration.
- ii) Unless otherwise indicated by the Commission, all issuers of securities are eligible to issue, in accordance with a shelf registration.

Provided that there shall be full disclosure of:

- a) any prosecution commenced against either the issuer or any of its subsidiaries in respect of any breach of any securities or banking laws or the Companies and Allied Matters Act;
- b) any action taken against the issuer by a recognized securities exchange in respect of any breach of the listing requirements of the exchange;
- c) An issuer shall not be eligible for shelf registration where the issuer or any of its subsidiaries (where applicable) has breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies, during the twelve (12) calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus.

(4) ***Transaction requirement***

The value of the issue on offer under shelf registration shall not be less than N5 billion.

(5) ***Requirement for Shelf Prospectus and Supplementary Shelf Prospectus***

- (i) An issuer may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase securities under a shelf registration where at the time of the

issue, offer or invitation, there is in force a shelf prospectus as updated by a supplementary shelf prospectus, both of which have been registered by the Commission;

- (ii) A shelf prospectus shall be effective for a period of two years from the date of its issue and it shall not be renewed.

**(6) *Contents of Shelf Prospectus and Supplementary Shelf Prospectus***

(a) A shelf prospectus shall—

- (i) comply with the general form and contents of a prospectus as set out in sections 71 to 87 of the Act and rules 283 to 301 of these rules and regulations;
- (ii) state that the shelf prospectus has been registered by the Commission;
- (iii) state that the registration of the shelf prospectus and supplementary shelf prospectus shall not be taken to be that the Commission endorses or recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed therein;
- (iv) contain a statement that no securities will be allotted or issued on the basis of the shelf prospectus read together with any supplementary shelf prospectus later than two years after the date of the issue of the shelf prospectus;
- (v) if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the shelf prospectus;
- (vi) disclose any legal proceedings commenced against either the issuer or any of its subsidiaries, during the twelve calendar months immediately preceding the date of application to the Commission for registration of the prospectus in respect of any breach or contravention of any securities or banking laws or the Companies and Allied Matters Act, or the listing requirements of a recognized securities exchange;
- (vii) contain the relevant disclosures that neither the issuer nor any of its subsidiaries has, during the twelve (12) calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus, breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies;
- (viii) set out such other information as may be specified by the Commission.

(b) A supplementary shelf prospectus shall—

- (i) state such information as may be specified in these rules and regulations on contents of prospectus;

- (ii) state the offer period which should not be longer than twenty-eight (28) working days from the date of the issue of the supplementary prospectus or such longer period as may be allowed by the Commission;
- (iii) disclose information such as:
  - (a) where a matter has arisen and information in respect of that matter would have been required by the Act, these rules and regulations or any listing requirements of a recognized securities exchange, to be disclosed in the prospectus if the matter had arisen at the time the shelf prospectus was prepared;
  - (b) where there has been a significant change affecting a matter disclosed in the shelf prospectus;
  - (c) where the shelf prospectus contains a statement or information that is false or misleading;
  - (d) where the shelf prospectus contains a statement or information from which there is a material omission;
  - (e) any legal proceedings commenced against either the issuer or any of its subsidiaries during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus and during the effective period of the shelf prospectus, in respect of any breach or contravention of any securities or banking laws or the Companies and Allied Matters Act or the listing requirements of a recognized securities exchange;
  - (f) that neither the issuer nor any of its subsidiaries has, during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus and during the effective period of the shelf prospectus, breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies;
  - (g) that the supplementary shelf prospectus has been registered by the Commission and that a copy has been lodged with the Securities Exchange where the securities are listed.

**( 7) General Duty of Disclosure in Shelf Prospectus and Supplementary Shelf Prospectus**

- (a) For the purpose of determining whether a shelf prospectus or supplementary shelf prospectus contains any statement or information which is false or misleading, or from which there is a material omission, regard shall be had to whether the shelf prospectus and supplementary shelf prospectus contain all such information that investors and their professional advisers would reasonably require, and expect to find in the shelf and supplementary shelf prospectus, for the purpose of making an informed assessment of:-

- (i) financial position and prospects of the issuer;
  - (ii) the rights if any, attaching to the securities; and
  - (iii) the merits of investing in the securities and the extent of the risk involved in doing so.
- (b) The information that investors and their professional advisers would reasonably require and expect to find in the shelf prospectus and supplementary shelf prospectus under paragraph (a) is information—
- i. which is known to all or any of the parties to the issue of shelf prospectus and supplementary shelf prospectus, or
  - ii. which any of the persons referred to in subparagraph (i) would have been able to obtain by making such enquiries as were reasonable in the circumstances.
- c) Without prejudice to the generality of sub-rule (6) (a) or (b) above, in determining the information that is required to be included in a shelf prospectus and supplementary shelf prospectus under these rules, regard shall be had to:-
- i. the nature of the securities and business of the issuer of the securities;
  - ii. the persons likely to consider acquiring such securities;
  - iii. the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors may reasonably be expected to consult; and
  - iv. whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase of securities is to be made are the holders of securities in the company, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of a recognized securities exchange or otherwise.

#### **(8) *Issuing of Shelf Prospectus***

Upon the registration of the shelf prospectus by the Commission, the issuer is allowed to issue the shelf prospectus, provided that:-

- (a) securities are only to be issued upon the registration of a supplementary shelf prospectus by the Commission; and
- (b) the form of application which would facilitate the issue of, offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase of securities on the basis of the shelf registration is attached to the relevant supplementary shelf prospectus and not the shelf prospectus.

**(9) *Delivery of Shelf Documents to the Public***

All shelf documents shall be made accessible to the public at the offices of the issuer and Commission and by publishing same on the websites of the Commission and the issuer.

**(10) *Fees for Shelf Registration***

All Issuers of a shelf prospectus shall pay a filing fee of N50,000 and a vetting fee of N200,000 at the time of placement of documents on the shelf and the appropriate fees for registration of securities as provided in these rules and regulations at the time of the issuance of the securities.

**4. Registration of Bonus Issue**

**(a) *Definition***

**Bonus** means the proportionate issuance of new shares to the existing shareholders of a company, at no cost to the shareholders by the capitalization of accumulated reserves from the profits earned in previous years.

**(b) *Registration Requirements***

An application for registration of bonus issue by public companies shall be made in the designated form within one month of the approval by the shareholders and shall be accompanied by the following:

- i) a copy each of the board and shareholders resolutions authorizing the issue and certified by the company secretary;
  - ii) a copy of the audited accounts of the company showing provisions for the bonus;
  - iii) a copy of the certificate of increase in share capital certified by the CAC or by the issuer's company secretary, where applicable;
  - iv) evidence of payment of registration and filing fees to the Commission;
  - v) a copy of the Certificate of Incorporation certified by the issuer's company secretary, where the document has not been previously filed with the Commission;
  - vi) a copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission, where the document has not been previously filed with the Commission or where the previously filed copy had been amended.
- (c) The Commission shall register bonus issues within seven (7) working days of receipt of the application, provided the applicant has complied with all registration requirements.
- (d) The company shall forward the Commissions' approval together with the bonus share certificates (where applicable) to the Registrar within one (1) working day of receipt of the approval.
- (e) The registrar shall forward the required data to CSCS within five working days and the CSCS shall credit shareholders account within two (2) working days.

(f) Bonus issues shall be distributed as follows:

i) credited to the shareholders account at the securities depository within 5 working days of approval by the Commission;

ii) where the shareholder requests in writing for a physical certificate, or did not provide the Registrar with his clearing house number or the company is a public unlisted company, the certificate shall be dispatched within one month of approval by the Commission.

(g) Failure to credit a shareholders' account or dispatch the certificate within the specified period shall attract a penalty of N100,000 in the first instance and thereafter N5,000 per day for the period of default, payable by the defaulting party. *[SECRR(A) March, 2010]*

## **5. Debt - Equity Conversion**

### **(1) Definition**

Debt - Equity conversion is a process that enables conversion of debt instruments into equity, based on predetermined agreement or conditions by the parties involved.

### **(2) Registration Requirement**

An application for registration of securities arising from debt-equity conversion shall be filed with the Commission and shall be accompanied with:

(a) Form SEC 6(duly completed)

(b) Conversion or Information Memorandum containing the following details:

(i) Introduction

(ii) Definition of terms

(iii) summary of convertible loan:

(a) Brief of the convertible loan;

(b) the convertible amount;

(c) borrower;

(d) lender;

(e) share capital;

(f) purpose and use of loan proceeds;

(g) conversion formula;

(h) status of the securities;

(i) quotation;

(j) effects of the conversion:

- (i) shareholding structure pre-conversion;
- (ii) shareholding structure post conversion;
- (c) Conversion Loan Agreement duly certified by the company secretary;
- (d) A copy each of the Board and Shareholders resolutions authorizing the conversion and issuance of the debt;
- (e) Evidence of payment of registration and filing fees;
- (f) A copy of the Certificate of incorporation of the issuer certified by the Corporate Affairs Commission (if the company is coming for the first time);
- (g) Copies of the memorandum and Articles of Association of the issuer certified by the Corporate Affairs Commission;
- (h) The most recent audited accounts, which shall not be more than nine (9) months from audited date;
- (i) copy of the most recent certificate of increase in share capital(where applicable);
- (j) Option Notice (where applicable).
- (k) Any other information that may be relevant to the transaction.
- (l.) Evidence of collection of the loan.

This rule also applies to convertible preference shares.

*[SECRR(A) September, 2011]*

## ***Regulation of Distribution of Securities***

### ***F 1. Public Offer***

#### **280. Filing of registration statement**

- (1) (a) The registration statement for the offer of securities shall be filed by an issuing house and shall conform with the requirements of the Act, these rules and regulations and any other requirement prescribed by the Commission.
- (b) No securities shall be sold or offered for sale prior to the approval of the Commission .(*SECRR(A) February,2013*)
- (2) (a) The time interval between the initial filing of documents and the time approval is given by the Commission shall be not more than six (6) weeks.
- (b) No report, recommendation, or sale literature shall be circulated between the period of filing and approval of an offer. The issuing house may however in an offer, requiring price discovery process, file and circulate a preliminary prospectus (Red Herring) which shall be boldly written in red lettering on the

title page. On the cover page shall be boldly inscribed in red ***“this document is for guidance purposes for price discovery process only”***. ( SECRR(A)February, 2013)

(3) ***Declaration by the issuer on full disclosure***

The issuer shall make a sworn declaration that it has fully disclosed all material facts in the offer document and the declaration shall be signed by the chief executive officer, the company secretary and the chief financial officer of the issuer. [SECRR(A) March, 2010]

**281. Condition for Approval of Subsequent public offers**

Subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds. However, in the case of a shelf filing the issuer shall within the two year validity period of the shelf be permitted to issue securities to the limit of the programme. [SECRR(A) March ,2010]

**282. Prohibition of sale**

- (1) It is an unlawful act for any person to offer for sale or to buy or sell securities which are subject to the provisions of the Act or these rules and regulations:
  - a) before the issuing house has filed a registration statement with the Commission; or
  - b) after the registration statement has been filed but before it is cleared by the Commission; or
  - c) after the completion board meeting but before the issue is authorized to open except in the following circumstances:
    - i. preliminary negotiations or actual agreement between the issuer and the underwriter;
    - ii. oral offers not made to the public;
    - iii. notices of proposed offering.
- (2) Any person who acts in contravention of the provisions of this rule shall be guilty of an offence and liable to a penalty of N5,000 for every day the default persists and may in addition be subject to any sanction or action which the Commission deems necessary for protection of investors.

**283. Notice of proposed offering**

For purposes only of this Part, a notice given by an issuer that it proposes to make a public offering of securities to be registered under the Act shall not be deemed to be an offer of securities for sale if such notice states that the offering will be made only by means of a prospectus and contains no more than the following additional information:

- (a) the name of the issuer;
- b) the title, amount and basic terms of the securities proposed to be offered, the anticipated time of the offering and the purpose of the offering;



(c) in the case of a rights offering, the class of shareholders which will be entitled to subscribe to the securities proposed to be offered, the subscription ratio, date, terms and price at which the proposed rights are to be offered;

(d) in the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made.

## 284. Guidelines for advertisement

- (1) No issuer or issuing house shall publish any advertisement relating to public offer without the approval of the Commission;
- (2) Issuing houses shall comply with the following:-
  - (a) obtain an undertaking from the issuer, as part of the vending agreement, to the effect that the issuer shall not directly or indirectly release, during any conference or at any other time any material or information which is not contained in the offer documents; provided that the issuer may release information to the general public on the floor of the exchange, by advertising in the national newspapers.
  - b) ensure that the issuer obtains approval in respect of all advertisements and publicity materials from the Commission through the issuing house.
- (3)
  - (a) An advertisement shall be truthful and not misleading. Any advertisement reproducing or purporting to reproduce any information contained in an offer document shall produce such information in full and disclose all relevant facts and shall not be restricted to select extracts relating to that item.
  - (b) Information in any advertisement shall be restricted to the information in the offer documents.
- (4) An advertisement shall be considered to be misleading, if it contains—
  - (i) statements made about the performance or activities of the company in the absence of necessary explanatory or qualifying notes, which may give an exaggerated picture of the performance than what it really is;
  - (ii) an inaccurate portrayal of past performance or its portrayal in a manner which suggests that past gains or income will be repeated in future.
- (5) An advertisement shall avoid the use of extensive technical legal terminology or complex language and the inclusion of excessive details which may distract the investor. Ambiguous and high sounding words shall be avoided and slogans and terminologies that can mislead the investor such as **“invest and haul in the future”, “top offer”, “superior offer”, “brighter future”,** etc. shall be avoided.
- (6) An advertisement shall not contain statements which promise or guarantee rapid increase in profits.

- (7) Models, celebrities, fictional characters, landmarks or caricatures or the likes shall not be displayed on or form part of the advertisements. Advertisements shall not appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television.
- (8) No advertisement shall include any slogans or brand names for the issue except the normal commercial name of the company or brand names of its products already in use. No slogans, expletives or non-factual and unsubstantiated titles shall appear in the advertisements.
- (9) The historical financial information and all other information to be incorporated in advertisement materials shall not exceed the period as contained in the approved offer documents.
- (10) Evidence of any award received by the issuer to be stated in the advertisements shall be forwarded to the Commission for clearance before the advertisements.
- (11) The publication of the following advisory clause:

*“please read the Prospectus/Rights Circular and where in doubt, consult your stockbroker, fund/portfolio managers, accountant, banker, solicitor or any other professional adviser for guidance before subscribing”,* shall be stated as a footnote in all print and electronic media advertisements.

#### **285. Form, size, number, etc., of prospectus**

- (1) Every Prospectus filed with the Commission as part of the registration statement shall be filed electronically or in printed form, in duplicate, no larger in size than A4 paper and:  
  
Provided that in the case of issuers of securities through a capital trade point, the prospectus may be abridged in terms of content and may not be in printed form.
- (2) The information required in a prospectus shall follow the order required in rule 285 and rule 286 and thereafter it need not follow any particular order provided that the information is set forth in such a manner as not to obscure any of the required information necessary to keep the required information from being incomplete or misleading.
- (3) Information set forth in a prospectus shall be presented in a clear, concise English language and under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder.

#### **286. Date of prospectus**

Every prospectus shall be dated on the front cover and the date shall not be earlier than the date of execution of the offer document or the completion board meeting.

#### **287. Statements required in a prospectus**

- (1) There shall be set forth among other information on the front cover of every prospectus the following statement printed in red ink:

**THIS PROSPECTUS AND THE SECURITIES, WHICH IT OFFERS, HAVE BEEN REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION. THE**

**INVESTMENTS AND SECURITIES ACT, PROVIDES FOR CIVIL AND CRIMINAL LIABILITIES FOR THE ISSUE OF A PROSPECTUS WHICH CONTAINS FALSE OR MISLEADING INFORMATION. THE REGISTRATION OF THIS PROSPECTUS AND THE SECURITIES WHICH IT OFFERS DOES NOT RELIEVE THE PARTIES OF ANY LIABILITY ARISING UNDER THE ACT FOR FALSE OR MISLEADING STATEMENTS OR FOR ANY OMISSION OF A MATERIAL FACT IN THIS PROSPECTUS.**

- (2) Every prospectus shall set forth on the page describing the “offer” the following statements:
- (a) a copy of this prospectus together with the documents specified herein have been delivered to the Commission for registration;
  - (b) this prospectus is issued under the provisions of the Act, and in compliance with the requirements of the rules and regulations of the Commission and the listing requirements of the relevant securities exchange and over-the-counter market for the purpose of giving information to the public with regard to the shares of the company;
  - (c) the directors of the company collectively and individually accept full responsibility for the accuracy of the information given and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief, there are no facts, the omission of which would make any statement herein misleading or untrue.
- (3) In addition to sub rule (2) above, state if the shares being issued will rank pari- passu in all respects with the existing ordinary shares of the company.
- (4) State if application has been made to a securities exchange/over-the-counter market for the listing of and dealing in the shares of the company and if upon admission of the shares to the official list whether the securities will qualify under the Trustee Investment Act, Laws of the Federation of Nigeria, 2004.

**288. Contents of a prospectus**

- (1) Every prospectus shall contain the information required by the Third schedule to the Act, and shall in addition state the following information as applicable to the relevant securities.
- (a) the front cover shall state the name of the issuer, the issuing house(s), their respective Corporate Affairs Commission registration certificate (R.C.) numbers, the type of offer, amount/number of shares being offered, the price and amount payable in full on application;
  - (b) a detailed table of contents in the forepart of the Prospectus showing the subject matter of the various sections or subsections of the Prospectus and the page number on which each such section or subsection begins;
  - (c) a summary of the offer stating the amount/number of shares on offer, the offer price, purpose of the offer, minimum application and multiples thereafter, tenor, coupon redemption and other terms,; whether or not the offer is underwritten and if there would be any preferential allotment and summary financials;

- (d) the offer stating the requirements of rules 287 (2) and (3), the times of opening and closing of the offer, the share capital of the company showing the authorized share capital, issued and fully paid share capital and the indebtedness of the company, including details of any bridging loan if any;
- (e) names and addresses of the directors and the other parties to the issue;
- (f) the Chairman's letter/statement which should disclose the history and business of the company, directors, management and staff, purpose of the offer, financial summary, prospect and future developments of the company, and any other material information;
- (g) five (5) year audited historical financial information comprising accounting policies, balance sheets, profit and loss accounts, cash flow and notes to the accounts:

Provided that where the company has existed for less than five (5) years, audited historical financial information for the number of years in existence or an audited statement of affairs for a new company;

- (h) letter from the reporting accountants reviewing the audited accounts for the period.

*[SECRR(A) September 2011]*

- (i) rating report (for debt issue);
- (j) statutory and general information stating date of incorporation, registration number and share capital history of the company, the principal shareholders, shareholding structure, directors' interests, subsidiaries and associated companies, extract from the Articles of Association and or the trust deed(as appropriate), claims and litigations, material contracts, consents, documents available for inspection, underwriting and any other material information;
- (k) procedure for application and allotment;
- (l) collecting agents;
- (m) the receiving bank;
- (n) application form;
- (o) a revised forecast in the event of oversubscription and absorption of 15% of the offer shall be disclosed in the offer document. *(optional) [SECRR(A) March, 2010]*
- (p) any other information required by the Commission from time to time.

## **(2) *Caveat on risk factor***

The Prospectus shall contain in the front or inside cover page the following statement to be highlighted in bold letters **“Investing in this offer involves risks. For information concerning certain risk factors which should be considered by prospective investors, see “risk factors” commencing on the relevant page hereof ”.**

### **(3) Risk factors**

Risk factors peculiar to the issuer shall be stated in the prospectus including the following risks:

- (a) Risk associated with the business activities of the entity e.g market risk, interest risk, credit risk, exchange risk, etc;
- (b) sectoral risks – risks associated with the sector e.g. energy sector risk;
- (c) political risks, i.e. risks associated with the political climate;
- (d) currency risk;
- (e) environmental risk.

Measures, if any, taken to address or mitigate the identified risk factors shall be stated.

### **(4) Definitions and corporate directory**

The Prospectus shall contain:-

- (a) a glossary of abbreviations and technical terms to guide investors on definitions and explanations of abbreviations and terms, especially for companies engaged in technical activities;
- (b) addresses and telephone numbers of the issuers 'branch/regional office, head/management office, e-mail, website and registrar's office;
- (c) names of all exchanges where the company's shares are listed or are to be listed.

### **(5) Description of group structure**

Where the issuer is a group, the issuer shall disclose, in the summary page of the prospectus, information about the group including a description of group structure and a diagrammatic illustration.

### **(6) Expected time-frame for completion of project/gestation period**

The issuer shall state in the prospectus the expected period to complete the project(s) for which funds were obtained and also disclose the gestation period of the project(s).

### **(7) Information on the company**

The prospectus shall disclose the following information about the company:

- (a) availability of raw materials, i.e. where the company derives or will derive its raw materials from;
- (b) quality control procedures or quality management programme in place.

### **(8) Information on shareholders/directors/key management staff**

The Prospectus shall provide a statement as to whether or not any shareholder, director or key management personnel and, where applicable, its key technical personnel, are or have been involved in any of the following (whether in or outside Nigeria):-

- (a) a petition under any bankruptcy or insolvency laws filed (and not struck-out) against such person or any partnership in which he was a partner or any company of which he was a director or key personnel; or
- (b) a conviction in a criminal proceeding or is named subject of pending criminal proceedings relating to fraud or dishonesty; or
- (c) the subject of any order, judgment or ruling of any court of competent jurisdiction or regulatory body relating to fraud or dishonesty, restraining him from acting as an investment adviser, dealer in securities, director or employee of a financial institution and engaging in any type of business practice or activity.

***(9) Related party transactions/conflicts of interest***

The issuer shall disclose in the prospectus:-

- (a)
  - (i) any existing and potential related-party transactions and conflict of interest in relation to the company and its related parties, together with steps taken to resolve such conflicts of interest;
  - (ii) the nature and extent of the related-party transactions and conflict of interest situations;
  - (iii) declaration of an expert on existing and potential interests/conflicts of interest in any capacity (if any) vis-à-vis the company/group;
- (b) **“experts”** means experts as defined in the Act,
- (c) **“related party”** shall bear the same meaning as related company as defined in the Act.

***(10) Directors’ interest***

The issuer shall disclose in the prospectus:-

- (a) information and details of amounts or benefits paid or intended to be paid or given to any promoter within the two years preceding the date of the prospectus;
- (b) the full particulars of the nature and extent of any interest, whether direct or indirect of any director and major shareholder in the promotion of, or in any material assets within the two years preceding the date of the prospectus, acquired or disposed of by or leased to the company or any subsidiary company or are proposed to be acquired or disposed of by or leased to the company or any subsidiary company. such particulars shall include the following:
  - (i) the consideration passing to or from the company or any subsidiary company; and
  - (ii) brief particulars of all transactions relating to any such material assets which have taken place within the two years preceding the date of the prospectus or an appropriate negative statement.

### ***(11) Mergers or take-over***

The prospectus shall contain a statement as to whether or not any of the following has occurred during the preceding financial year and or the current financial year.

- (a) merger or take-over offers by third parties in respect of the company's securities; and
- (b) merger or take-over offers by the company in respect of another company's securities;
- (c) if the foregoing statement is in the affirmative, the prospectus shall state the price of the offer and the outcome thereof.

### ***(12) Illustration***

If the prospectus contains photographs or illustrations of properties or assets, which do not belong to the issuer, the photographs or illustrations shall be accompanied by a statement to the effect that the properties or assets depicted do not belong to the company.

### ***(13) Financial information – segmental reporting***

In the case of an issuer which is a group of companies, the prospectus shall contain a detailed analysis of the group over the past five (5) years or number of years in existence (as applicable), preceding the date of the prospectus including segmental reporting of revenue and operating profits by subsidiary/associated company (where applicable), products/services and markets/geographical location.

### ***(14) Accountants' report***

#### ***Purchase of any Business***

If the proceeds or any part of the proceeds of the issue of the securities is to be utilized directly or indirectly for the purchase of any business, the accountants report in the prospectus shall deal with—

- (a) the financial statements of the business to be purchased for the five (5) preceding years or for the number of years the company has been in existence;
- (b) the balance sheet of the business to be purchased for each of the preceding five (5) years or the number of years the company has been in existence immediately after the last date to which the accounts of the business were made up;
- (c) such date shall not in any case, be more than nine (9) months prior to the issue of the prospectus.

#### ***Acquisition of another company***

If the proceeds or any part of the proceeds of the issue of the securities are to be applied directly for the acquisition of securities of any other company and by reason of that acquisition the company will become a subsidiary of the issuer, the accountants report shall deal with the income statement and balance sheet of the company to be acquired in accordance with the relevant accounting standards and S.E.C. rules and regulations.

## **(15) *Property schedule***

### ***Land and buildings***

- (a) Fixed assets of the issuer shall be disclosed in the prospectus. In the case of buildings, i.e. offices, factories, warehouses, etc., there shall be full disclosure on:-
- (i) the tenure of lease;
  - (ii) the particular usage to which it is put;
  - (iii) any other relevant information relating thereto.

There shall be a property schedule to be rendered in the following format:-

### ***Property Schedule***

Title	Status:	Description	Purpose /Book	Market value
Details	Owned/	Age and Use	Value (where assets have been	revalued)
Address	Leased	Tenure		

- (b) The Prospectus shall contain a valuer's report where the assets have been revalued.

## **(16) *Financial and non-financial disclosure requirements***

### ***(1) Balance sheet items***

#### ***(a) Disclosure on liabilities:***

- (i) Details of all material liabilities classified by tenure shall not be lumped together under one item but must be clearly disclosed in the financial statements and with appropriate headings in the notes.
- (ii) Names of creditors constituting 5% and above of the company's total debt shall be disclosed.

#### ***(b) Contingent liability:***

All known contingent liabilities shall be quantified (where practicable) and disclosed by way of note to the accounts.

#### ***(c) Claims and litigation:***

The claims and litigation clause shall be disclosed in the summary of the prospectus and highlighted boldly.

#### ***(d) Unclaimed dividends:***

The issuer shall disclose in the prospectus and the annual report the total amount of unclaimed dividends and where invested.



(e) ***Unpaid dividends:***

- (i) The amount of all unpaid dividends shall be disclosed in the prospectus as well as in the financial statements.
- (ii) Reasons why dividends are unpaid shall be stated.

(f) ***Debtors:***

- (i) Details of all material credits classified by tenure shall be disclosed in the prospectus.
- (ii) Names of debtors constituting 5% and above of the company's total credit shall be disclosed.
- (iii) The issuer shall make provision for bad debts and state the extent of the provision.

( 2) ***Profit and loss items***

(a) ***Directors' remuneration:***

- (i) The remuneration of each director, whether in cash or otherwise, shall be disclosed in both the prospectus and annual report;
- (ii) all benefits other than cash shall be quantified in monetary terms in the prospectus and annual report. any other benefits i.e. share options given to directors shall also be disclosed in both the financial statements and the prospectus;
- (iii) share options shall be disclosed and be expensed in the company's books to avoid the practice of falsely recognizing same as profit.

(b) ***Off-balance sheet items:***

Off-balance sheet transactions shall be disclosed and properly presented both in the financial statements and in the prospectus.

(c) ***Narratives:***

The prospectus and annual report shall include adequate narratives to guide investors particularly relating to accounts and other technical issues.

***(17) Confirmation of the "going concern status"***

The directors of an issuer and the auditors/reporting accountants to an issue shall make a declaration in the prospectus as to whether or not the company will continue in operation in the foreseeable future.

***(18) Corporate governance compliance***

The prospectus and annual report shall state the level of compliance with the code of corporate governance.

***(19) Pledge of assets***

- (a) All securities and assets pledged by the company with its creditors shall be disclosed in the prospectus.
- (b) the extent to which such assets have been pledged as security for debts owed to third parties shall be disclosed.
- (c) More specifically the disclosure shall include the following:
  - (i) the specific assets of the company pledged;
  - (ii) the value of the assets pledged in relation to the total assets of the company;
  - (iii) the beneficiary of the pledge.

***(20) Capacity utilization***

The issuer shall disclose in the Prospectus its percentage utilization of installed capacity (where applicable).

***(21) Research and development***

The issuer shall state in the prospectus the amount expended on research and development in the last three (3) years, (if any).

***(22) Disclosure of developments/events occurring after submission of prospectus but before closing the offer***

The issuer, issuing house and reporting accountants (where relevant) shall report immediately to the Commission, the occurrence of any event after the submission of the prospectus (for clearance), which event is likely to alter the contents of information in the offer documents or render the information in the prospectus misleading.

**289. Abridged prospectus**

- (1) An abridged prospectus filed as part of a registration statement in accordance with this rule shall be deemed to be a prospectus for the purpose of the Act, if it meets the requirements of the Commission under this rule;

Provided that at the time the registration statement is filed, an application has been made to a recognized securities exchange for the securities to be listed;

- (2) Where it is not intended to list the securities on a recognized securities exchange, an application shall be made to the Commission for approval to use a statement in lieu of prospectus for the offering in compliance with the Fourth Schedule to the Act and the rules and regulations of the Commission.

## **290. Contents of abridged prospectus**

- (1) An abridged prospectus shall contain information, the substance of which is contained in the prospectus and or registration statement and shall also contain the following statements and information:

**“A copy of this abridged prospectus with the documents specified herein has been registered by the Securities and Exchange Commission (S.E.C.).**

**This abridged prospectus issued under the provisions of the Act, contains particulars in compliance with the requirements of the Commission and the listing requirements of the relevant exchange for the purpose of giving information to the public with regard to the shares of the company.**

**The directors of the company collectively and individually accept full responsibility for the accuracy of the information given and confirm having made all reasonable enquiries, that to the best of their knowledge and belief, there are no facts, the omission of which would make any statement herein misleading or untrue”;**

- (a) the dates of opening and closing of the offer;
  - (b) indebtedness of the company;
  - (c) history and business of the company;
  - (d) parties to the issue;
  - (e) purpose of the offer;
  - (f) summary of financial information;
  - (g) claims and litigations.
  - (h) material contracts;
  - (i) procedure for application and allotment (state if there would be preferential allotment);
  - (j) collecting agents and receiving banker;
  - (k) application form;
  - (l) any other information required by the Commission from time to time.
- (2) All information contained in an abridged prospectus may be expressed in such condensed or summarized form as may be appropriate in the light of the circumstances under which it is to be used.

## **291. Contents of statement in lieu of prospectus**

The statement in lieu of prospectus shall be in compliance with schedule IV of the Act.

## **292. Civil liability for mis-statements in prospectus**

(1) Where a prospectus invites persons to subscribe for shares in a company, the persons referred to in subsection (2) of the section shall be liable to pay compensation to all persons who subscribe for shares or debentures relying on the prospectus for the loss or damage they may have sustained by reason of any untrue statement or mis-statement included in it.

(2) A person liable to pay compensation under subsection (1) of the section includes:-

- (a) any director of the company at the time of the issue of the prospectus;
- (b) any person who consented to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) any employee of the company who participated in or facilitated the production of the prospectus; and
- (d) the issuing house and its principal officers.

(3) Where under section 77 of the Act the consent of a person is required to the issue of a prospectus and he has given that consent he shall not by reason only of his having given the consent be liable under the section as a person who has authorized the issue of prospectus except in respect of an untrue statement or mis-statement purported to be made by him as an expert.

(4) No person shall be liable under subsection (1) of the section if he proves:-

- (a) that, having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he immediately gave reasonable public notice that it was issued without his knowledge or consent;
- (c) that, after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement or mis-statement in it, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (d) that, as regards every untrue statement or mis-statement:-
  - (i) not purporting to be made on the authority of an expert, or of an official public document or statement, he had reasonable ground to believe and did up to the time of the allotment of the shares, as the case may be, believe that the statement was true;
  - (ii) purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from

the report or valuation and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 77 of the Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and;

(iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or an extract from an official public document, it was a correct and fair representation of the statement or copy of or extract from the document;

(5) The provisions of subsection (4) of the section shall not apply in the case of a person liable by reason of his having given a consent required of him by section 77 of the Act as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert.

(6) A person who, apart from this subsection, would under subsection (1) of the section be who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves that :-

(a) having given his consent under section 77 of the Act to the issue of the prospectus, he withdraws it in writing before delivery of a copy of the prospectus for registration; or

(b) after delivery of a copy of the prospectus for registration and before allotment he, on becoming aware of the untrue statement or mis-statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or

(c) he was competent to make the statement and that he had reasonable ground to believe and did, up to the time of the allotment of the shares, believe that the statement was true.

(7) Where:-

(a) the prospectus contains the name of a person as a director of the company or as having agreed to become a director of the company and he has not consented to become director, or has withdrawn his consent in writing before the issue of the prospectus, and has not authorized or consented to such issue; or

(b) the consent of a person is required under section 77 of the Act to the issue of the prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus;

(c) the directors of the company, except a director without whose knowledge or consent the prospectus was issued, and any other person who authorized such issue, commits of an offence and is liable to indemnify the person so named or whose consent was so required, as the case may be against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of the issue of the prospectus or the inclusion in the prospectus of the statement.

(8) A person shall not be deemed for the purpose of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 77 of the Act to the inclusion in it of a statement purporting to be made by him as an expert.

**293. Criminal liability for mis-statement in prospectus.**

(1) Where a prospectus includes any untrue statement or mis-statement, any director or officer who authorized the issue of the prospectus commits an offence and is liable:-

(a) on conviction to a fine of not less than N1,000,000,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or

(b) on summary conviction, to a fine of not less than N1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of the section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 77 of the Act to the inclusion in it of a statement purporting to be made by him as an expert.

**294. Criminal liability in respect of statements in lieu of prospectus**

(1) Where a statement in lieu of prospectus includes any untrue statement or mis-statement, any person who authorized the delivery of the statement in lieu of prospectus for registration commits an offence and is liable-

(a) on conviction to a fine of not less than N1,000,000,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or

(b) on summary conviction, to a fine not exceeding N1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement or mis-statement was true.

(2) For the purposes of the section-

(a) any information included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form or context in which it is included; and

(b) an information shall be deemed to be included in a statement in lieu of prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated in it.

**295. Allotment of securities.**

Where a public offer of securities is made, whether listed or not, under such rules and regulations as may be laid down by the Commission, the issuer and the issuing house shall be responsible for the allotment of the securities of the company, subject to the approval of such

allotment by the Commission in accordance with the guidelines prescribed under the rules and regulations made hereunder.

**296. Opening of subscription lists**

(1) No allotment shall be made of any securities in a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus; and in the Act, the beginning of the said third day or such later time, as mentioned in this subsection, is hereafter referred to as "the time of the opening of the subscriptions lists;

(2) In subsection (1) of the section, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement, provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner;

(3) The validity of an allotment shall not be affected by any contravention of the provisions of subsection (1) or (2) of the section but, in the event of any such contravention, the company and every director or officer is liable to a penalty of not less than N50,000;

(4) In the application of the section to a prospectus offering securities for sale, the provisions of subsections (1), (2) and (3) of the section shall have effect with the substitution of references to sale, for references to allotment, and with the substitution for reference to the company and every director or officer of the company who is in default, or reference to any person by or through whom the offer is made and who knowingly and willfully authorizes or permits the contravention;

(5) An application for securities in a company made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day following the opening of the subscription lists, unless before the expiration of the said third day, a person responsible under section 86 of the Act for the prospectus, has given a public notice having the effect under that section of excluding or limiting the responsibility of the person giving the public notice;

(6) In reckoning for the purposes of this section and section 95 of the Act, the third day after another day or any intervening day which is a Saturday or Sunday or which is a public holiday in any part of Nigeria shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purpose be substituted the first day after which is none of them.

**297. Consent of parties**

All written consents filed with the registration statement pursuant to the Act and these rules and regulations shall be dated and signed by named persons giving the consent. A corporate body giving consent shall do so through duly authorized persons who shall be a director, company secretary or persons acting in those capacities with the seal of that body. Originals of such consent shall be filed with every application.

**298. Parties to an issue/scheme**

(1) Parties to an issue include the directors of the issuer, directors of companies involved in mergers or other forms of business combinations registered capital market operators and other expert/professionals whose opinions and activities directly impact on capital market transactions.

(2) Where there is more than one Issuing House for a public offer, the lead issuing house shall not be a subsidiary, affiliate or a related company of the Issuer. *[SECRR(A) January, 2011]*

**299. All Parties meeting**

There shall be at least two all parties meetings before the opening of the offer and the Commission reserves the right to review the minutes of such meetings. *[SECRR(A) March, 2010]*

**300. Pre-Offer waiting period (Fixed price offers)**

There shall be at least one week pre-offer period before the opening of the offer. For the purpose of this rule, it shall be the period from the date of the execution of offer documents to the date an offer opens provided that where price is discovered through book building, this rule shall not apply. *[SECRR(A) March, 2010]*

**301. Opening and closing of offer**

(1) A rights issue, offer for subscription or offer for sale of securities to the public shall remain open for a period not exceeding twenty-eight (28) working days:

Provided that in the case of privatization, it shall not exceed forty (40) working days.

(2) The Commission may, on an application by the issuer, grant extension of time on the happening of any of the following events:

- (a) upheavals, which could be either religious, political or social. These must be national or within the catchment areas of the issuer (i.e. where most of the shareholders reside);
- (b) crisis such as labor unrest or riots which could lead to office shutdowns;
- (c) a minimum of three (3) days public holidays within an offer period;
- (d) natural disasters such as earthquake, fire outbreaks, etc.

(3) Any application for extension of the offer period under (b) above, shall be made to the Commission at least 5 working days before the date of closure of the issue as stated in the offer document. No offer under (a) shall continue beyond the closing date unless prior written approval of the Commission is obtained.

(4) Before an extension is granted, the issuer's latest audited accounts shall remain valid throughout the extension period. The new closing date shall be the reference date for the purpose of computing any penalty for late submission of an allotment proposal.

*[SECRR(A) March, 2010]*



### **302. Application form**

(a) The application form for the offer shall state the minimum subscription to be made and shall contain sufficient instructions to enable investors to complete the same properly.

(b) Applications shall be rejected for any of the following reasons and any allotments made contrary thereof shall be null and void:

- i. incorrect multiples of units;
- ii. omission of signature;
- iii. omission of company seal/R.C. No.;
- iv. thumb print impression not witnessed;
- v. wrong amount;
- vi. failure to write names in the correct order;
- vii. printed signature;
- viii. improper completion of application forms;
- ix. name/signature erased;
- x. omission of surname;
- xi. incomplete address;
- xii. multiple applications;
- xiii. applications by persons below the age of 18 years;
- xiv. applications by nominees for non-eligible persons;
- xv. any other reasons which the Commission may by rules prescribe from time to time.

(c) Photo/electronic copies of application forms shall be an acceptable mode of application provided that all instructions for completing the application form are complied with and signed normally by the applicant.

### **303. Processing fee on applications**

No receiving agent or capital market operator shall charge any processing fee in respect of applications submitted by subscribers in a public offer.

### **304. Purpose of the offer**

The prospectus shall disclose material details of the purpose of the offer in order of priority and shall state an approximate amount of the proceeds of the offer to be used in respect of each purpose.

### 305. Proceeds of issue

(1) The issuing house (the lead issuing house, if any) shall ensure that all proceeds of an issue are deposited in a separate interest yielding account. *[SECRR(A) March, 2010]*

- (a) The chief executive officer of the issuing house and any sponsored individual shall be the signatories to the account. The issuing house shall notify the Commission of any change in the signatories.
- (b) The particulars of the account shall be forwarded to the Commission within seven (7) days of the opening of the account.
- (c) No withdrawal shall be made from the account except a lump sum representing the total cost of issue in accordance with the terms of the vending agreement and as disclosed in the prospectus.
- (d) Where the issuing house is not the receiving banker, the issuing house shall notify the bank in writing upon opening of the said account, of the authorized uses of the proceeds among others, as well as forward to it, a copy of the approved Prospectus.

(2) The next working day after clearance of allotment, the receiving banker shall issue a certified cheque representing the value of the securities allotted including interest earned in the name of the issuer.

(3) Such monies shall be delivered by the issuing house to the registrar not later than two (2) working days after clearance of the allotment proposal.

(4) In the case of over-subscription, receiving banker shall within one working day issue a certified cheque representing the value of the over-subscription including accrued interest in the name of the registrar, and deliver same to the issuing house.

(5) All surplus monies shall be returned to the affected subscribers by the registrar within five (5) working days of the approval of the allotment proposal.

- (a) The Commission may approve the utilization of surplus monies where—
  - (i) it was disclosed in the prospectus that it shall be utilized, stating the purpose for which such funds would be used.
  - (ii) the authority to utilize such funds was contained in the resolution of the general meeting of the company that authorized the raising of funds through public offer of securities, and;
  - (iii) the surplus amount to be absorbed is not more than 15% of the offer size. *[SECRR(A) March, 2010]*
- (b) The registrar shall within fourteen (14) working days of approval of allotment, forward to the Commission, the following:
  - (i) statement of amounts received;

- (ii) names and addresses of subscribers whose application monies were returned and the mode and evidence of dispatch.
  - (6) The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the prospectus.
  - (7) (a) Where the issuing house or underwriter(s) default(s) in terms of the date of payment, the issuer shall be entitled to the proceeds plus accrued interest at the prevailing Nigeria Inter-bank Offer Rate (N.I.B.O.R.).
  - (b) Failure to remit proceeds of issue within the period prescribed by the Commission in this rule shall constitute unprofessional and unethical conduct and a violation of the rules, which is subject to fine and/or sanction.
  - (8) If return monies are not dispatched in compliance with sub-(5) above, accrued interest shall be paid to the unsuccessful applicants at a rate not below CBN MPR + 5%.
- [SECRR(A) March, 2010]*

### **306. Summary report on completion of a public offer**

- (1) The issuing house shall within twenty-one (21) working days of approval of allotment file with the Commission a summary report containing among others, the following:
  - (a) problems arising generally from the conduct of the issue;
  - (b) satisfactory compliance of parties with their obligations under the issue;
  - (c) details regarding the return of surplus monies;
  - (d) details and any evidence of dispatch of share certificates;
  - (e) status of listing of the securities at the exchange;
  - (f) details and evidence of payment of net proceeds of the issue to the issuer;
  - (g) analysis of total costs incurred during the course of the offer;
  - (h) any other relevant information and recommendation.
- (2) The issuer and the issuing house shall file with the Commission not later than ninety (90) days after clearance of allotment reports on Form S.E.C. QR8 giving detailed information on the utilization of proceeds of issue. Evidence of such utilization shall be provided as appendix to the report.

### **307. Granting of credit facility/bridging loan**

- (1) Any credit facility granted to the issuer by the issuing house or any other party to the issue shall be deemed to have been granted in the ordinary course of business and no such credit facility shall be paid off from the proceeds of the issue unless the Commission is notified at the time of application for approval and such fact is disclosed in the prospectus.

(2) In disclosing information on any facility or any bridging loan, the following relevant documents among others, should be filed with the application:

- (a) duly executed facility/loan agreement;
- (b) collateral (if any);
- (c) resolution authorizing the facility/loan;
- (d) C.B.N. approval (where applicable).

### **308. Annual report and accounts**

(1) All entities that have issued securities to the public shall release and file simultaneously with the Commission and the relevant securities exchange (where applicable), and publish not more than 48 hours after, to the public, quarterly, interim financial statements and annual report within thirty (30) days of the end of quarter and within ninety (90) days after the end of the financial year. Such reports shall be prepared in accordance with the relevant accounting standards.

- (2) (a) Where the company is a multi-national corporation or a group of companies, there shall be segmented reporting of the activities of the company in each of the countries it operates or line of business of each of the subsidiaries of the group.
- (b) The report shall state clearly the income generated from different departments/sectors, regions (i.e. segments) and the risk inherent in each of the group's business or each country of operation.

(3) The chief executive officer and the chief financial officer shall swear to an affidavit of correctness of the information disclosed in annual report and accounts and periodic financial reports released to the public.

### **309. Allotment period and submission of allotment proposal**

(1) An allotment proposal shall be presented to the Commission not later than six (6) weeks after the close of the issue unless the Commission on application by the issuer deems it necessary, in the interest of the public and for the protection of investors, to grant a written extension of time not exceeding two weeks.

(2) The allotment proposal filed by the issuing house shall include

- (a) summary of applications received;
- (b) list of allottees of 50,000 units of securities or more and list of all allottees acquiring 5% or more of the securities on offer;
- (c) list of all applications received including list of those rejected and the basis for rejection;
- (d) draft newspaper announcement.

(3) The Commission may declare any irregular allotment of securities null and void and may prescribe appropriate measures to rectify such irregularities.

(4) Where the issuer/issuing house fails to submit allotment proposal within the stipulated period or any extended period granted, the Commission may impose appropriate penalty or direct that the issue be aborted irrespective of the level of subscription.

**310. Power of the Commission to abort an issue**

The issuer/issuing house shall notify the Commission of the level of subscription within six (6) weeks after the close of offer and the Commission may, in the interest of the investing public, direct that the issue be aborted.

**311. Basis of allotment**

In the case of over-subscription in a public offer, a minimum modified pro-rating approach shall be adopted. This entails that all subscribers in the public offer shall be allotted the minimum subscription units as specified in the offer documents, and then the residual balance shall be pro-rated i.e. all subscribers would be allotted equal proportion of the amount applied for. Where the minimum subscription cannot accommodate all the subscribers, the minimum to be allotted shall be reduced so as to accommodate all the subscribers.

*[SECRR(A) March, 2010]*

**312. Under-subscription**

(1) Underwritten securities shall be held by the underwriter(s) and sold on the floor of the securities exchange or capital trade point within six months after allotment.

(2) Detailed information of such sales (including particulars of purchasers and the number of shares acquired shall be filed with the Commission every quarter.

(3) Where the securities are not disposed of within six (6) months, quarterly returns shall be made to the Commission in respect of the balance until the same is fully disposed and such disposal shall be in accordance with the rules prescribed under this regulation.

(4) Details of the warehousing agreement for unlisted securities shall be filed with Commission for clearance. Detailed information in respect of the sales shall be filed with the Commission as in (2) and (3) above. This Rule shall not apply where an issue is not underwritten.

(5) Where an equity issue is not fully subscribed, the under-subscribed portion which is not underwritten shall revert to the company as part of its unissued authorized share capital. In the case of bond issue, the unsubscribe portion shall revert back to the company for cancellation. Provided that where it is offered under shelf registration, the unsubscribe portion shall revert back to the shelf.

(6) (i) Where an issue not underwritten is less than 50% subscribed, the issue shall be aborted by the issuer within six (6) weeks of the closing date of the offer.

*[SECRR(A) March 2010]*

(ii) The issuing house shall publish in at least two daily national newspapers details of the decision to abort the offer not later than five (5) working days after the Commission has been notified of the decision.

(iii) The registrar to the issue shall return monies to subscribers to the aborted issue not later than fifteen (15) days of the decision to abort the issue and two days for money to go back to the registrar.

(iv) Subject to the prior approval of the Commission, an aborted issue may be resuscitated by the issuer/issuing house within fifteen (15) days of date of notification of the aborted issue to the Commission. No resuscitation of such issue shall be entertained by the Commission after subscription monies have been returned to subscribers as prescribed in paragraph (iii) above.

### **313. Publication of allotment**

(1) The issuing house shall within five (5) working days of allotment, publish the allotment in at least two national daily newspapers.

(2) Securities shall be listed not later than thirty (30) days after the allotment clearance (where applicable).

### **314. Cost of issue**

The total cost of issue shall not exceed 3.17% for equity transaction and 3.9375% for bonds of the gross total proceeds, excluding indemnity fee, advertisement, printing and take on fees for registrars, from the issue or such percentage as the Commission may prescribe from time to time.

*[SECRR(A) March ,2010]*

### **315. Underwriting of public issues**

(1) Underwriting of public issues shall be at the discretion of the issuer.

(2) Where the issue is underwritten by a syndicate of underwriters, the issuing house shall act as the lead underwriter; provided, however, that in the case of a debt issue a lead underwriter other than the issuing house may be appointed but shall be registered by the Commission as such. The issuing house to the debt issue shall be a member of the syndicate of underwriters.

(3) All underwriting and sub-underwriting agreements shall be submitted to the Commission for clearance along with other registration documents.

(4) Where there is a firm underwriting of an issue the following shall apply:

- (a) The underwriter shall sell the securities on a securities exchange.
- (b) The underwritten securities shall be sold within six (6) months from the date of allotment to the underwriter.
- (c) Where the securities are not disposed of within the six (6) month period, the underwriter may apply to the Commission for extension. The Commission may within ten(10) days grant or deny such application for extension.
- (d) Underwriters shall submit quarterly returns to the Commission in respect of the indisposed securities until same is fully disposed.

(5) Where any party or parties in an underwriting agreement intend to terminate the agreement, such party or parties shall give not less than five (5) working days' notice to the Commission and shall state the reasons for the intended termination. If the Commission is satisfied with the reasons given it may give approval for the termination of the agreement.

(6) The arbitration clause in the underwriting agreement shall include provisions to the effect that—

- (a) Whenever a dispute arises between the parties, the Commission shall be notified within five (5) working days;
- (b) a maximum period of ten (10) working days will be allowed for the parties to resolve the dispute by themselves or appoint arbitrator(s);
- (c) the arbitrator(s) shall have a maximum period of ten (10) working days to resolve the dispute after the exchange of pleadings by the parties or such further period as the Commission may approve, failing which the matter shall be referred to the Commission for resolution.
- (d) any party aggrieved by the decision of the Commission may refer the matter to the Investments and Securities Tribunal (I.S.T.).

(7) The underwriting agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the Act, and the Commission's rules and regulations made thereunder.

### **316. Amount to be underwritten**

The level of underwriting commitment by a single underwriter at any time shall not be more than three times (3) its shareholders fund for equity offering, and four times (4) for fixed income securities. *[SECRR(A) March 2010]*

### **317. Underwriting commission**

(1) The commission for firm and standby underwriting shall be subject to negotiation between the issuer and the issuing house and shall be a percentage of the amount underwritten.

(2) In all cases of underwriting, the underwriting commission shall become payable on the day the offer opens. For firm underwriting, the underwriter shall be entitled to deduct the underwriting commission from the underwriting commitment.

### **318. Time amount underwritten is made available**

(1) In all cases of firm underwriting the underwriter shall pay the amount underwritten available to the issuer on the day the offer opens.

(2) In all cases of standby underwriting, the amount underwritten shall be paid to the issuer the next working day after clearance of allotment.

### **319. Vending agreement**

(1) All vending agreements shall be submitted to the Commission for clearance along with other registration documents.

(2) The vending agreement shall, among other things, provide for the following:-

- a. definitions;
- b. obligations of the issuing house(s);
- c. obligations of the issuer;
- d. representation and warranties by the issuer;
- e. covenant by the issuer;
- f. covenant by the issuing house(s);
- g. indemnities;
- h. remuneration of the issuing house(s);
- i. Terms of the relationship between the joint issuing houses where there is more than one issuing house; *[SECRR(A) January 2011]*
- j. conditions and terminations;
- k. time;
- l. notices;
- m. governing laws;
- n. arbitration.

(3) The arbitration clause in the vending agreement shall include provisions to the effect that:

- (a) Whenever a dispute arises between the parties, the Commission shall be notified within five (5) working days;
- (b) a maximum period of ten (10) working days will be allowed for the parties to resolve the dispute themselves or to appoint arbitrator(s);
- (c) the arbitrator(s) shall have a maximum period of ten (10) working days to resolve the dispute after the exchange of pleadings by the parties, failing which the matter shall be referred to the Commission for resolution;
- (d) any party aggrieved by the decision of the Commission may refer the matter to the Investments and Securities Tribunal (I.S.T.).

(4) The indemnity clause in the agreement shall not exclude but ensure due diligence on the part of the issuing house(s).

(5) The vending agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the Act, and the Commission's rules and regulations made thereunder.

### **320. Bookbuilding**

A public company (including Special Purpose Vehicle (SPV)), Federal, State/Local Government, Multilateral/Bilateral Institutions, may offer securities by way of book building process, but with the prior approval of the Commission. *[SECRR(A) September, 2011]*



### 321. Definitions

**Book building** shall mean a process of price and demand discovery by which an issuing house/book runner, attempts to determine at what price a public offer should be made, based on demand from qualified institutional and high net worth investors.

For the purposes of this rule, **Qualified Institutional Investors** shall include:

- a. Banks; *[SECRR(A) September 2011]*
- b. Fund Managers;
- c. Pension Fund Administrators;
- d. Insurance Companies;
- e. Investment/Unit Trusts;
- f. Multilateral and Bilateral Institutions;
- g. Registered and/or Verifiable Private Equity (PE) funds;
- h. Registered and/or Verifiable Hedge funds;
- i. Market Makers;
- j. Staff Schemes;
- k. Trustees/Custodians;
- l. Stock broking firms;
- m. Any other category as the Commission may determine from time to time;

**Staff Schemes** means any scheme set up by an entity for the purpose of investing in securities on behalf of its employees.

**High Net Worth Investor** means an individual with net worth of at least 300 million Naira, excluding automobiles, homes and furniture.

**Red Herring** means a preliminary prospectus released by an issuing house or book runner of a new issue to qualified institutional/high net worth investor.

**Book Runner** means a registered issuing house.

### 322. Investors in a book building Process

- a) In the book building process for equities a portion of the offer may be reserved for retail Investors. *[SECRR(A) January ,2011]*
- b) For fixed income securities, 100 percent shall be offered to Qualified institutional/High net worth investors.

**323. Conditions for approval of offer:**

- (1) The resolution of the company authorizing the book building process shall be an ordinary resolution as defined in the Companies and Allied Matters Act, and shall be filed with the Commission.
- (2) The option of book building in the issuance of securities shall be available to all public companies.
- (3) The issuer shall appoint registered issuing houses as book-runners and their names shall be mentioned in the prospectus.
- (4) There shall be no more than one lead book runner who shall be primarily responsible for building the book.
- (5) The red herring prospectus containing all information except the information regarding the price at which the securities are offered and the volume of securities, shall be filed with the Commission.
- (6) Upon filling the red herring prospectus with the Commission, the book runners may commence road show/distribution of the red herring prospectus. Please note that the red herring prospectus does not constitute an offer for sale or an invitation to treat.
- (7) Upon approval by the Commission of the red herring prospectus, it shall be circulated by the book runner to the qualified institutional/high net worth investors, inviting offer for subscription to the securities.
- (8) The red herring prospectus to be circulated shall be issued with an invitation letter, which shall indicate the price range within which the securities are to be offered for subscription.
- (9) The book-runner on the receipt of the orders shall maintain a record of the name and number of securities ordered and the price at which the qualified institutional/high-net-worth investor is willing to subscribe to securities under the portion reserved for them.
- (10) All other issuing houses/book runners shall maintain a record of the orders received by them.
- (11) The issuing houses/book runners shall aggregate the orders so received on a daily basis and make available to the lead book-runner the aggregate amount of the orders received during the book building period.
- (12) The book runners and the issuer shall not later than two (2) weeks from the day the book opens determine the price at which the securities shall be offered based on the aggregation of orders received. *[SECRR(A) January ,2011]*
- (13) On the determination of the issue price, coupon and the number of securities to be issued, the prospectus shall be amended/updated and filed with the Commission along with Form SEC 6 within 48 hours.
- (14) The allotment of securities to qualified institutional/high net worth investors shall be made on the date of signing of the executed offer documents.

- (15) Two different accounts shall be opened for the subscription monies, one for the qualified institutional/high net worth investors and the other for the retail investors.
- (16) Upon filing the complete updated document and payment of the appropriate fees, the Commission shall approve the document within 48 hours.
- (17) Upon the allotment, the issue proceeds in respect of the book-building portion shall be remitted to the issuer within 24 hours. and evidence of same shall be filed with the Commission within 48 hours.
- (18) The executed offer documents and evidence of qualification of high net-worth investors shall be filed with the Commission within two (2) working days of the signing of the offer document or the Completion Board Meeting.
- (19) The book-runner and other intermediaries associated with the book-building process shall maintain records for the book-building process.
- (20) The allotment in respect of Book-building process shall be filed with the Commission within two (2) working days of the signing of the offer document **or** the completion board meeting.
- (21) In the event of over-subscription and for the purposes of this rule, the issuer can only absorb not more than 15% of the value of the offer.
- (22) For the purposes of this rule, where the issuer opts for underwriting, it shall be on a 100 percent standby basis.

*[SECRR(A) September, 2009]*

## ***F2. Rights Issue***

### **324. Notification of rights offering**

Rights Circular shall be sent to every shareholder and publication of notice of rights shall be in at least 2 national daily newspapers.

### **325. Invitation to existing shareholders**

All securities offered by way of rights shall be tradable by the holders thereof only during the offer period. The offer period is as stated in the rights circular approved by the Commission.

### **326. Registration of rights circular**

- (1) An issuer shall file with the Commission, a rights circular containing among others, the following information on its cover page:

- (a) the rights price;
- (b) the period for which the rights will be tradable on the securities exchanges.

- (2) The original rights circular and any certified transfer form issued pursuant to a rights issue shall state boldly the last date for trading in the underlying rights.

### **327. Contents of a Rights Issue**

Every right circular shall contain the following information:

- (a) The front cover shall state the name of the issuer, the issuing house, certificate of incorporation (RC number) of the issuer shall be printed on the right circular, type of the offer, total amount / number of shares to be offered, the basis for the rights issue, the price and amount payable in full on application;
- (b) A detailed table of contents in the fore part of the right circular showing the subject matter of the various sections or subscriptions;
- (c) Summary of the offer stating the amount/number of shares on offer, the offer price, purpose of the offer, the opening and closing date of the offer, shareholding structure, authorized share capital, issued and fully paid, indebtedness of the company stating details of bridging loan if any;
- (d) The chairman's letter / statement which should disclose, working capital adequacy and future developments of the company and any other material information;
- (e) Five years historical financial information on balance sheets, profit and loss account, cash flow and notes to the accounts;
- (f) Statutory and general information including the history and business of the company, date of incorporation, registration number and shareholding structure, claims and litigation, material contracts, consents, documents available for inspection and any other material information, directors interest, related party transactions, indebtedness, costs and expenses;
- (g) Procedure for application and allotment;
- (h) Receiving agents and receiving banks;
- (i) Application form.

*[SECRR(A) September 2011]*

### **328. Basis of allotment**

In the case of over-subscription in renounced shares in a rights issue, a minimum modified pro-rating approach shall be adopted. This entails that all subscribers in the public offer shall be allotted the minimum subscription units as specified in the offer documents, and then the residual balance shall be pro-rated i.e. all subscribers would be allotted equal proportion of the amount applied for. Where the minimum subscription cannot accommodate all the subscribers, the minimum to be allotted shall be reduced so as to accommodate all the subscribers.

In the case of a rights issue, the allotment for the renounced shares shall be pro-rated.

**329. Contract in rights circular not to be varied without leave**

- (1) All rights circulars shall bear a notice on the front cover advising existing shareholders of the issuer of such rights that the whole or part of the rights are tradable during the period of offer on the specified securities exchange
- (2) A shareholder exercising the right referred to in sub rule (a) above shall as transferor, renounce in favour of the shareholder's stockbroker the quantity of shares provisionally allotted to the shareholder which he intends to sell, by completion of the usual instrument or transfer form authenticated by the relevant registrars.

**330. Notice to existing shareholders**

- (1) The issuer shall ensure that existing shareholders receive a copy of the rights circular or become aware of the rights offer not less than twenty one (21) days before the opening of the offer;
- (2) The registrar shall dispatch to the existing shareholders, copies of the rights circular approved and registered by the Commission which have the same control numbers as the share certificates from which the rights are derived.

**331. Trading in Rights**

- (1) A stockbroker, upon the written instruction of the shareholder, may sell all or part of the shareholder's right. In addition to the instruction, the shareholder's stockbroker shall receive from the shareholder the following:
  - (a) the rights circular and a duly verified stock/share transfer form for the entire quantity or part thereof of shares provisionally allotted;
  - (b) a rights offer sale order form signed by the shareholder indicating the quantity of rights the broker is authorized to sell;
  - (c) an additional transfer form with the selling shareholder as transferor for the quantity of the rights the shareholder wishes to keep.
- (2) The qualification date for a rights issue shall be the date of filing the application with the securities exchange(s).

**332. Quotation Price**

The initial quotation price for the rights to be traded on the exchange(s) shall be announced on the floor of the exchange(s) at the end of the trading day immediately preceding the offer opening date and the rights shall be listed on the board at that price. Subsequent quotation prices shall be determined by market forces.

**333. Valuation of rights issue**

- (1) Valuation of rights issue shall be determined by the issuer and the issuing house and the value of such rights issue may be influenced by the resolutions passed by the shareholders authorizing the issue.

- (2) Where offer for subscription and rights issues are made using a single offer document, such securities shall be offered at the same price.

**334. Delivery of the Rights**

Delivery of the rights by a selling broker to a buying broker may be effected as follows:

- (1) tendering of the rights circular and the rights offer sale order form in addition to a duly verified stock/share transfer form signed by the shareholder of record as transferor;
- (2) use of certified stock/share transfer form where the requirements in (a) above have already been lodged formally with the registrar with the endorsed stock/share transfer form having also been noted by the exchange(s) and a stock-broking firm duly named as transferee.

**335. Delisting and noting of trading in Rights**

- (1) The securities exchange(s) shall delist the rights on the next business day following the final date of trading of the rights. The noting by the exchange(s) of transfer forms deriving from any trade shall be stopped after one week of the final date of trading in such rights.
- (2) The securities exchange(s) shall publish the volume weighted average price (VWAP) the day after the deadline for noting.

**336. Lodgment of a Rights Circular**

- (1) Any lodgment of a rights circular and payment for shares provisionally allotted, by shareholders exercising their rights directly, in full or in part, shall be made by the shareholders in the current and usual manner, through any receiving agent of the shareholder's choice.
- (2) Any lodgment of rights circular and payment for shares in respect of rights purchased in the secondary market shall be made through stock-broking firms only. Each stock-broking firm shall make lodgments with the registrars by providing—
  - a) a copy of the original rights circular or certified stock/share transfer form(s) accompanied respectively by the requisite documentation specified in rule 331 above;
  - b) any number of stock/share transfer form(s) duly noted by the exchange(s) with the stock-broking firm as transferor and the various clients to whom it acts as transferee.
- (3) All stockbrokers lodging on behalf of purchasers of rights in the secondary market shall complete the normal return forms in remitting payment to the receiving bank(s).
- (4) Stockbrokers shall file with the Commission on the prescribed form returns on rights traded.

**337. Underwriting of Rights issues**

- (1) A rights issue may be underwritten at the discretion of the Issuer subject to the prior consent of its shareholders;

(2) Shareholders shall pass a special resolution that in the event of an under-subscription, their pre-emptive rights be waived to enable the underwriter take up any unsubscribed shares.

*[SECRR(A) March 2010]*

**338. Allotment of securities**

The securities shall be delivered by the registrar by way of electronic book entry or by issuance of share certificate to the ultimate purchasers of the rights within the time specified in these rules and regulations

***F 3. Regulation of Private Placement by Public Companies***

**339. Definition**

**Private placement** shall mean the issue of securities by public company to select persons.

**340. Conditions for approval of offer**

(1) .No public company shall offer securities by way of private placement without the prior approval of the Commission.

(2) Private placement by public companies shall be subject to the following conditions:-

- a) The company shall show evidence of dire need of fresh funds or technical expertise and shall satisfy the Commission that private placement remains the only viable option to achieving its objective.
- b) The securities shall not be offered to more than 50 subscribers.
- c) The resolution of the company authorizing the placement shall be Special as defined in the Companies and Allied Matters Act, and shall state the number of shares to be offered and the price.
- d) The notice of the general meeting authorizing the placement shall be published in two national daily newspapers and evidence of the publications shall be filed with the Commission.
- e) The aggregate number of shares to be offered through private placement by a public quoted company shall be 30% of its existing issued and paid-up capital prior to the offer:

Provided that where the company is ailing, it may offer a higher number of shares, subject to the approval of the Commission.

- f) The price of the securities of the company, if quoted, shall be on technical suspension during the period of placement.
- g) The offer shall be for a period as proposed by the issuer and approved by the Commission but not exceeding ten (10) working days:

Provided that the Commission may extend the period under special circumstances.

- h) All subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds. *[SECRR(A) March 2010]*
- (2) Private Placements shall not be advertised, mentioned and/or discussed in the print and electronic media. Approval of a private placement may be suspended or withdrawn for violation of this rule. Any Capital Market Operator engaged in an advisory role on the private placement may also be sanctioned. *[SECRR(A) March 2010]*

**341. Nature of offerees**

The issuer or any person acting on its behalf shall have reasonable grounds to believe and shall believe

- (1) that immediately prior to making the offer either:-
  - a) that the offeree has such knowledge and experience in financial business matters that he is capable of evaluating the merits and risks of the prospective investment; or
  - b) that the offeree is a person who is able to bear the economic risk of investment; and
- (2) that immediately prior to making any sale, after making reasonable enquiry, the offeree had sufficient knowledge to evaluate the investment and either him or his representative had requisite knowledge, and the offeree is able to bear the risk of investment.

**342. Access to information, etc.**

- (1) Each offeree shall have access to the same information which shall be in a placement memorandum or other offering document;
- (2) The offeree shall have an opportunity to question the issuer about the terms and conditions of the offering, and to obtain any additional facts necessary to verify the information given;
- (3) At a reasonable time prior to the sale of securities, the issuer shall furnish to the offeree, the same information disclosed in a placement memorandum to the extent necessary for proper understanding of the issuer, its business and the securities being offered.

**343. Filing requirements**

- (1) The issuing house shall within ten(10) working days of the close of an offer, file a report on the offer with the Commission.
- (2) The report shall contain the following information:-
  - (a) names and addresses of the purchasers;
  - (b) amount purchased by each offeree and the mode of payment;
  - (c) date of payment;
  - (d) nature of the offeree;
  - (e) amount company is raising;



(3) The report shall be signed by duly authorized persons.

**344. Placement memorandum**

Where a private placement is proposed in line with this regulation, the issuing house shall file two (2) copies of the placement memorandum containing, amongst others, the following:-

- a) Summary of the offer.
- b) Financial summary for five (5) years, (or less if the company is less than five (5) years old);
- c) Directors/Parties.
- d) Chairman's letter.
- e) Historical financial information containing the accounting policies, balance sheets, profit and loss accounts, cash flow statements and notes to the accounts;
- f) Statutory/General information stating date of incorporation, registration number and share capital history of the company, the principal shareholders, directors' interests, subsidiaries and associated companies, extracts from the Articles of Association, claims and litigations, material contracts, consents, documents available for inspection, underwriting and any other material information.;
- g) Placement period;
- h) Application form.

**PART G**

***G 1. Regulation of Conduct of Securities Business***

**345. Electronic offer and transfer of securities**

Without prejudice to other provisions in these rules and regulations, an entity may offer or transfer its securities electronically: Provided that where an investor elects to have a certificate, such certificate shall be issued by the issuer.

**346. Cash transaction**

- (1) All payments for purchase or sale of securities shall be made either by personal cheque or bank draft. However, a purchaser of securities may deposit cash, not exceeding N50,000 with a stockbroker on account of transaction and a stockbroker may pay cash, not exceeding N50,000 on account of sale of securities;
- (2) Where a prospective purchaser deposits cash not exceeding N50,000.00 on several occasions within a short period of time and the transactions appear to be linked, the stockbroker shall make a suspicious transaction report to the Commission.

**347. Know your customer**

A capital market operator shall comply with the Anti-Money Laundering/Combating Financing of Terrorism(AML/CFT) regulations for capital market operators provided in Schedule XI. [SECRR(A) March 2010]

**348. Exemption from application of provisions relating to prospectus in certain cases**

The provisions of sections 71 and 73 of the Act shall not apply to the issue:-

- (1) made to the existing members of a company or to a prospectus or form of application relating to shares in the company whether or not an applicant for shares has the right to renounce in favour of other persons; or
- (2) of a prospectus or form of application relating to securities which are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a securities exchange or capital trade point.
- (3) prohibition of issuance.

**349. Prohibition of issuance, circulation etc of certain notices circulars and advertisement**

- (1) No person shall without the prior approval of the Commission issue, circulate, publish, disseminate or distribute any notice, circular or advertisement to the public which :-
  - (a) offers for subscription or purchase of securities in a company;
  - (b) invites subscription for or purchase of securities; or
  - (c) calls attention to-
    - (i) an offer or intended offer for subscription or purchase of securities in a company;
    - (ii) an invitation or intended invitation to subscribe for or purchase any such securities; or
    - (iii) a prospectus.
- (2) This section shall not apply to-
  - (a) a notice or circular which relates to an offer or invitation not made or issued to the public
  - (b) a registered prospectus;
  - (c) a notice, circular or advertisement which calls attention to a registered prospectus and states that allotments of, or contracts with respect to the shares referred to in the prospectus shall be made only on the basis of one of the forms of application referred to in and attached to a copy of the prospectus and contains no other information or matter other than some or all of the following information, namely:-
    - (i) the number and description of the securities in the company to which the prospectus relates;

- (ii) the name of the company, the date of its incorporation and the number of the company's issued securities and where the issue price of any securities is to be paid by installments, the amounts paid and unpaid on those issued securities;
  - (iii) the general nature of its main business or the proposed main business of the company;
  - (iv) the names, addresses and occupation of the directors or proposed directors;
  - (v) the names and addresses of the brokers or underwriters (if any), to the issue;
  - (vi) the name of the securities exchange or capital trade point (if any) of which the brokers or underwriters to the issue are members;
  - (vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; and
- d) a notice or circular which:-
- i. accompanies a notice or circular referred to in paragraphs (a) or (c) of the section;
  - ii. is issued or circulated by a person whose ordinary business includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business;
  - iii. contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and
  - iv. where the person is an underwriter or sub-underwriter of an issue of securities to which the notice or circular relates, contains a statement that the person making the recommendation is an underwriter or sub-underwriter as the case may be.
- (3) This section applies to notices, circulars and advertisements published or disseminated by a newspaper, radio or television broadcasting, cinematograph or any other means.
- (4) A person who:-
- (a) contravenes the provisions of this section; or
  - (b) knowingly authorizes or permits an act which constitutes a contravention of the section, commits an offence and is liable on conviction to a fine of N100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.
- (5) The Commission may, in lieu of a prosecution pursuant to subsection (4) of the section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than N100,000 and a further sum of not less than N5,000 for every day the violation continues.
- (6) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company is liable to a penalty of N500,000 and a further sum of not less than N25,000 for every day the violation continues.

### **350. Exemption certificate and effect**

(1) Where:-

- (a) it is proposed to offer any securities in a company to the public by a prospectus issued generally (that is to say to persons who are not existing members of the company); and
- (b) the application is made to a securities exchange or capital trade point for permission for those securities to be dealt in or quoted on that securities exchange or capital trade point;

the securities exchange or capital trade point to which the application is made may, at the request of the applicant, grant a certificate of exemption that is, a certificate that, having regard to the proposal (as stated in the request) as to the size and other circumstances of the issue of securities and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule to the Act will be unduly cumbersome.

(2) If a certificate of exemption is given and the proposal mentioned in subsection (1) of the section are complied with and the particulars and information required to be published in connection with the application for permission made to the securities exchange or capital trade point are so published, then-

- (a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Third schedule to the Act; and
- (b) after the permission applied for is granted, sections 71 and 73 of the Act shall not apply to any issue of a prospectus or form of application relating to the securities.

### **351. Expert's statement on prospectus**

(1) A prospectus inviting persons to subscribe for securities in a company and including a statement purporting to be made by an expert shall not be issued unless:-

- (a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue of the statement included in the form and context in which it is; and
- (b) a statement appears in the prospectus that the expert has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue commits an offence and is liable on conviction to a fine of N100,000 or a term of imprisonment of not less than three years or to both such fine and imprisonment.

(3) The Commission may, in lieu of a prosecution for the offence prescribed in subsection two of this section, impose a penalty of not less than N100,000 and a further penalty of not less than N5,000 for every day the violation continues.

**352. Prospectus on invitation to the public to acquire or dispose of securities.**

(1) Notwithstanding the provisions of section 67 of the Act, no person shall make an invitation to the public to acquire or dispose of any securities of a public company if-

(a) within six months prior to the making of the invitation, a prospectus relating to such securities and complying in all respects with the relevant provisions of sections 75, 76 and 79 of the Act has been delivered to the Commission and registered by it, in accordance with section 80 of the Act;

(b) every person to whom the invitation is made is supplied with a true copy of such prospectus as filed with the Commission; and

(c) every copy of the prospectus states on its face that it has been registered with the Commission at the time when the invitation is first made and the date of registration is reflected thereon ;

(2) The provisions of paragraph (b) of subsection (1) of the section does not apply to an invitation made by or through a member of a securities exchange or capital trade point to a client of that member or to an invitation made by or through an exempted dealer.

**353. General and restricted invitation to the public**

(1) Except as provided in section 76 of the Act, where a public company invites the public to acquire its securities, the prospectus referred to in section 77 of the Act shall state the matters specified in Part 1 of the Third Schedule to the Act and set out the report specified in Part II of the same Schedule.

(2) Subsection (1) of the section shall not apply to an invitation by a company in respect of its shares -

a. made solely to the existing shareholders of that company; or

b. which in all respects is uniform with its existing listed shares.

(3) A prospectus relating to any invitation to the public to acquire or dispose of any securities of a public company, being an invitation not falling within subsection (1) of the section, either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection, may not state all the matters or set out the reports specified in the Third Schedule to the Act but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any securities exchange or capital trade point or if application has been, or is being made to a securities exchange or capital trade point for permission to deal in those securities the prospectus shall:-

(a) state that the securities to be dealt in on that securities exchange or capital trade point or, as the case may be, that application has been or is to be made for permission for the securities to be dealt in on that securities exchange or capital trade point;

(b) state whether or not that securities exchange or capital trade point is an approved securities organization within the meaning of the Act; and

(c) contain the particulars and information required by that securities exchange or capital trade point, and in any other case, shall state that the securities are not dealt in on any securities exchange or capital trade point.

- (4) An invitation falling within subsection (1) of the section shall, hereafter in the Act be described as a "**general invitation**" and an invitation falling within subsection (2) of the section shall, hereafter in this Act be described as a "restricted invitation".

### **354. Registration of prospectus**

- (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Commission a copy of the prospectus for registration, signed by every person who is named in it as a director of the company, or by his agent authorized in writing and having endorsed on it or attached to it-
- (a) any consent to the issue of the prospectus required by section 68 of the Act from any person as an expert; and
  - (b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to the Act to be stated in the prospectus; and
  - (c) in the case of a prospectus deemed by virtue of a certificate granted under section 67 of the Act to comply with the requirements of the Third Schedule, a contract or a copy of such contract or a memorandum of a contract which was made available for inspection in connection with the application made under that section to the securities exchange or capital trade point; and
  - (d). where the persons making any report required by Part II of the Third schedule to the Act have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them;
- (2) The references in paragraphs (b) and (c) of subsection (1) of the section to the copy of a contract required to be endorsed on or attached to a prospectus shall :-
- (a) in the case of a contract wholly or partly in any language other than English, be taken as references to a copy of a translation in English of the parts of the contract that are in any other languages other than English from the original language of the contract being a translation certified in any manner acceptable to the Commission to be a correct translation;
  - (b) in the case of a copy of a contract or memorandum of a contract required to be made available for inspection under paragraph (c) of subsection (1) of the section, and which is wholly or partly in any language other than English, shall include a reference to a copy of a translation of the contract or memorandum or a copy embodying a translation of a part of it and certified in a manner acceptable to the Commission.
- (3) Every prospectus shall, on the face of it-
- (a) state that a copy has been delivered for registration as required by this section; and

(b) specify or refer to statements included in the prospectus which specify any document required by this section to be endorsed on or attached to the copy so delivered.

- (4) The Commission shall not register a prospectus unless it is satisfied that -
  - (a) it is dated and signed as required by this section;
  - (b) it has endorsed on it or attached to it the documents (if any) specified; and
  - (c) the prospectus otherwise complies with the requirements of the Act.
- (5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of the Act, an aggrieved person may appeal to the Tribunal established by the Act within twenty-one days after notification of the refusal by the Commission.
- (6) If a prospectus is issued without a copy of it being delivered under this section to the Commission or without the copy so delivered having endorsed on it or attached to it the documents required under the Act the company and every person who is knowingly a party to the issue of the prospectus, shall be jointly and severally liable to a penalty of not less than N25,000 in the case of a company and not less than N5,000 in the case of other persons for every day from the date of issue of the prospectus until a copy of it is so delivered with the required documents endorsed on it or attached to it.

### **355. Securities pledged as collateral**

- (1) Where an individual intends pledging registered securities as collateral for a loan, the following documents shall be deposited with the pledge:
  - (a) documentary evidence of the indebtedness for which the securities are pledged as collateral;
  - (b) a letter addressed to the registrar for the security and jointly signed by the pledgor and pledgee stating the securities and amount of the securities pledged; and waiving any right to be notified of subsequent transfer by the registrar;
  - (c) duly executed transfer forms.
- (2) Where a company intends pledging securities as collateral for a loan, in addition to (1) (a) above, the company shall deposit with the pledgee, the following documents:
  - a. board resolution under the seal of the company authorizing the pledge of the company and the company secretary;
  - b. a letter addressed to the registrar of the company and jointly signed by the pledgor and pledgee stating the securities and amount of the securities pledged; and waiving any right to be notified of subsequent transfer by the registrar;
  - c. duly executed transfer form under the seal of the company signed by the authorizing signatories, by the board and noted by the securities depository.

(3) *Duty of the broker*

The broker shall ensure that any certificate or statement of holding issued by the relevant authority to which sub rules (1) and (2) apply, is verified with the registrars before any deal is done on such securities on the exchange in which the securities are listed.

(4) *Duty of the Registrar*

Upon lodgment of securities certificates and documents specified in sub rules (1) and (2) above, and after due verification the Registrar or securities depository shall within twenty-four (24) hours if verified.

***G 2. Margin Lending***

**356. Definitions**

In this part of these rules unless the context otherwise requires:

“**Bank**” means any bank duly licensed by CBN and operating under the provisions of Bank and Other Financial Institutions Act Cap. B3 L.F.N. 2004.

“**BOFIA**” means Bank and Other Financial Institutions Act Cap. B3 L.F.N. 2004.

“**Broker**” means a market operator registered as such by SEC and licensed by any recognized securities exchange to transact securities on the floor of the Exchange for the account of others.

“**Cash Accounts**” means a brokerage account in which the customer is required to pay the full amount due by the settlement date for securities purchased.

“**CBN**” means the Central Bank of Nigeria established under the Central Bank of Nigeria Act, 2007.

“**Client**” or “**Customer**” means any person who borrows money pursuant to a margin agreement to buy securities in accordance with the Rules and Regulations issued by CBN and SEC for the purpose of margin trading from time to time.

“**Dealer**” means a person engaged in the business of buying and selling of securities for his own account;

“**Debit Balance**” (DB) means the amount owed by the account holder to the market operator. It changes with additional purchases or sales in the Margin Account.

“**DMO**” means Debt Management Office established under the Debt Management Office (Establishment) Act No 18, 2003.

“**Equity**” means the Long Market Value minus the Debit Balance.

“**Execution only**” means a stockbroker who carries out client’s mandate without taking custody of the underlining securities and the related funds.



**“Fiduciary Margin Accounts”** means Margin Accounts held and managed on behalf of a beneficiary by a fiduciary.

**“Fiduciary”** means a person other than the owner of the security who is legally appointed and authorized to act on behalf of the owner. This includes but is not limited to people who perform the following roles: Trustee, Custodian, Guardian, Executor, Administrator, and Receiver.

**“Free Float”** means the number of shares outstanding and available to be traded on a securities exchange.

**“Hypothecation”** means the pledging of assets or securities as collateral to secure a margin facility.

**“ISA”** means the Investments and Securities Act No.29, 2007.

**“Joint Tenants with Rights of Survivorship account”** means that if one party dies, the survivor retains the entire account.

**“Long Market Value (LMV)”** means the current market value of all securities in the Margin Account, calculated on a daily basis.

**“Loan Value”** means the complement of CBN Reg. C multiplied by the Long Market Value.

**“Maintenance Margin”** means the minimum amount of equity that must be maintained by a Client in a Margin Account;

**“Margin”** means the amount of cash and/ or approved securities deposited as security by a Client as a percentage of the current market value of the securities held in a Margin Account.

**“Margin Account”** means an account maintained with a lender, (Bank or Broker) which records transactions on margin trade.

**“Margin Agreement”** means the written document that details the terms and conditions governing a Margin Account including the Hypothecation of securities, the value of the equity the Customer must maintain in the margin account and the interest rate on margin loans.

**“Margin Call or CBN Regulation C Call”** means a notice issued in writing by a lender to his/her client requiring the client to provide additional deposit in order to maintain the margin.

**“Margin Financing”** means financing the Client for the purpose of margin trading.

**“Margin Trading”** means the buying and selling of securities by the Broker for themselves or for their Clients through Margin Financing.

**“Margin List”** means a list of CBN and SEC approved Securities that may be bought or sold in a Margin Account published by CBN and SEC on a monthly basis.

**“Net Capital”** is as defined by CBN and SEC;

**“Net worth”** means share-holders funds computed by deducting total outside liabilities from total assets.

**“Prudent Man Rule”** refers to the discretion given to a fiduciary to manage another’s affairs and invest another’s money with such skill and care as a person of ordinary prudence and intelligence would use in managing his or her own affairs or investments.

**“Re-hypothecation”** means when already pledged securities (Customer to Broker) are re-pledged (Broker to Bank) to secure a facility to fund several margin transactions for different Customers of the same Broker

**“Related Party”** means

- ii. In relation to a company, anybody corporate which is that company’s subsidiary, holding company or a subsidiary of that company’s holding company.
- iii. In relation to a person, any immediate member of that persons family, companies over which the person or an immediate member of the person’s family has control or significant influence and companies where the person or an immediate member of that person’s family is a key management personnel.

**“Restricted Account”** means a Margin Account that has fallen below the CBN Reg. C requirement. Sales and Purchase can still be performed in a Restricted Account.

**“Same Day Substitution”** means a purchase and sale of securities of the same value on the same day in a Margin Account which does not require additional deposit.

**“SEC”** means the Securities and Exchange Commission established by The Investments and Securities Act No 29, 2007.

**“Securities”** in this rule means shares of listed companies deposited as margin and which are quoted on a Securities Exchange.

**“Securities Exchange”** is as defined by the ISA.

**“Single Limit”** means the margin loan limit allowed to a single investor.

**“Sophisticated Investor”** means any investor that has a net worth, in excess of two hundred and fifty million Naira in securities, cash or real estate assets or earns annually the sum of twenty five million Naira whichever comes first. However he or she must have been actively investing for a minimum period of three (3)years.

**“Special Memorandum Account (SMA)/Excess Equity”** means the Margin Account equity minus the CBN Reg. C requirement.

**“Standby Margin Loan”** means a loan approved by a bank to a broker but has not been drawn down by the broker, therefore does not incur charges.

**“Tenancy-in-Common account”** means, if one party in the joint account dies, that person’s portion of the account reverts to his or her estate, and not to the partner in the account.

**“Trustee”** in this rule means a person having legal title to securities and holding such securities in trust for the benefit of another person or entity and owes a fiduciary duty to that beneficiary.

**357. Requirements of a margin agreement:**

A margin agreement between the broker and bank or broker and customer shall amongst other things provide for the following:

- (a) consent of the customer to pledge his securities to the broker as collateral for the loan the broker may extend to the customer.
- (b) consent of the broker to pledge to a bank a combination of securities from several customers who have approved margin accounts opened and operating within its operations for the purposes of obtaining a margin loan from the bank for onward lending to its customers.
- (c) consent of the Customer to grant to the Broker permission to re-hypothecate (pledge) the securities at a bank in order to use the securities as collateral for a loan. The amount of securities that the broker may use is limited.
- (d) consent of the customer that the broker may re-hypothecate the customer’s securities with those of other bona fide customers as collateral for a bank loan.
- (e) That securities belonging to customers trading in cash accounts and whereby customers have not signed any margin agreements with the broker may not be used as collateral for getting a margin loan from a bank.
- (f) That a bank extending a loan to a broker shall request to sight the margin loan agreements of the customers whose securities are being hypothecated.
- (g) That the broker grants the bank permission to sell the pledged securities if the margin requirements or equity maintenance requirements are not met after the mandatory time required by these margin rules has lapsed.
- (h) That the broker or bank shall send its customers a statement of the amount of interest that will be charged on a margin account. The statement shall contain the following:-
  - i. the method by which interest will be computed,
  - ii. the conditions under which interest charges will be imposed,
  - iii. the method of determining the debit balances on which interest will be charged.
- (i) A written statement shall be sent to all customers to whom credit is extended on a monthly basis.

- (j) The Central Securities Clearing System (CSCS) will ensure a technological link for all securities that are hypothecated or placed on lien for the purposes of margin trading. In addition the CSCS will report to the SEC on a monthly basis a comprehensive list of hypothecated securities and the brokerage houses to which those securities belong

**358. Categories of margin accounts**

All operators in the financial market who wish to operate margin accounts for customers, maintain fiduciary margin accounts or trade for their own account shall open either:

- (a) ***Bank Margin Account***, which is restricted to institutions or body corporate that are registered by SEC to act as capital market operators, and sophisticated Investors or;
- (b) ***Brokerage Margin Account***, with a broker. These accounts are open to all categories of investors and may include members of the general public.

**359. Opening and maintaining margin accounts (Regulation B)**

(1) ***Opening Margin Accounts:***

Banks and brokers shall comply with the respective Know-Your-Customer (“KYC”) requirements of the CBN and SEC prior to entering into a margin arrangement.

(2) ***Credit Judgment***

When opening a margin account, the bank or broker shall make its credit judgment without regard to the customer’s other assets or security positions held in connection with unrelated transactions.

(3) ***Documents required for opening the Margin Account:***

- (a) . A duly executed margin agreement which must state that the customer agrees to abide by the rules and regulations of the CBN, the SEC and a securities exchange.

- (b) A valid means of Identification such as National Identity Card, a Driver’s License or International Passport for Individuals; a certified true copy of the Certificate of Incorporation, Particulars of the Shareholders, and a Board resolution authorizing the opening of the Margin Account for corporate bodies; and a Certificate of Registration of Business Name and Particulars of Partners including each partners name, address, citizenship, signatures and a copy of the Partnership Agreement for firms. A Copy of these documents shall remain in the file at the firm operating the account at all times.

- (c) If the account holder is a corporate body then the identification of the authorized personnel mandated to operate the account shall be submitted.

(4) The margin agreement shall contain two separate sections:

- a. the credit agreement, and;

- b. the hypothecation agreement.
- (5) ***Margin Credit Agreement.***  
By signing the credit agreement, a customer acknowledges borrowing funds from the Broker or Bank and acknowledges responsibility for the payment of interest and repayment of the principal loan amount.
- (6) The credit agreement shall contain, amongst others, provisions which authorize/restrict the broker to :–
  - a. Extend margin trading and margin facilities to its client up to the limit approved by CBN Regulation “C”.
  - b. Choose stocks only from the CBN and SEC approved “**Margin List**”.
  - c. Sell not more than the prescribed amount in the event of a margin call.
  - d. State the approved period within which to make a margin call.
  - e. Indicate that the account holder has a period of 24 hours from the date a call is made to respond to the margin call.
- (7) ***Hypothecation Agreement.***  
The hypothecation agreement shall state that the customer hypothecates (pledges) his or her securities to the brokerage firm or bank and gives the firm in question the right to re-hypothecate the securities to secure the loan at a different bank or financial institution. The firm shall pledge an amount equal to 140% of the cash deposit made by the customer.
- (8) If a customer wishes to open a fiduciary margin account, the broker is required to obtain documentary evidence of proper legal authority prior to opening the account.

### 360. **Types of margin accounts**

- (1) ***Individual Account.***
  - (a) An individual margin account is a margin account opened in favour of an individual in accordance with CBN and SEC rules and guidelines on margin lending.
  - (b) An individual may only operate margin accounts at a brokerage firm. individuals who wish to operate margin accounts at a bank must be “Sophisticated Investors”.
- (2) ***Joint Margin Account.***
  - (a) A joint margin account is a margin account opened in favour of two or more individuals or entities with a legal personality.

- (b) When opening a joint margin account, whether a tenancy-in-common or joint tenants with rights of survivorship accounts, information shall be obtained from both parties in the margin account.
- (c) Documents and cheques to be signed must be endorsed by both parties.

**(3) *Corporate Margin Account.***

- (a) A corporate margin account is margin account opened in favour of a corporate body.
- (b) In order to be able to open a corporate margin account, the company's Memorandum and Articles of Association or other constitutional documents of the corporate body shall specify that the corporate body is authorized to open investment accounts and or carry out the investments.
- (c) The board resolution authorizing the opening of the margin accounts shall list those individuals authorized to act and take investment decisions on behalf of the company.

**(4) *Partnership Margin Account.***

- (a) A partnership margin account is a margin account opened in favour of a group of individuals carrying on business as a partnership.
- (b) If the partnership agreement does not specify those partners authorized to execute transactions on behalf of the partnership, the account shall not be opened until such specification has been made by a resolution of the partnership.

**(5) *Fiduciary Margin Account.***

When opening a fiduciary margin account, a copy of the document authorizing the fiduciary relationship shall be submitted in addition to other documents that may be required. In the case of a trust account, the document shall be a trust agreement.

**(6) *Discretionary Margin Account.***

- (a) A discretionary margin account is a margin account opened by a customer in respect of which the customer authorizes the broker to make purchases and sales of securities from the account at its discretion without recourse to the customer.
- (b) When opening a discretionary margin account there shall be a written Power of Attorney which shall be limited or full, signed by the customer and kept by the broker.
- (c) In a discretionary margin account, the customer shall give an employee of the broker (usually the account executive or asset manager) the authorization to make purchases and sales in the margin account without first obtaining the customer's permission.

- (d) Limited Power of Attorney only gives the authorized person the right to buy or sell securities in the margin account, while full Power of Attorney allows the person to buy and sell, remove assets and, withdraw funds on behalf of the customer. each discretionary margin transaction order shall be approved promptly by a principal or manager of the broker.
- (e) They shall be reviewed frequently to ensure that transactions are not excessive in size or frequency, in view of the financial resources and character of the account, provided that if a customer notifies a broker of the name of the security, whether to buy or sell the security, and the number of shares or units to be bought or sold, leaving discretion only as to time and price, this is not considered to be a discretionary order and the rules guiding discretion shall not apply.

(7) ***Margin Accounts Requiring Employer Approval and Prohibited Margin Accounts:***

- (a) If an employee of a broker wishes to open a margin account with another broker he shall disclose his intention to his employer.
- (b) If an employee of a bank wishes to operate a margin account with a broker, he or she shall obtain approval from his or her principal or manager authorizing the account opening. if the employee is working in a bank that has loaned funds to the broker within the preceding 24 months, whether or not such loans remain outstanding, the opening of such margin accounts are strictly prohibited.
- (c) If a broker has never borrowed funds from a particular bank but intends to do so in the future, it must first close all margin accounts owned or operated by employees of that bank before accepting a loan facility or margin facility from that bank.

**361. Operation of margin accounts**

- (1) margin accounts shall be operated in a manner that conforms to industry best practices and the rules and regulations of SEC regarding the broker to customer, and the CBN regarding the bank to broker or bank to individual sophisticated investors.
- (2) ***Transfer of Margin Accounts***
  - (a) If a customer wishes to transfer a margin account from one broker (the resident firm) to another broker (the target firm), the customer must give written instructions to both the resident firm and the target firm provided that such transfer instructions shall not be deemed to have been validly issued **“unless and until”** all outstanding obligations of the resident firm have been fully discharged.
  - (b) Both member firms are required to coordinate their activities in order to expedite the transfer and then the normal securities exchange requirements for transfer of accounts shall apply.

**(3) *Closure of Margin Accounts.***

The following process shall apply in relation to the closure of margin accounts:

- (a) Upon notification of the death of a customer, the registered representative shall :
  - i. flag the account to reflect the status;
  - ii. subject to sighting of the death certificate, cancel all open margin transactions; without prejudice to the discretion of the broker to take appropriate actions in the event of margin calls;
  - iii. close the margin account upon receipt of a valid instruction from a duly appointed executor/administrator.
- (b) Upon receipt of an order of court of competent jurisdiction adjudging the individual customer to be bankrupt; the broker shall act on the duly authenticated instruction of the trustee in bankruptcy.
- (c) A customer may close a margin account at his or her own discretion provided that all debit balances are paid off.

**(4) *Margin Account Statements.***

All activities in a customer's margin account shall be listed in the customer's account statement. a broker is required to forward quarterly statements for inactive accounts (accounts that have had no trading activity for three (3) consecutive months) and monthly statements for active accounts to the clients. the account statement shall list all current long positions, debits and credits, and account balances. the bank or brokerage firm's customer statement shall contain the following:

- (a) The total amount of margin facility granted.
- (b) The securities purchased.
- (c) The accrued interest.
- (d) The Long Market Value (as at the date of the Statement).
- (e) The Debit Balance (as at the date of the Statement).
- (f) The Equity (as at the date of the Statement).
- (g) The excess equity (special memorandum account or amount that can be withdrawn as at the date of the statement).
- (h) Buying power of the account.
- (i) Number of CBN Regulation C calls the account has received within the period.

Restricted accounts shall bear a red stripe along the top border of the statement.



(5) ***Mail Retention for Margin Account Holders.***

For customers with mail retention instruction, the broker shall nevertheless endeavor to communicate margin calls immediately to such clients.

(6) ***Customer Confirmations.***

- (a) A confirmation of every margin transaction shall be sent to the customer by the broker.
- (b) The confirmation shall be sent out electronically or in hard copy. All confirmations shall contain the following Information:
  - i. Trade date.
  - ii. Settlement date.
  - iii. The type of transaction (purchase or sale).
  - iv. Description of the Security.
  - v. Amount of the Security.
  - vi. Execution price.
  - vii. The capacity in which the firm acted (i.e agent as broker or principal as a dealer or a related party).
  - viii. The total amount due.
  - ix. The debit balance of the margin facility.
  - x. Commission charged.
  - xi. The time of execution.

**362. Margin lending by brokers to customers.**

- (1) A customer purchasing securities may pay in full or borrow a portion of the purchase price from the broker.
- (2) In order to cover the loan to the customer, the broker shall have a standby margin loan from a bank that operates in the clearing system of the capital market. the loan extended by the bank to the broker to support the onward lending to customers shall also be treated as a margin loan and the same rules apply.
- (3) A stand by margin loan shall only accrue interest and charges when an amount has been drawn there from by a customer for the purpose of purchasing securities on margin.
- (4) It shall be unlawful for a bank or a broker to grant a margin facility for the purchase of the securities of a company in which it has substantial interest.

**363. Dealer margin trading accounts**

- 1) If a dealer is trading for its own account and wants to make some purchases on margin it shall do so in a separate margin account designated for that purpose and that account shall comply with these rules and regulations as if it were a routine customer.
- 2) A dealer shall:
  - (a) Not commingle assets of its own margin account with the assets of its customers;
  - (b) Comply with all reporting requirements regarding its own account to the relevant authorities;
  - (c) Not re-hypothecate the securities of its customers to support trading for its own account;
  - (d) Comply with accounting procedures and have the relevant documentation regarding corporate accounts.

**364. Bank margin accounts**

- (1) If a bank is trading for its own account and wants to make some purchases on margin it shall do so in a separate margin account designated for that purpose and that account shall comply with these rules and regulations as if it were a routine customer.
- (2) A bank shall:
  - (a). Not commingle assets of its own margin account with the assets of its customers;
  - (b). Comply with all reporting requirements regarding its own account to the relevant authorities;
  - (c). Not re-hypothecate the securities of its customers to support trading for its own account;
  - (d). Comply with account opening procedures and have the relevant documentations regarding corporate accounts.

**365. Central Bank of Nigeria regulation C (REG.C)**

For margin loans and margin lending, the margin requirement shall be 50% of the total purchase price of the securities or group of securities or as may be stipulated by the Central Bank of Nigeria from time to time.

**366. Central Bank Of Nigeria (CBN) regulation C call**

- (1) A Margin Call or a Reg. C call shall be initiated by a bank or broker (as the case may be) to a customer, when a transaction effected in a margin account does not meet, or falls below, the minimum initial requirement of 50% of total purchase price . a margin call shall be satisfied within twenty four hours of the settlement date.

- (2) The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, marginable securities, or any combination thereof.
- (3) If any margin deficiency is not met in full within the required time, the bank or broker shall liquidate securities sufficient to meet the margin call or eliminate any margin deficiency existing on the day such liquidation is required. no action need be taken by the bank or broker if the margin deficiency is N1000 (one thousand Naira) or less.
- (4) Securities in a margin account shall be held as collateral to support the purchases made on margin. The bank or broker shall have recourse only to those securities held in the margin account and can ask the customer to provide additional deposit of cash, marginable securities or any combination thereof, to meet a Reg. C Call.
- (5) Collateral used to support margin accounts shall be sold by the broker or bank in any lawful manner in accordance with all existing rules:
  - (a). If the account holder has failed to meet CBN Reg. C Call;
  - (b). In order to meet an equity maintenance requirement;

Provided that there shall be no recourse to the customer for additional liability if the broker or bank refuses to sell collateral held in margin to meet a margin call.

- (6) The amount of margin financing that a bank or brokerage firm may lend to any single client shall be determined by SEC and CBN on a quarterly basis.
- (7) In determining the total amount of margin facilities given to any single client, the term “**single client**” may include the following:
  - (a) In the case of an individual, the margin facilities shall be deemed to include the margin facilities granted to the individual, and the accounts over which the individual exercises control.
  - (b) In addition, an individual is deemed to exercise “**control**” over a company if the individual or the individual’s spouse, severally or jointly:-
    - i. Holds, directly or indirectly, at least 50.1% of the shares of that company;
    - ii. Has the power to appoint, or cause to be appointed, a majority of the directors;
    - iii. Has the power to make, or cause to be made, decisions in respect of the business or administration of that company, and to give effect to such decisions, or cause them to be given effect to.
  - (c) Where such single client is a company, any margin facilities extended to the company, its subsidiaries and associated companies shall be deemed to be margin facility extended to such a single client.

### **367. Components of the margin account**

A customer purchasing securities on margin shall establish a long margin account which shall comprise of the following:

- (a) Long Market Value (LMV);
- (b) Debit Balance (DB);
- (c) Equity (EQ).

### **368. Loan value (loans given against securities)**

All marginable securities shall have a loan value which is expected to cover all future lending against securities and represents the maximum percentage of a portfolio's current market value that a brokerage firm or bank can lend to a customer. The loan value is equal to the complement of the CBN Regulation C requirement which is presently 50%.

### **369. The debit balance**

The debit balance represents the amount owed to the brokerage firm or bank. A change in the current market price shall have no effect on a customer's debit balance.

### **370. Determination of excess equity**

To determine the excess equity in a margin account, subtract the Reg. C requirement (based on the current market value of the securities) from the equity in the account.

### **371. Special memorandum account (SMA)**

- (1). Excess funds in a margin account shall be recorded in a special memorandum account or section. these funds may be used to offset a debit balance when a margin call has been made on the account. the broker or bank is required to apply the funds from the SMA to offset margin calls first before resorting to selling securities. Funds credited to a customer's SMA shall include:
  - a. Dividends on stock owned in the account;
  - b. Interest on bonds owned in the account;
  - c. Voluntary cash deposits made by the Customer; and
  - d. Proceeds from the sale of securities in the account.
- (2). Decreases in market value shall not affect SMA. However, the SMA shall be debited if the Customer withdraws cash or purchases securities from that account.

### **372. Restricted account**

An account shall become restricted when the Equity falls below the CBN Reg. C requirement.

**373. Purchase in a restricted account**

- (1). Where an account is restricted, the customer can make additional purchases in the account after meeting the CBN Reg. C requirement on the purchase.
- (2). Any additional funds deposited in a restricted account shall be used to bring down the customer's debt balance.

**374. Sales in a restricted account**

Upon the sale of securities in a restricted account, the proceeds shall be used to reduce the debit balance without the customer's consent until the CBN Reg. C requirement has been met. Thereafter, any sale proceeds shall be credited to the SMA and may be withdrawn by the customer.

**375. Same day substitution in a restricted account**

- (1). Where the value of securities purchased and sold on the same day in a restricted account are the same, there would be no additional deposit required.
- (2). Where the purchase is greater than the sale, the customer would need to deposit the CBN margin requirement on the difference.
- (3). Where the sale is for a greater amount than the purchase, SMA shall be credited with the balance of the net sale proceeds provided the Reg. C requirement has been met.

**376. Margin maintenance requirements for broker and bank requirements for margin accounts**

1. In addition to the requirements set by the CBN Regulation C and the SEC, margin accounts are subject to the industry requirements of a Securities Exchange, and the Bankers Committee etc, which shall set internal standards and rules to cover both initial transactions and the equity maintenance requirements of all margin accounts.
2. Brokers and banks may establish their own internal margin maintenance requirements however those standards must not fall below the rules stated in this section. Internal guide lines of banks and brokers can increase the maintenance level for equity in a margin account but they cannot reduce it.
3. Customers must maintain a minimum equity of 25% of the Long Market Value (LMV) of the margin account. This means that equity must not fall below 25% of the current market value of the securities in the account. If the account equity falls below 25% of the LMV then the account owner will be issued a "maintenance call". The maintenance call will be issued for the difference between the approved maintenance equity level and the current equity level. When a maintenance call is made the call shall be met immediately by depositing cash or fully paid up marginable securities.
4. Initial requirement for purchases in a margin account shall not be less than One million naira. If the customer starts with a lower amount then that first deposit will not qualify for margin lending and it will be treated as a cash transaction.

5. Brokerage firms and banks may increase the initial deposit requirement but cannot reduce it. Initial requirements set by internal rules of brokers or banks shall not exceed ten (10) million naira.

**377. Margin requirements for exempt securities**

1. ***NIGERIAN GOVERNMENT BONDS***

The CBN in consultation with the DMO and SEC shall determine the margin requirement for each issuance of Nigerian Government bonds at the time of issuance.

2. ***STATE GOVERNMENT, LOCAL GOVERNMENT AND OTHER GOVERNMENT AGENCY BONDS***

The CBN in consultation with SEC shall determine the margin requirement for State, Local Government and other Government agencies bonds.

**378. Marginable securities**

1. Marginable securities are securities that have been approved by CBN and SEC to be traded on margin in compliance with these rules and regulations. The CBN and SEC shall determine, approve, and SEC shall publish the approved list of marginable securities, “The Margin List”, every month.
2. The compliance officers of a securities exchange, banks and brokers shall ensure that securities that are traded in a margin account for which a margin facility has been extended are securities that are contained on the approved margin list.

**379. Criteria for determining marginable securities**

1. The criteria for determining marginable securities shall include:
  - a. The three month average trading volume, which shall demonstrate active trading in the security in relation to float. A security not traded during the first two (2) months out of the last three (3) months shall not be approved as a marginable security, even if there is heavy trading in the third and last month.
  - b. The last ten (10) days average trading volume, shall demonstrate an active demand for the security over the last ten days not determined by release of quarterly results.
  - c. Only companies that have been trading for at least twelve (12) months shall be included in the margin list.
  - d. Market capitalization as well as the share price of the securities shall be used by CBN and SEC in determining Marginable securities.

**1. *Exclusion from the List of Marginable Securities***

The following are excluded from the list of marginable securities

- a. Securities of unlisted companies;
- b. Securities of companies that have been listed on a securities exchange for less than twelve (12) months;
- c. Securities offered through Initial Public Offerings;
- d. Securities offered through a private placement by a listed company;
- e. All banking securities;
- f. Securities that have not traded actively for the last three (3) months;
- g. Securities of a company that have ceased to exist or filed for bankruptcy;

Provided that, SEC in consultation with CBN, may add to, omit or remove from the margin list securities or companies if in its judgment such action is necessary or appropriate in the public interest, and provided again that:

**“It shall be unlawful for any issuer to make, or cause to be made any representation to the effect that the inclusion of a security on the list of Marginable Securities is evidence that the SEC or the CBN has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the SEC or CBN in connection with the list or securities on the list shall be an unlawful representation”.**

**380. Investor eligibility**

Trading on margin and operating a margin account require a minimum level of sophistication on the part of the investor. In this regard and due to the level of understanding required by the investor for owning and operating a margin account, these accounts will be restricted to only knowledgeable investors.

**1. *Individual Investors:***

An individual investor shall satisfy the following conditions before he/she will be eligible to operate a margin account:

- a. Shall not have been convicted of a financial crime or not have filed for bankruptcy.
- b. Shall open his/her margin accounts at a brokerage firm while a **“Sophisticated Investor”** shall be eligible to open a margin account at a bank.
- c. Shall declare if there is a **“third party”** relationship in the ownership of the margin account. (margin accounts opened for minors or in cases where there

is a trustee relationship, the trustee or custodian shall meet the rules for eligibility).

Provided that a bank which accepts securities as asset collateral in a normal loan in the normal course of business with an individual customer has not engaged in margin lending.

2. ***Corporate investors:(Eligibility to operate Margin Accounts)***

- a. Asset managers, investment advisers, brokers, banks, investment houses, financial advisers, corporation treasury departments, etc shall upon satisfying the requirements prescribed in these rules be eligible to operate a margin account.
- b. All pension fund administrators (PFA) are excluded from owning and operating margin accounts. Assets of pension fund administrators shall not be pledged, hypothecated or re-hypothecated for the purpose of securing credit to operate a margin account or to carry out purchase of securities on margin.
- c. Banks and brokers acting on behalf of PFAs are not permitted to hypothecate securities belonging to a PFA whether separately or in a combined arrangement.
- d. Other corporate investors operating under the Companies and Allied Matters Act are permitted to own and operate margin accounts.
- e. A board resolution giving authority to the management to open such an account is required. The board resolution shall contain the name of the individual or individuals authorized to make investment decisions regarding the account including monetary and investment limits, where necessary.
- f. Any corporate body opening a margin account directly with a bank shall be registered with SEC.
- g. Margin trading carried out by a brokerage firm on behalf of customers shall be handled by a firm:
  - i. with a valid registration with the SEC;
  - ii. in good standing and a valid membership with a securities exchange
  - iii. which shall fulfill such other conditions as may be prescribed by the SEC from time to time.
- h. Margin trading carried out by any stockbrokerage firm, investment adviser, asset manager or bank for its own account only shall:
  - i. Meet all the conditions prescribed in these rules and regulations.
  - ii. Meet other conditions of the CBN and other regulatory agencies.



**381. Training/Certification of Market Operators' Personnel in Margin Lending and Trading.**

1. All investor representatives, advisers, asset managers, account managers, lawyers, accountants, financial consultants, and any other individual that is responsible, licensed or authorized by law to advise individual or corporate investors on investment strategy, securities trading or investment in general shall be educated on margin lending and trading and the risks associated with it.
2. If the market operator is a bank, then it shall get a certification from a CBN approved institution for “**Margin finance**”.
3. If the market operator is a broker then it shall get a certification from a SEC approved institution for “**Trading in margin**”.

**382. Technology for Margin Trading/financing**

1. All market operators that meet the laid down criteria for eligibility for trading in margin must equally meet a minimum requirement for having the right technology.
2. The technology shall be able to assist the market operator with the necessary regulatory reports as well as all standard requirements for client reporting and notification such as account statements, trading confirmation etc.
3. If the market operator is a bank then the CBN shall certify that adequate technology is in place at the bank to justify its margin financing as a lender. All institutions operating under the Bank and Other Financial Institutions Act shall obtain their technology certification from the CBN.
4. If the market operator is a broker then the SEC shall certify that adequate technology is in place to justify its trading in margin whether for its own account or on behalf of others. All other market operators operating under the Investments and Securities Act shall get their technology certification from the SEC.
5. Market operators who will not be managing margin accounts for others or third parties but wish to trade only for their own accounts and have been exempted from certain rules for eligibility notwithstanding the exemption, are required to have the adequate technology to engage in margin trading even though they are only trading for their own account.

**383. Margin transaction reporting**

1. All margin transactions shall be reported to the CBN by the bank on a quarterly basis. Any transaction that breaches the Regulation C requirement of the CBN shall be reported on a monthly basis to the CBN. The reporting requirement shall include the following information:
  - a. The market operator that engaged in margin borrowing;
  - b. The securities that were hypothecated;

- c. The securities purchased on the margin facility;
  - d. The margin limit;
  - e. The maintenance requirement communicated to the margin account holder;
  - f. Whether the transaction was a combined transaction for on lending to Customers or whether the transaction was for the account of the market operator;
  - g. The value of the transaction;
  - h. The total shares traded on margin;
  - i. Whether the Margin facility needed re-hypothecation.
2. Margin transactions carried out at the broker level shall be reported to the SEC quarterly. The reporting requirement shall include the following:
- a. The name of the investor.
  - b. The securities that were hypothecated.
  - c. The securities purchased on margin.
  - d. The Margin Limit.
  - e. The Maintenance requirement communicated to the margin account holder.
  - f. Whether the account is a discretionary account or whether the investor is acting in full authority.
  - g. The type of margin account whether it is a **“third party”** account such as custodian account, Trustee or fully owned by the investor making the decisions.
  - h. The value of the transaction.
  - i. The total shares traded.
  - j. Whether the Margin facility needed re-hypothecation.
3. If the CBN determines that a bank has over extended margin facilities to a **“Single Client”** or to a combination of clients, it shall direct the Bank to:
- a. Reduce the outstanding position of the client or combination of clients;
  - b. Prohibit the bank from further margin financing;
  - c. take any other action as CBN may deem fit.
4. If SEC determines that a broker has over extended margin to a **“Single Client”** or to a combination of clients, it shall:

- a. Direct the operator to reduce the outstanding position of the client or combination of clients.
  - b. Prohibit the operator from further trading on margin.
  - c. take any other action as it may deem fit.
5. The CSCS must submit to SEC on a monthly basis a comprehensive list of hypothecated securities as well as securities placed on lien. The list must be separated by brokerage house, customer and location of securities such as account numbers etc.

6. ***Full Disclosure;***

Where a bank or broker extends margin facilities to:-

- a. Any of its partners, directors, agents or employees;
- b. Any firm in which any of its partners, agents or employees is interested as a partner, agent, employee or guarantor;
- c. Any company in which any of its directors, agents or employees is interested as director, agent, employee or guarantor;
- d. Any company in which any of its directors, agents or employees hold at least a 5% shareholding;

the lender shall provide full disclosure, which shall be included in its quarterly returns to the CBN and SEC.

**384. Appointment of compliance officer**

1. Every market operator that owns or operates a margin account or manages a margin account on behalf of investors or has a margin account in its system, shall appoint a “Margin Compliance Officer” for the purposes of monitoring full and strict compliance with all the rules governing margin lending and margin trading in Nigeria;
2. The compliance officer shall be well trained in the rules and guidelines on margin lending and shall attend regular training sessions as organized or supported by the CBN or SEC to maintain a minimum Knowledge requirement in the personnel of the market operator;
3. The officer shall be certified by the CBN as a “**Margin Compliance Officer**” if the Institution is a bank;
4. The officer shall be certified by SEC as a “**Margin Compliance Officer**” if the Institution is a broker.

***Exemption:***

All asset managers or investment advisers that operate their margin accounts in the house of other market operators such as a broker are exempted from appointing margin compliance officer.

**385. Duties of the Margin Compliance Officer**

The Margin compliance officer shall be responsible for:

- a. approving margin accounts of investors whether in the banks, or with the brokers.
- b. all CBN reporting requirements, if it is a bank.
- c. all SEC reporting requirements, if it is a broker.
- d. all the securities exchange or capital trade point reporting requirements.
- e. recommending and maintaining an internal margin maintenance guide lines for investors within its system.
- f. educating the other personnel within the system of the bank or the broker of the rules of margin as well as periodic updates and adjustments as may be made by the CBN or SEC from time to time.
- g. educating the investors of the risks of margin trading.

**386. Appointment of principal Margin Compliance Officer**

1. All securities exchanges registered with SEC shall maintain “Principal Margin Compliance Officers” and such officers shall inspect the operations of all brokers from time to time to ensure that they are in full compliance with the terms and the spirit of these rules and regulations.
2. All infractions and violations shall be reported to the CBN if it involves a bank and to SEC if it involves a brokerage firm. Such reports are mandatory irrespective of whether the securities exchange is handling the infraction or violation.

**387. Valuation of Securities used for Collateral in Margin Accounts.**

The collateral that a client may deposit into his margin account and the method of valuation thereof shall be limited:

1. To the value based on the last price of the securities on the preceding market day at the exchange for securities quoted on the securities exchange.
2. To the value based on the last done price on the preceding day for Government securities.

*[SECRR(A) October 2010]*

### **G3. Securities Lending and Borrowing**

#### **388. Definitions.**

**Lending Agent** means a company duly registered as a market maker, custodian, licensed dealing member or any other market participant by the Commission through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

**Borrower** means a person who borrows the securities under these rules and regulations through a lending agent.

**Collateral** means acceptable forms of securities, cash, or a combination of acceptable forms of securities delivered by the borrower to the lender to support a loan as to security.

**Commission** means the Securities and Exchange Commission of Nigeria established under the Investments & Securities Act.

**Corporate Benefits** shall include dividends (gross) rights, bonus, redemption benefits, interests, or any other right or benefit accruing on the securities lent.

**Custodian** means custodian as defined in the Act.

**Lender** means a person who deposits with a lending agent for purpose of lending under these regulations, securities registered in his name or in the name of any other person duly authorized on his behalf.

**Margin** means the amount of cash and or approved securities deposited as collateral by a client or an investor as a percentage of the current market value of the borrowed securities.

**Margin Call** means a notice issued in writing by a lender to his/her client requiring the client to provide additional deposit in order to maintain the margin.

**Mark to Market** means the practice of revaluing securities and financial instruments using current **market** prices.

**Market Maker** means any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner any dealer who with respect to a security, holds himself out (by entering quotations in an inter-dealer communication system or otherwise) as being willing to buy and sell such security for his own account on a regular continuous basis.

#### **389. General requirements**

In every transaction for securities lending:-

1. The lender shall enter into an agreement with the lending agent for depositing the securities for the purpose of lending through the lending agent in accordance with these rules and the borrower shall enter into a separate agreement with the lending agent for the purpose of borrowing of securities. There shall be no direct agreement between the lender and the borrower for lending and borrowing of securities.

2. The agreement between the lender and the lending agent shall provide that when the lender has deposited the securities with the lending agent under these rules, the beneficial interest shall continue to remain in the lender and all the corporate benefits shall accrue to the lender.
3. The lender shall deposit only those securities registered in his name or in the name of any other person duly authorized on his behalf with the lending agent for purpose of lending.
4. Only quoted securities shall qualify for lending and borrowing purposes.
5. The lending of securities under these rules, through lending agent and the return of the equivalent securities of the same type and class by the borrower shall not be treated as disposal of the securities.
6. The lending agent shall issue a receipt to the lender acknowledging the deposit of the securities by the lender.
7. The lending agent shall unless otherwise provided in the agreement with the lender, guarantee the return of the equivalent securities of the same type and class to the lender along with the corporate benefits accrued on them during the tenure of the borrowing. Where the borrower fails to return the securities or corporate benefits the lending agent shall be liable for making good the loss caused to the lender.
8. The lending agent may retain the securities deposited by the lender in its custody as a trustee on behalf of the lender. The lending agent shall in accordance with the terms of the agreement entered into with the lender, be entitled to lend the securities deposited by the lender to a borrower from time to time.
9. Under these rules, the title of the securities lent to the borrower shall be temporarily vested in the borrower and the borrower shall be entitled to deal with or dispose of the securities borrowed in any manner whatsoever.
10. The agreement between the borrower and the lending agent shall inter alia provide that the borrower shall have an obligation to return, the equivalent number of securities of the same type and class borrowed, to lending agent within the time specified in the agreement along with all the corporate benefits which have accrued thereon during the period of borrowing.
11. The agreement between the borrower and the lending agent shall also provide for the following terms and conditions:
  - a. The period of depositing/lending securities;
  - b. Charges or fees for depositing/lending and borrowing;
  - c. Collateral securities for borrowing;
  - d. Provisions for the return including premature return of the securities deposited or lent;
  - e. Mechanism for resolution of disputes through arbitration;
  - f. Where relevant, confirmation that an agent has appropriate prior authority from the beneficial owners, or a party suitably authorized by the beneficial owners, for the securities to be lent;

- g. The absolute transfer of title to securities and collateral (including any securities transferred through substitution or mark to market adjustment to collateral);
- h. Daily marking to market of transactions;
- i. Acceptable forms of collateral and margin percentages;
- j. Arrangements for delivery of collateral and for the maintenance of margin whenever the mark to market reveals a material change of value;
- k. The treatment of dividend payments and other rights in respect of securities and collateral including, for example, the timing of any payments;
- l. Arrangements for dealing with corporate actions;
- m. Procedures for calling stock and arrangements if called stock cannot be delivered;
- n. Clear specification of the events of default and the consequential rights and obligations of the counterparties;
- o. Fully set-off of claims between the counterparties in the event of default;
- p. The governing law shall be Nigerian law.

**Whenever any of the above is not clearly provided for in the agreement between the borrower and the lending agent, the relevant provisions of these rules shall apply.**

- 12. The borrower shall not be entitled to discharge his liabilities of returning the equivalent securities through payment in cash or kind.
- 13. The lending agent shall be entitled to receive from the borrower collateral security and fees for lending securities.
- 14. The borrower shall deposit the collateral securities with the lending agent in the form of cash, government securities or other securities as may be agreed upon with the lending agent for the purpose of ensuring the return of the securities, subject to the provision of these rules.
- 15. When the lending agent returns the securities to the lender, the lending agent shall issue a receipt to the lender.
- 16. The lending agent shall maintain a complete record of the securities deposited by the lender, securities lent to the borrower, the securities received from the borrower and securities returned to the lender by the lending agent.
- 17. In the event of the failure of the borrower to return the securities in terms of the agreement, the borrower shall be in default and the lending agent shall have the right to liquidate the collateral deposited with it. The lending agent shall be entitled to take any action as deemed appropriate against the defaulting borrower to make good its loss.
- 18. The lending agent shall notify defaults by any borrower to the Commission, the relevant Securities Exchanges and the relevant authorities for initiation of appropriate action against the defaulter.

### **390. Other requirements**

- (a) Each lending agent shall maintain adequate records at all times detailing the following, amongst others:
  - i. Securities available for lending;
  - ii. Securities currently lent, attached collateral and value of each collateral;
  - iii. Outstanding loans by borrower(i.e. borrower by borrower)
  - iv. Returns of loaned securities.
- (b) Each lending agent shall observe the following administrative procedure amongst others:
  - i. Daily mark to market of securities lent and collateral securities;
  - ii. Daily margin calls, whenever the current market value of the collateral falls below the appropriate threshold;
  - iii. Open, transparent and published procedure for choosing client account for sourcing securities to be lent, especially when multiple accounts are involved;
  - iv. Fair allocation of security loans among all participating accounts within the books of the lending agent;
  - v. Internal controls shall include operating procedures that ensure role segregation, timely standard management reporting, periodic auditing with a view to ensuring compliance with all procedures;
  - vi. Regulatory control shall include weekly returns on daily mark to market of collaterals, periodic regulatory examination by the Commission and any other external operational auditing.
- (c) Each lending agent may approve in advance, each potential or intending borrower through its duly constituted management or supervisory committee, subject to the following:
  - i. Pre-approved credit limit shall be based on credit analysis of the potential or intending borrower;
  - ii. Such limit shall be put in place before establishing the lending borrowing relationship;
  - iii. The limit shall be reviewed regularly to check borrowers financial status i.e. capitalization, management earnings, business reputation etc.

### **391. Collateral management**

- (a) Acceptable forms of collateral shall be restricted to cash, Federal Government of Nigeria bonds/money market instruments and equities listed on a securities exchange as agreed by the parties to the transaction;
- (b) All margins on acceptable forms of collateral shall be subject to agreement between the lending agent and the borrower subject to the following thresholds:
  - i. Cash- applicable margin shall not be less than 120% of the value of the loaned securities;
  - ii. Federal Government of Nigeria (FGN) Bonds- applicable margin shall not be less than 125% of value of the loaned securities;
  - iii. Equities Listed on a Securities Exchange- applicable margin shall not be less than 130% of value of the loaned securities.



- (c) Title and possession of collateral shall be transferred to the lending agent before the transfer of the loaned securities to the borrower or simultaneously. Loaned securities must be delivered within 24 hours of the transfer of collateral title and possession, if not done simultaneously.
- (d) Daily mark to market of loaned securities and collaterals shall be conducted by each lending agent using most current market prices of specific securities. Surplus collateral may be returned to the borrower on request and shortfalls must be restored by the borrower on a daily basis based on the applicable margin.
- (e) Corporate actions on collateral shall be held in the lending agent's name in the market but in the borrower's name in the lending agent's records for proper monitoring and administration. Rights on loaned securities and collaterals must be restored to the legal owner (lender or borrower, in either case). Corporate actions on collateral become part of the collateral and ultimately belong to the borrower subject to the satisfaction of the daily mark to market and alignment with the agreed margin.
- (f) Unless otherwise agreed by the parties to a securities lending transaction and expressly stated in the agreement between the parties, cash collateral shall be investible only in FGN Bonds, Treasury Bills and Fixed Deposits in designated banks. Other collateral types shall not be re-investible.
- (g) Borrowers may be allowed to substitute collaterals earlier transferred to the extent that the new collateral meets the acceptable criteria under acceptable forms of collateral.

### **392. Processes**

1. Securities lending transactions as well as transfer of collateral securities shall be done over the counter on deliver free of payment and receive free of payment bases at a fixed charge by the Central Securities Clearing System (CSCS).
2. Settlement cycle for detachment of securities lending transactions shall be within 24 hours from the day detachment instruction is sent to the CSCS i.e. T+1.
3. Securities lending transaction shall be identified by the following parameters:
  - a. The borrower must sell the borrowed securities not later than ten (10) working days from the day the borrowed security is detached into his account. This shall be indicated by an audit trail showing a related regular market sale trade.
  - b. The borrower must execute a buy trade to repay borrowed securities not later than twelve (12) months from the day of the securities lending detachment. This must be indicated by an audit trail showing a related regular market buy trade.
  - c. on maturity, an audit trail of the securities lending transaction must confirm return of borrowed securities to the same account from where the lender/lending agent lent from. In default, disposal of collateral would signify a close of a securities lending transaction.

### **393. Criteria for eligibility as lending agent**

1. Any person desirous of acting as an lending agent shall make an application to the Commission in the appropriate form.
2. Such applicant shall:
  - i. be a market maker, custodian, prime broker or other market participant as approved by the Commission;
  - ii. be registered with the Commission and the CSCS in such capacity;
  - iii. Meet the minimum capital requirement of N3, 000,000,000(three billion naira only). The Commission may demand additional capital based on the risk profile of the lending agent;
  - iv. have relevant experience and expertise;
  - v. have operational capability in terms of appropriate staffing, technology and risk management tools;  
The technology deployed by the lending agent shall have capabilities to capture clients instruction, capture securities lending deals, capture corporate action events, CSV upload daily price list, mark to market loan and collateral positions daily, trigger collateral shortfalls, take into valuation new loans, returns and collateral movements, accrue fees, receive and transmit SWIFT message, amongst others;
  - vi. possess good disciplinary history;
  - vii. be in good standing with the Commission, relevant securities exchanges and the CSCS.
3. No person shall act as an lending agent unless a certificate of registration has been obtained from the Commission.

### **394. Obligations and responsibilities of a lending agent**

An lending agent shall comply with the following obligations and responsibilities:-

1. The lending agent shall abide by the rules issued by the Commission from time to time with respect to its activities of securities lending and borrowing.
2. The lending agent shall comply with the criteria for eligibility as specified by the rules.
3. The lending agent shall specify in the respective agreement the fees payable by the parties to the transaction.
4. The lending agent shall specify the value and type of collateral acceptable for the purpose of securities lending as well as the method of the valuation of securities.
5. The receipt issued by the lending agent to the lender shall include the complete details of securities deposited such as name of security, quantity, face value and certificate number along with the date when the lender becomes the registered holder of the security. Similarly, when securities are returned to the lender by the lending agent, it shall issue a receipt containing the above details to enable the lender to use the same proof of continuity of his holdings
6. The records of the lending agent shall be opened for inspection by the Commission or any other person duly authorized by the Commission for this purpose.

7. The lending agent shall maintain and make available to the Commission and a securities exchange such information, documents, returns and reports as may be specified from time to time.

8. The lending agent shall abide by the code of conduct as may be prescribed by the Commission from time to time.

9. Nothing in these rules shall exempt the lending agent from any obligations placed on it by any Law, rules and regulations and guidelines.

*[SECRR(A) January 2011] [SECRR(A) May 2013]*

#### ***G4. Trading in Securities***

The provisions of these rules and regulations shall apply to transactions relating to securities ownership.

##### **395. Persons required to register their securities**

The following persons shall register their securities and shall thereafter file reports with the Commission as prescribed under these rules and regulations:

1. public quoted companies;
2. public unquoted companies;
3. Governments and Government agencies with publicly issued securities;
4. Collective investment schemes as defined by the ISA.
5. Other entities including supranational bodies.

##### **396. Exemptions**

Subject to rule 8, the Commission may exempt any security from being registered and any company from reporting, if such exemption is in the interest of the public and does not endanger investors' interest.

##### **397. Rules relating to securities ownership**

1. Every registrar shall on an annual basis, file with the Commission, the company and a securities exchange, information on beneficial owners of 5% or more of the company's shares;
2. Information on any transaction that brings beneficial ownership of shares in the company to 5% or more shall be filed by the registrar with the Commission, the company and the securities exchange;
3. Any subsequent transaction by holder in 1 above shall also be filed with the Commission by the Registrar and on the relevant form and the company.
4. Every registrar or security depository shall file the information in 2 and 3 above within 5 days of being aware of the change in ownership.

*[SECRR(A) January 2011]*

### **398. Rules relating to Share Buy-back**

- (1) These rules shall apply to publicly quoted companies;
- (2) Every company acquiring its own shares shall file an application with the Commission for the approval of such acquisition accompanied with detailed information about the transaction including the company's latest audited financial statements.
- (3) Every company acquiring its own shares shall comply with the following:-
  - (i) The aggregate number of shares to be brought back shall not exceed 15% of its existing issued and paid-up equity capital in any given financial year.
  - (ii) an undertaking that no voting rights shall be exercised by the company or its nominee or trustee in respect of the acquired shares;
  - (iii) the company and/or the directors shall file details of the directors' shareholding before and after the acquisition.
  - (iv) The resolution of the company authorizing the share buy-back shall be a special resolution as provided in the Companies and Allied Matters Act (CAMA).
  - (v) The notice of the general meeting to authorize the share buy-back shall be published in at least two national daily newspapers and evidence of the publication shall be filed with the Commission.
  - (vi) Shares shall only be purchased out of the profit of the company which would otherwise be available for dividends, or the proceeds of a fresh issue of shares made for the purpose of the purchase. These shall be reflected in the latest audited accounts which shall not be more than nine (9) months old.  
*[SECRR(A) March 2010]*
  - (vii) The buy-back shall be either through the Open Market or through Self-Tenders Offer.
  - (viii) The residual debt equity ratio shall not exceed 2:1 after the buy-back, the equity for this purpose is the shareholders' funds;
  - (ix) The buy-back shall be a direct purchase made only by the company and the beneficiary shall be the Company.
  - (x) The shares bought back shall be cancelled in accordance with the procedures set out in CAMA.
  - (xi) The maximum time allowed for the completion of the buy-back process shall not be more than twelve (12) months from the date of the shareholders resolution;
  - (xii) A declaration of solvency shall be filed with the Commission by the Board of Directors of the company that they believe that the Company would remain solvent in the foreseeable future;

(xiii) The buy-back shall not be made if the company is illiquid (i.e. a Company defaulting in payments of its obligations including dividend payment). A letter from the Auditors on the going concern status of the Company shall be filed with the Commission.

(xiv) For open market buy-back, the price of the shares to be bought back shall be at the current market price and for self-tenders offer, the price shall be determined by the Board of Directors and shall not be more than 5% above the average calculated market price over the last five (5) days.

(xv) The Company shall make a public announcement in at least two national daily newspapers, at least five(5) days to the commencement of the program, disclosing relevant information to the public, such as proposed size, nature, duration and the potential impact on the Company's financial position. A similar announcement shall also be made at the conclusion of the exercise.

(xvi) The Company and the financial adviser shall file a monthly report not later than five (5) working days after the end of each month indicating the number of shares bought, the total amount paid, minimum and maximum price, and the number of shares cancelled.

(xvii) Redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;

(xviii) Any two buy-back programs shall be separated by a minimum period of 365 days after the end of the preceding buy-back even where they are of different classes.

(xix) The source of funding the buyback shall be disclosed.

(xx) After any buy-back, the shareholders' funds of the company shall not fall below any legally prescribed minimum for the line of business.

(xxi) For the purpose of the buy-back through open market, the Company shall not use more than two stock broking companies for each programme. The stock broking firm shall not be a subsidiary of the company.

- (4) The company shall file quarterly returns in respect of the acquisition and the disposal of same. Where the shares are held by nominees or trustees of the company, the particulars of the nominees or trustees shall be provided. *[SECRR(A) September 2008]*

### **399. Rules relating to dual listing of securities**

An issuer may list its securities on one or more exchanges provided it complies with the listing requirements of the relevant securities exchange.

### **400. Manipulative and deceptive devices and contrivances**

- (1) A person involved in securities trading shall not:-

- (a) employ any device, scheme or artifice to defraud or capable of defrauding any person or institution;

- (b) make, utter or present any untrue statement of a material fact;
  - (c) omit to disclose a material fact necessary in order not to render any statement misleading in the light of the circumstances under which the statement was made;
  - (d) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of or dealing in any security; or
  - (e) deal in the securities of a company of which he is an insider.
- (2) For the purpose of sub rule (1) (e) of this regulation, dealing by an insider applies to dealings at a recognized securities exchange and also to off-market dealings in securities, and occurs where a person or group of persons who is in possession of some confidential and price sensitive information not generally available to the public, utilizes such information to buy or sell securities for his/its own account and for his benefit or makes such information available to a third party (either knowingly or unknowingly) who uses it for his benefit.
- (3) **Insider** means an individual:-
- (a) who is connected with the company during the preceding six (6) months in one of the following capacities:
    - (i) a director of the company or a related company;
    - (ii) an officer of the company or a related company;
    - (iii) an employee of the company or related company;
    - (iv) a person involved in a professional or business relationship with the company as above;
    - (v) a shareholder who owns 5% or more of any class of securities or any person who can be deemed to be an agent of any of the above listed persons; and
    - (vi) members of the audit committee
  - (b) who by virtue of having been connected with the company as mentioned in paragraph (a) of this Rule has obtained unpublished price sensitive information in relation to the securities of the company.

**401. Filing of notice by directors and other insiders upon sale or purchase of their shares in the company**

- (a) Directors and other insiders of public companies shall notify the Commission of the sale of their shares in the company or any purchase of shares in the company not later than 48 hours after such activity;
- (b) Such notices shall be deposited at the Commission's head office or any of its zonal offices;
- (c) Insiders, as used in this rule, has the same meaning as defined in the Act.

**402. Disclosure of director's interest in stockbroking/dealing companies**

A director of a public company shall disclose to the Commission any interest he has in any stockbroking/dealing companies engaged by a company in which he is a director.

**403. Disclosure of interest of stockbroking/dealing companies in quoted companies**

Stock-broking/dealing companies shall disclose their interest in the public quoted companies offer documents as well as in the quoted company's annual report and accounts.

**404. Disclosure of interest of public quoted companies in stockbroking/dealing companies**

All public quoted companies shall disclose their interest in stockbroking/dealing companies in public offer documents as well as in their annual report and accounts.

## **PART H**

### ***Regulation of Foreign Investments and Cross-border Securities Transactions***

#### ***H1. Foreign Investments***

##### **General Information**

Foreign investors/securities-dealers intending to invest or participate in the Nigerian Capital Market are advised to familiarize themselves with the provisions of the following laws, etc.:-

**a. Investments and Securities Act, 2007.**

**b. Companies and Allied Matters Act, 1990.**

**c. Central Bank of Nigeria Act, No. 24 of 1991.**

**d. Banking and other Financial Institutions Act, No. 25 of 1991.**

**e. Nigerian Investment Promotion Commission Act, No. 16 of 1995.**

**f. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995.**

**405. Definitions**

Terms used in this Part (except where the context otherwise provides) shall have the same meaning as defined in the Nigerian Investment Promotion Commission Act, No. 16 of 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995—

**divestment** means relinquishing or disposing of securities holdings/assets by a foreign investor for the purposes of repatriation of such proceeds or for re-investment in Nigeria;

**dividend** means the percentage or the amount of that proportion of net profits of a company declared payable to its shareholders;

**foreign investments** shall mean any investment in securities involving foreign capital importation made by a foreign person (corporate body or individual) or by any Nigerian resident outside the country;

**foreign investors (F.I.'s)** shall include:-

- i. foreign institutional investors (F.I.I.'s) (e.g. pension funds, unit trust funds, investment trust funds, institutional portfolio managers, nominee companies, asset management companies, or any other corporate body);
- ii. individual investors who are foreigners and Nigerians resident abroad who are investing with foreign currency;

**investments** covered by these regulations shall include transactions in securities traded on the primary and secondary market, i.e. equities, Government stocks, industrial loan stocks, bonds, unit trusts, investment trusts, derivatives or any other securities registered by the S.E.C.;

**interest** means income/returns on investments in any interest-bearing securities in the Nigerian capital market;

**N.I.P.C.** means the Nigerian Investment Promotion Commission established under the Nigerian Investment Promotion Commission Act, No. 16 of 1995;

**O.T.C.** means over-the-counter market, which provides trading facilities for dealing in securities of public unquoted companies;

**primary market** means a mechanism by which companies can raise fresh capital through the issuance of securities (e.g. shares and debentures, etc.) to the investing public;

**secondary market** means a resale market where securities originally issued in the primary market are bought and sold.

**CCI** means certificate of capital importation.

#### **406. Investing in Securities**

1. Any person, in accordance with section 26 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995, may invest in all securities traded on the primary and secondary markets or by private placements in Nigeria. Such securities, except those of private companies shall be registered by the Securities and Exchange Commission (S.E.C.) in accordance with the Act, and the rules and regulations made thereunder.
2. Any person investing in securities of public companies involving foreign capital shall do so through capital market operators registered by the Commission.

#### **407. Registration of Foreign Capital Market Operators**

- (1) Foreign capital market operators wishing to carry on investment and securities business in Nigeria are required to register with the Commission before operating in the Nigerian capital market. Such operators seeking registration with the Commission are required to submit:-



- a. a certificate of incorporation in Nigeria issued by the Corporate Affairs Commission (C.A.C.);
- b. a copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission (C.A.C.);
- c. proof of registration with the Securities Commission or the regulatory authority of their country of domicile;
- d. latest audited accounts of the applicant company in its country of domicile;
- e. management/promoter's profile;
- f. shareholding structure;
- g. certified true copy of the certificate of incorporation in the country of domicile; and
- h. any other information considered by the Commission to be relevant.

(2) Where a foreign person acquires part of or enters into a partnership with an existing registered market operator, that registered market operator may sponsor such foreign person for registration with the Commission by filing the proper application forms accompanied by required documents pursuant to these rules and regulations.

#### **408. Requirements for certificate of capital importation**

(1) Any person investing in securities in Nigeria with foreign capital is required by law to bring in such capital through an authorized dealer and obtain a certificate of capital importation.

(2) The certificate of capital importation shall entitle foreign investors to:-

- (a) open a domiciliary account with any authorized dealer for investment purposes in accordance with provisions of Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1999.
- (b) open a special non-resident naira account to which could be credited all receipts from the capital inflows, proceeds from sale of securities, dividends and interests;
- (c) make investments in securities in Nigeria out of the balances in the naira account;
- (d) repatriate the capital, capital gains, dividends and interest incomes received, etc., through an authorized dealer at autonomous market rates in a freely convertible currency subject to deductions of all applicable taxes.

#### **409. Prohibited Investments**

For purposes of investments in Nigeria generally, and pursuant to the Nigerian Investment Promotion Commission (NIPC) Act, as amended, there is no restriction except in the following areas which are prohibited to both Nigerians and foreigners:

- (a) petroleum enterprises (as defined in the Nigerian Investment Promotion Commission (N.I.P.C. Act);
- (b) production of arms, ammunition, etc.;
- (c) production of and dealing in narcotic drugs and psychotropic substances;
- (d) production of military and paramilitary wears and accoutrement including those of the police and the customs, immigration and prison services;
- (e) such other items as the Federal Executive Council may from time to time determine.

#### **410. Modalities for portfolio investments**

1. Portfolio investors subscribing in primary market securities should effect their transactions through capital market operators.
2. Portfolio investors transacting business in secondary market securities should effect their transactions through licensed broker/dealers on the floor of a securities exchange.

#### **411. Use of Custodian**

- (1) Portfolio investors shall appoint a custodian to perform, for and on their behalf, any or all of the following services:-
  - a. confirming transactions in securities;
  - b. settling purchases and sale;
  - c. information reporting.
  - d. and any other services agreed with the custodian
  - e. A copy of the letter of appointment of the custodian should be filed with the Commission by the appointee within ten (10) working days of such appointment.
- (2) (a) The custodian shall keep separate accounts detailing the capital utilization of such accounts on a daily basis.  
  
(b) The custodian shall make returns in the form prescribed by the Commission on a quarterly basis.

**412. Divestment of securities**

- (1) (a) A foreign investor shall divest holdings in securities of public companies through a Securities Exchange or on a recognized over-the-counter market with respect to unquoted securities traded on that market;
- (b) Divestment of holdings in securities in any other public company shall be through market operators
- (2) The Custodian shall notify the Commission of divestment by foreign investors within five (5) working days of any such divestment and shall provide among others, the following information:-
  - (a) mandate letter from the foreign investor (or a duly appointed attorney) stating among others the intention to divest;
  - (b) the name(s) and address(es) of the person(s) divesting;
  - (c) the name of the company whose shares/assets are being divested including the status and nature of business;
  - (d) date, price and amount of initial investments;
  - (e) the volume/percentage divested;
  - (f) price at which divestment was made;
  - (g) evidence of payment of any applicable taxes;
  - (h) the mode of divestment;
  - (i) list of the allottees /beneficiaries and the amount or percentage each acquired.

**413. Repatriation of proceeds from divestment**

Dividends, capital gains and interest income shall be repatriated through authorized dealers in accordance with the provisions of the law.

**414. Sale or offer for subscription of securities**

A foreign Government, or a company incorporated in a foreign country may issue, sell or offer for sale or subscription its securities to the public through the Nigerian Capital Market; Such securities may be denominated in naira or any convertible foreign currency.

**415. Filing of application**

Every foreign issuer of securities is required to file an application for registration of its securities with the Commission, accompanied by a draft prospectus and under such conditions as prescribed by the Commission. such issuers are required to file their application on Forms SEC 6F accompanied by the registration fee prescribed by the Commission from time to time.

#### **416. Exemptions**

- (1) The Commission may, if it is in the public interest and where reciprocal agreement exists between Nigeria and the country of the issuer, or the issuer's country is a member of the International Organization of Securities Commissions (I.O.S.C.O.), grant exemption from compliance with any of the requirements for registration of securities issued in Nigeria.
- (2) Such exemptions include, but are not limited to waiving full compliance under S.E.C. regulations by the acceptance of a prospectus approved or cleared by a foreign securities commission or similar body; adoption of audited annual reports/accounts of foreign issuer accepted by the Securities Commission of that country.
- (3) An exemption from any registration requirement does not relieve an issuer from the requirements of filing reports, forms or other documents prescribed by the Commission.

### **H2. Cross-border Securities Transactions**

#### **417. Public offering of securities**

All securities offered to the public under the provisions of this Part shall be registered by the issuer or issuing house filing on Forms SEC 6F.

#### **418. Filing of Registration Statement**

The registration statement for the distribution of the securities shall be filed by the issuer or issuing house and shall conform with the requirements of the Act and these rules and regulations or with any other requirement prescribed by the Commission.

#### **419. Content of the Prospectus**

Issuers of securities shall provide to the Commission for approval a prospectus containing the following information:

- (1) ***Identity of directors, senior management and advisers:***
  - (a) the names, business addresses and functions of the company's directors (executive and non-executive) and senior management;
  - (b) the names and addresses of the company's bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for listing (where required by the host country regulations), and the legal advisers to the issue;
  - (c) the names and addresses of the company's auditors for the preceding three years (state the principal partners and the professional body to which they belong).

**(2) *Outline of expected timetable:***

For all offerings, and separately for each group of targeted potential investors, the document shall state the following information to the extent applicable to the offering procedure:-

- (a) the time and period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or and the manner and duration or possible extension(s) or closure of this period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the document is first filed or distributed to the public, describe arrangements for announcing the final or definitive date or period;
- (b) method and time limits for payment in full, where payment is partial, the manner and date on which amount due is to be paid;
- (c) method and time limits for delivery of equity securities (including provisional certificates, if applicable) to subscribers or purchasers;
- (d) in the case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised;
- (e) full description of the manner in which results of the distribution of securities are to be made public and when appropriate the manner for refunding excess amounts paid by applicants (including interest).

**(3) *Summary/statistics of offerings:***

For each method of offering, rights offering, general offering, etc., state the total expected amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

**(4) *Key information:***

- (a) The company shall provide historical financial data regarding the company, which shall be presented for the five (5) most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements. Selected financial data for either or both of the earliest two (2) years of the five (5) years period may be omitted, if the company represents to the Commission that such information cannot be provided, or cannot be provided on a restated basis, without unreasonable effort or expense;

If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be unaudited, provided that fact is stated. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the yearend balance sheet information.

- (b) The financial data presented shall be expressed in the same manner as the company' financial statement;
- (c) Where the financial statements provided in response to sub rule 4(a) are prepared in a currency other than the Naira, the exchange rate between the financial reporting currency and the Naira shall be provided, using official exchange rate published by the Central bank of Nigeria (CBN).
  - (i) at the latest practicable date;
  - (ii) the high and low exchange rates for each month during the previous six (6) months; and
  - (iii) for the five (5) most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.
- (d) The issuer shall provide a statement of capitalization and indebtedness (distinguishing between guaranteed, secured or unsecured and contingent, indebtedness) as of a date not earlier than sixty (60) days prior to the date of the document, showing the company's capitalization on an actual basis and, if applicable, as adjusted to reflect the sale of new securities being issued and the intended application of the net proceeds therefrom. Indebtedness also includes indirect and contingent indebtedness -
  - (i) the document shall disclose the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds not sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed;
  - (ii) if the proceeds are being used directly or indirectly to acquire assets, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the company or their associates, disclose the persons from whom they will be acquired and how the cost to the company will be determined;
  - (iii) if the proceeds may or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions;
  - (iv) if any material part of the proceeds is to be used to discharge, reduce or retire indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.
- (e) The document shall prominently disclose risk factors that are specific to the company or its industry and make an offering speculative or one of high risk, in a section headed "**Risk Factors**". Companies are encouraged, but not required, to list the risk factors in the order of their priority to the company. Among other things, such factors may include, for example: the nature of the business in

which the company is engaged or proposes to engage; factors relating to the countries in which it operates; profitable; reliance on the expertise of management; unusual competitive conditions, pending expiration of material patents, trademarks or contracts; or dependence on a limited number of customers or suppliers. The risk factors section is intended to be a summary of more detailed discussion contained elsewhere in the document.

**(5) *Information on the company:***

- (a) The issuer shall provide the following information:-
  - (i) the legal and commercial name of the company;
  - (ii) the date of incorporation and the length of life of the company, except where it is indefinite;
  - (iii) the domicile and legal form of the company, the legislation under which the company operates, its country of incorporation and the address and telephone number of its registered office (or principal place of business, if different from its registered office). Provide the name and address of the company's agent in Nigeria, if any;
  - (iv) the important events in the development of the company's business, e.g. information concerning the nature and results of any material re-classification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries;
  - (v) a description, including the amount invested, of the company's major assets (including interests in other companies) and divestitures, from the beginning of the company's last three (3) financial years to the date of the offering or listing document;
  - (vi) information concerning major assets (including interest in other companies) and divestitures currently in progress, including the distribution of these investments geographically (home and abroad); and the method of financing (internal or external);
  - (vii) an indication of any public take-over offers by third-parties in respect of the company's shares or by the company in respect of other companies' shares which have occurred during the last and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated.
- (b) The issuer shall provide the following information relating to its business overview on the same basis as that used to determine its business segments

under the body of the accounting principles used in preparing the financial statements:-

- (i) a description of the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three (3) financial years. Indicate any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development;
  - (ii) a description of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three (3) financial years;
  - (iii) a description of the seasonality of the company's main business;
  - (iv) a description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile;
  - (v) a description of the marketing channels used by the company, including an explanation of any special sales methods, such as installment sales;
  - (vi) summary information regarding the extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the company's business or profitability;
  - (vii) the basis for any statements made by the company regarding its competitive position shall be disclosed;
  - (viii) a description of the material effect of Government Regulations on the company's business, identifying the regulatory body.
- (c) If the company is part of a group, a brief description of the group and the company's position within the group shall be stated. The listing of the company's significant subsidiaries, including name, country of incorporation or residence and proportion of voting power held shall be provided.
- (d) The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the uses of the property, productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. A description of any environmental issues that may affect the company's utilization of the assets.
- (e) With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description



of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.

**(6) *Operating and financial review and prospects:***

The company shall provide and explain information on its financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required, including the causes of material changes from year to year in financial statement line items, to the extent necessary for an understanding of the company's business as a whole.

The information so provided shall relate to all separate segments of the company and shall cover—

- (a) information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations—
  - (i) to the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative of the extent to which such changes are attributable to changes in prices or to changes in the volume of amount of products or services being sold or to the introduction of new products or services;
  - (ii) describe the impact of inflation, if material. If the currency in which financial statements are presented is a country that has experienced hyperinflation, the existence of such inflation, a five (5) year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business shall be disclosed;
  - (iii) provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments;
  - (iv) provide information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations or investments by shareholders resident in Nigeria.
- (b) The following information on the company's liquidity (both short- and long-term) and capital resources shall be provided:-
  - (i) a description of the internal and external sources of liquidity and details of any material unused sources of liability, include a statement by the company that, in its opinion, the working capital is sufficient for the company's present requirements, or if not, how it proposes to provide the additional working capital needed;

- (ii) an evaluation of the sources and amounts of the company's cash flow, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations;
  - (iii) information on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use;
  - (iv) information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. It also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes;
  - (v) information regarding the company's material commitments for capital expenditures as at the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments;
  - (vi) a description of the company's research and development policies for the last three years, where it is significant, including the amount spent during each of the last three (3) financial years on company-sponsored research and development activities;
  - (vii) the company shall provide information and identify the most significant recent trends in production, sales and inventory, the state of the order book and cost and selling prices since the latest financial year. It shall be examined for at least the current financial year, any known trends, uncertainties, demand, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operation, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operation results or financial condition.
- (7) ***Directors and employees: Disclosure of experience, qualification, etc.:***
- (a) The following information shall be disclosed with respect to the company's directors and senior management, and any employees such as scientists, engineers or the technical experts or designers upon whose work the company is dependent:-
    - (i) name, business experience, function;
    - (ii) principal business activities performed outside the issuing company (including, in the case of directors, other principal directorships);

- (iii) date of birth or age (if required to be reported in the home country or otherwise publicly disclosed by the company);
  - (iv) the nature of any family relationship between any of the persons named above;
  - (v) any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to above was selected as a director or member of senior management.
- (b) The company shall provide the following information for the last full financial year for directors and members of its administrative, supervisory or management bodies:

The amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid:

- (i) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the basis upon which such persons participated in the plan; or
  - (ii) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options; or
  - (iii) the total amounts set aside or accrued by the company or its subsidiaries to provide pension, retirement or similar benefits.
- (c) The following information for the company's last completed financial year shall be given with respect to, unless otherwise specified, the company's directors, and members of its administrative, supervisory or management bodies—
- (i) date of expiration of the current term of office, if applicable, and the period during which the person has served in that office;
  - (ii) details of directors' services/contracts with the company or any of its subsidiaries providing for benefits upon termination of employment, or any appropriate negative statement;
  - (iii) details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
- (d) The company shall provide either the number of employees at the end of the period or the average for the period for each of information on the past three financial years, and changes in such numbers if material. If possible, provide a breakdown of persons employed by main category of activity and geographic location during the most recent full financial year. It shall also disclose any significant change(s) in the number of employees, and information regarding the relationship between management and labor

unions. If the company employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.

- (e) With respect to the persons listed in subsection (7) (b) above, provide information as to their share ownership in the company as of the most recent practicable date (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights) held by the persons listed and options granted to them on the company's shares. Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; and the expiration date of the options.
- (f) Describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issues or grant of options or shares or securities of the company.

**(8) *Major shareholders and related party transactions:***

- (a) The following information shall be provided regarding the company's major shareholders, which means shareholders that are the beneficial owners of 5% or more of each class of the company's voting securities:-
  - (i) the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders;
  - (ii) disclose any significant change in the percentage ownership held by any major shareholder during the past three (3) years;
  - (iii) indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement;
  - (iv) information shall be provided as to the portion of each class of securities held in Nigeria and the number of holders of record in the country;
  - (v) to the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any foreign Government or by any other natural or legal person(s) severally or jointly and, if so, give the names(s) of such controlling corporation(s), Government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote;
  - (vi) describe any arrangement, known to the company, the operation of which may at a subsequent date result in a change in control of the company.
- (b) (1) The company shall provide the information required below for the period since the beginning of the company's preceding three (3)

financial years up to the date of the document, with respect to transactions or loans between the company and—

- (i) enterprises that directly or indirectly, through one or more intermediaries, control or are controlled by, or are under common control with, the company;
- (ii) associates;
- (iii) individuals owning, directly or indirectly, any interest in the voting power of the company that gives them significant influence over the company, and close members of any such individuals' family;
- (iv) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management companies and close members of such individuals' families;
- (v) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (iii) or (iv) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that individuals' families may be expected to influence, or be influenced by that person in their dealings with the company.

An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company.

Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company.

- (2) The nature and extent of any transactions or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party.
- (3) The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transactions in which it was incurred, and the interest rate on the loan.

- (c) If any of the named experts or counselors who was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

**(9) *Financial information:***

- (a) The document shall contain consolidated financial statements, audited by an independent auditor and accompanied by an audit report, comprised of:-
  - (i) a balance sheet;
  - (ii) an income statement;
  - (iii) a statement showing either (a) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (b) all changes in equity (including a subtotal of all non-owner movements in equity);
  - (iv) a cash flow statement;
  - (v) related notes and schedules required by the comprehensive body of accounting standards, pursuant to which the financial statements are prepared; and
  - (vi) if not included in the primary financial statements, a note analyzing the changes in each caption of shareholders' equity presented in the balance sheet.
- (b) The document shall include comparative financial statements that cover the latest three financial years, audited in accordance with a comprehensive body of auditing standards.
- (c) The audit report(s) must cover each of the periods for which these disclosure standards require audited financial statements. If the auditors have refused to provide the report(s) or if the report(s) contain qualifications or disclaimers, such refusal or such qualifications or disclaimers, shall be reproduced in full and the reasons given, the Commission can determine whether or not to accept the financial statements. Include an indication of any other information in the document which has been audited by the auditors.
- (d) The last year of audited financial statements may not be older than nine (9) months during the period of the public offering.
- (e) If the document is dated more than nine months after the end of the last audited financial year, it should contain consolidated interim financial statements, which must be audited to cover at least the first six (6) months of the financial year. The interim financial statements shall include a balance sheet, income statement, cash flow statement, and a statement showing either (a) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (b) all changes in equity (including a subtotal of all non-owners movements in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the

case of the income statement) and the major subtotals of cash flows (in the case of the cash flow statement).

The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year-end balance sheet. If not included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholder's equity presented in the balance sheet.

The interim financial statements shall include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial statements that cover a more current period than those otherwise required by this standard, the more current interim financial statements must be included in the document.

Companies are required to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

- (f) If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percentage and amount of export sales in the total amount of sales volume.
- (g) Provide information on any legal or arbitration proceedings, including those relating to bankruptcy, receivership or similar proceedings and those involving any third party which may have, or have had in the recent past, effects on the company's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.
- (h) Describe the company's policy on dividend distributions.
- (i) Disclose whether or not any significant change has occurred since the date of the annual financial statements and/or since the date of the most recent interim financial statements, if any, included in the document.

**(10) *The offer and listing:***

- (a) Indicate the expected price at which the securities will be offered and the method of determining the price.
- (b) If there is no established market for the securities, the document shall contain information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.

- (c) If the company's shareholders have pre-emptive purchase rights and where the exercise of right of the pre-emption of shareholders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or withdrawal and the beneficiaries of such restriction or withdrawal if intended to benefit specific persons.
- (d) Information regarding the price history of the stock to be offered or listed shall be disclosed as follows:-
  - (i) for the five (5) most recent full financial years, the annual high and low market prices;
  - (ii) for the two most recent full financial years and subsequent period, the high and low market prices for each full financial quarter;
  - (iii) for the most recent six (6) months, the high and low market prices for each month;
  - (iv) for pre-emptive issues, the market prices for the first trading day in the most recent six (6) months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the document.

Information shall be given with respect to the market price in Nigeria (if the securities of the issuer have been previously issued in Nigeria) and the principal trading market outside the Nigerian market. If significant trading suspensions occurred in the past three (3) years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.

- (e) State the type and class of the securities being offered or listed and furnish the following information
  - (i) indicate whether the shares are registered shares or bearer shares and provide the number of shares to be issued and to be made available to the market for each kind of share. The nominal par or equivalent value should be given on a per share basis and, where applicable, a statement of the minimum offer price;
  - (ii) describe the coupons attached, if applicable;
  - (iii) describe arrangements for transfer and any restrictions on the free transferability of the shares.
- (f) If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.
- (g) With respect to securities other than common or ordinary shares to be listed or offered, outline briefly the rights evidenced thereby:-



- (i) If subscription warrants or rights are to be listed or offered, state: the title and amount of securities called for; the amount of warrants or rights outstanding; provisions for changes to, or adjustments in the exercise price; the period during which and the price at which the warrants or rights are exercisable; and any other material terms of such warrants or rights.
  - (ii) Where convertible securities or stock purchase warrants to be listed or offered are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall include whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in the notice of redemption or call; the expiration or termination date of the warrants; the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and, in the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.
- a. *Plan of distribution:***
- (i) The names and addresses of the entities underwriting or guaranteeing the offering shall be listed.
  - (ii) To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe to more than 5% of the offering.
  - (iii) Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
  - (iv) If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the company or its subsidiaries, provide details of these and any other preferential allocation arrangement.
  - (v) Indicate whether the amount of the offering could be increased in the event of an over-subscription or any other circumstance and whether their authorized share capital can accommodate the expected increase.
  - (vi) Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than by issuing house/underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s)/-dealer(s) that will participate in the offering and state the amount to be offered through each.
  - (vii) If the securities are to be offered in connection with the writing of exchange-traded call options, or warrants describe briefly such transactions.

- (viii) Unless otherwise described under the response to item 11 (c), material contracts describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling shareholder. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all the securities if any are taken, or whether it is an agency or the type of “best efforts” arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.
- (ix) If any underwriter or other financial adviser has a material relationship with the company, describe the nature and terms of such relationship.
- (x) The company shall disclose all stock exchanges and other regulated markets on which the securities to be offered or listed are traded. When an application for admission to any exchange and/or regulated market is being or will be sought, this must be mentioned, without creating the impression that the listing necessarily will be approved. If known, the dates on which the shares will be listed and dealt in should be given.

***b. Selling shareholder:***

The following information shall be provided:-

- i. the name and address of the person or entity offering to sell the shares, the nature of any position, office or other material relationship that the selling shareholder has had within the past three years with the company or any of its predecessors or affiliates;
- ii. the number and class of securities being offered by each of the selling shareholders, and the percentage of the existing equity capital. The amount and percentage of the security for each particular type of securities beneficially held by the selling shareholder before and immediately after the offering shall be specified.

***c. Dilution:***

The following information shall be provided:-

- i. where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five (5) years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons;
- ii. disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date;
- iv. in the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

**d. *Expenses of the issue:***

The following information shall be provided:-

- i. the total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;
- ii. a reasonably itemized state of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given.

**(11) *Statutory and additional information:***

**(a) *Share capital***

The following information shall be given as of the date of the most recent balance sheet included in the financial statements and as of the latest practicable date:-

- (i) the amount of issued capital and, for each class of share capital:-
  - (a) the number of shares authorized;
  - (b) the number of shares issued and fully paid as well as the number of shares issued but not fully paid;
  - (c) the par value or that the shares have no par value; and
  - (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the past five (5) years, that fact should be stated;
- (ii) if there are shares not representing capital, the number and main characteristics of such shares shall be stated;
- (iii) indicate the number, book value and face value of shares in the company held by or on behalf of the company itself or by subsidiaries of the company;
- (iv) where there is authorized but un-issued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights granted, indicate: (1) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (2) the categories of persons having preferential subscription rights for such additional portions of capital; and (3) the terms, arrangements and procedures for the share issue corresponding to such portions;

- (v) the persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; and the expiration date of the options; or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving name(s);
- (vi) a history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and/or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or installment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given;
- (vii) an indication of the resolutions, authorizations and approvals by virtue of which the shares have been or will be created and/or issued, the nature of the issue and amount thereof and the number of shares which have been or will be created and/or issued, if pre-determined.

**(b) *Memorandum and Articles of Association***

The following information shall be provided

- i. indicate the register and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles;
- ii. with respect to directors, provide a summary of any provisions of the company's articles of association or charter and by-laws with respect to:-
  - (a) a director's power to vote on a proposal, arrangement or contract in which the director is materially interested;
  - (b) the directors' power, in the absence of an independent quorum, to vote compensation to themselves or any member of their body;
  - (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied;
  - (d) retirement or non-retirement of directors under an age-limit requirement; and
  - (e) number of shares, if any, required for director's qualification;
- iii. describe the rights, preferences and restrictions attached to each class of the shares, including:-

- a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favour this entitlement operates;
  - (b) voting rights, including whether directors stand for re-election at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required;
  - (c) rights to share in the company's profits;
  - (d) rights to share in any surplus in the event of liquidation;
  - (e) redemption provisions; (in case of debt instruments);
  - (f) sinking fund provisions; (in case of debt instruments);
  - (g) liability to further capital calls by the company; and
  - (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares;
- iv. describe what action is necessary to change the rights of holders of the stock indicating where the conditions are more significant than is required by law;
  - v. describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are conveyed, including the conditions of admissions;
  - vi. describe any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities imposed by foreign law or by the charter or other constituent document of the company or state that there are no such limitations if that is the case;
  - vii. describe briefly any provision of the company's Articles of Association, charter or by-laws that would have an effect of delaying, deferring or preventing a change in control of the company and that would operate only with respect to a merger, acquisition or corporate restructuring involving the company (or any of its subsidiaries);
  - viii. indicate the by-law provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed;
  - ix. with respect to items ii through viii above, if the law applicable to the company in these areas is significantly different from that in the host country, the effect of the law in these areas should be explained;
  - x. describe the conditions imposed by the Memorandum and Articles of Association governing changes in the capital, where such conditions are more stringent than is required by law.

**(c) *Material contracts***

Provide a summary of all outstanding contracts, to which the company or any member of the group is a party, including dates, parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to, or from the company or any other member of the group.

**(d) *Exchange controls***

For foreign companies accessing the Nigeria market, describe any statute, rules, regulations or other legislation of the home country of the company which may affect:-

- (i) the import or export of capital, including the availability of cash and cash equivalents for use by the company's group;
- (ii) the remittance of dividends, interest or other payments to non-resident holders of the company's securities.

**(e) *Taxation***

The company shall provide information regarding taxes (including withholding provisions) to which shareholders in Nigeria may be subject in the home country. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and Nigeria, or a statement, if applicable, that there are no such treaties.

**(f) *Dividends and paying agents***

Disclose any dividend restriction, the date on which the entitlement to dividends arises, if known, and any procedures for non-resident holders to claim dividends. Identify the financial organizations which, at the time of admission of shares to official listing, are the paying agents of the company in the countries where admission has taken place or is expected to take place.

**(g) *Statement by experts***

Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, address and qualifications and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorized the contents of that part of the document.

**(h) *Documents on display***

The company shall provide an indication of where the documents concerning the company, which are referred to in the document, may be inspected. Exhibits and documents on display generally should be translated into English which is the official language of Nigeria, or a summary into English should be provided.

**420.           Depository receipts by Nigerian entities**

(1) For all levels of Global Depository Receipt, the issuer shall furnish the Commission with information on the following:-

- a. nature of the programme;
- b. number of shares involved;
- c. parties (foreign/local);
- d. international clearing system desired;
- e. in the case of transaction on the stock exchange, the issuer must disclose the parties (foreign/local involved and number of shares in the transaction);
- f. copies of documents obtained from and filed with the foreign country;
- g. evidence that the programme has been cleared by the Central Bank of Nigeria or the National Insurance Commission where the programme involves a bank or an insurance company. Evidence of clearance by other regulatory agencies would be required where applicable;
- h. copies of latest annual report;
- i. copies of resolution at annual general meeting (A.G.M.) or extraordinary general meeting (E.G.M.);

In the case of Level I G.D.R., compliance with the above and the existing guidelines on foreign investments, may qualify the issuer for a “no objection” letter from the Commission.

(2) Where the issuer is to raise capital as in (1) above, full disclosure requirements of the Commission must be met. In addition, the issuer is required to file the following information with the Securities and Exchange Commission:-

- a. a certified copy of the resolution of the members/directors authorizing the issue (Corporate Affairs Commission certified true copy required);
- b. number of shares for the G.D.R./A.D.R. and the percentage it represents of the outstanding shares of the issuer;
- c. capital history of the issuer (e.g. total share capital, paid-up capital, issued and un-issued, etc.);
- d. parties to the issue;
- e. evidence of approval of the foreign regulatory authorities;
- f. evidence of consent(s) of any international party to the transaction;
- g. certified true copy of resolution of members at A.G.M./E.G.M. of the issuer approving the offer;

h. currency in which securities for the programme would be denominated (e.g. dollars, pound sterling, local currency, etc.);

i. a prospectus for foreign capital sourcing and another one for local offering (a single document for both domestic and foreign markets may be issued);

j. rights and obligations attached to each class of securities/shares if different classes of securities are being issued.

**Note:** In case of new offerings, the issuer must meet the requirements of both the local and foreign jurisdictions.

(3) GDR issues shall be approved only upon satisfactory account of utilization of proceeds from previous raising. [SECRR(A)March 2010]

## **PART I**

### ***Regulation of Mergers, Take-overs and Acquisitions***

#### ***I 1. Mergers***

#### **421. Definitions**

(1) For the purposes of these rules and regulations:-

**“acquisition”** means the take-over by one company of sufficient shares in another company to give the acquiring company control over that other company;

**“bid”** means an invitation or an offer;

**“conglomerate merger”** means other types of mergers;

**“horizontal mergers”** means mergers involving direct competitors;

**“merger”** means any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies and one or more corporate bodies;

**“Partnership”** means a voluntary relationship existing between two or more persons to carry on business as co-owners and share in the profit and loss.

**“offeree company”** means a company whose shares or assets are subject to a take-over bid;

**“offeror”** means a person or two or more persons jointly, or in concert, who makes, or make a take-over bid;

**“vertical mergers”** means mergers involving firms in non-competitive relationships.

(2) Failure by any person covered by this part to comply with the provisions of these rules shall, after being given an opportunity of being heard, be liable to a penalty of N5,000 per day during the period of default.



#### **422. Scope of the Regulation**

The provisions of this regulation shall apply to:-

- (1) public or private companies;
- (2) every merger, acquisition or combination between or among companies, involving acquisitions of shares or assets of another company.
- (3) Partnerships;
- (4) Any Merger, Takeover, Acquisition or external restructuring undertaken by any Federal Government owned Agency pursuant to statutory powers vested in it, shall in addition be subject to the approval of the Commission.

#### **423. Approval by the Commission**

(1) Every merger acquisition or external restructuring between or among companies shall be subject to the prior review and approval of the Commission.

(2) Approval for mergers, acquisition or external restructuring shall be given if, the Commission finds that:-

- (a) such acquisition, whether directly or indirectly, of the whole or any part of the equity or other share capital or of the assets of another company, is not likely to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise;
- (b) the use of such shares by voting or granting proxies or otherwise shall not cause substantial restraint of competition or tend to create monopoly in any line of business enterprise.
- (c) Though the contemplated merger is likely to restrain competition, one of the parties to the merger has proved that it is failing.

#### **424. Exemptions**

1. The provisions of this regulation shall not apply to:-
  - a. holding companies acquiring shares solely for the purpose of investment and not for the purpose of using the shares by voting or otherwise to cause or attempt to cause substantial restraint of competition or tend to create monopoly in any line of business enterprise;
  - b. In a small merger, the merging entities shall not be required to notify the Commission of that merger but shall be required to inform the Commission at the conclusion of the merger.
2. Notwithstanding the provision of (1) above, an acquisition in a private/ unquoted public companies with assets or turnover below N500,000,000 shall not be subject to the prior review and approval of the Commission.

#### **425. Procedures for Obtaining Approval for Mergers**

Companies proposing a merger, acquisition or other forms of external restructuring shall:-

- a. file with the Commission, a merger notification for evaluation;
- b. file an application in the Federal High Court seeking an order to convene a court ordered meeting;
- c. following the resolution of the shareholders at the court ordered meeting, the applicants shall file with the Commission a formal application for approval of the merger.
- d. comply with post-approval requirements.

#### **426. Requirements for Merger Notification**

1. The merger notification shall be filed by submitting to the Commission a report, which shall contain the following

- a. a letter of intent signed by the merging companies accompanied by board resolutions of the merging companies supporting the merger;
- b. a detailed Information Memorandum of the proposed transaction including all the background studies relating to the merger, and justification for it which shall include the following:-
  - i. detailed information about product lines or operations of the companies;
  - ii. a list of the major competitors in that product market and the market position or market share of each company;
  - iii. the structure and organization of the companies;
  - iv. revenue information about the operations of the companies;
  - v. an analysis of the effect of the transaction on the relevant market including the post transaction market position of the merging or resultant company;
  - vi. additional information to be disclosed/contained in an information memorandum which shall include the following:
    - a. State the products or services that the merging entities sell or provide in, into or from Nigeria. In addition, identify any products or services that you believe are considered by buyers as reasonably interchangeable with, or a substitute for, a product or service provided in, into or from Nigeria by parties to the merger;
    - b. For each identified product or service, state the geographic area (s) in Nigeria, in which the merging entities sell;

- c. For each identified product or service, identify and provide contact details of the top five producers or providers in each identified geographical area with the largest estimated turnover in value, and their estimated share of the total turnover during the last financial year;
  - d. For each identified product or service, state the turnover in each of the identified geographical area during the last financial year;
  - e. For each identified product or service, identify and provide contact details for the merging entities' five customers in each of the identified geographical area with the largest aggregate purchases in value during the last financial year;
  - f. The business relationship among the merging entities in terms of the products or services they sell to one another as well as the value of those products and services sold during the last financial year.
- vii. The note shall also Indicate whether the merger will involve the following:
  - a. Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights;
  - b. Transfer of shares or other interests.
- viii. Where a company involved in the merger transaction claims that it is failing, the following documents shall be forwarded:
  - a. Financial information demonstrating that the firm will be unable to meet its financial obligations in future;
  - b. Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.
  - c. the latest financial statement of the companies;
  - d. certificate of the corporation of the merging companies.
- ix. Where a party to a small merger is required by the Commission to notify it of the merger, documents forwarded shall be the same as those required for a merger notification:
  - a. Extract of board resolutions of the merging companies authorizing the merger duly certified by a director and the company secretary;
  - b. A copy of the letter appointing the Financial Adviser(s);
  - c. Copy of certificate of incorporation certified by the company secretary;
  - d. CAC certified true copy of particulars of directors and allotment of shares;
  - e. Letter of no object from company's regulators.(where applicable);

- f. The audited accounts of the merging entities for the preceding five (5) years or the number of years any of the companies have been in operation if less than five (5) years;
- g. Applicable merger notification fee of N50,000 (fifty thousand naira) per merging company (for intermediate and large mergers);
- h. In the case of an intermediate or large merger a copy of the merger notification shall be forwarded to:
  - 1. any registered trade union that represents a substantial number of its employees; or the employees concerned or representatives of the employees concerned, if there are no such registered trade unions.
  - 2. Additional information to be disclosed in the Information Memorandum includes:
    - i. The actual and potential level of import competition in the relevant industry;
    - ii. The ease of entry into the industry, including tariff and regulatory barriers;
    - iii. The level and trends of concentration and history of collusion in the relevant industry;
    - iv. The degree of countervailing power in the market;
    - v. The dynamic characteristics of the relevant industry including growth, innovation and product differentiation;
    - vi. The nature and extent of vertical integration in the relevant industry;
    - vii. Whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail;
    - viii. Whether the merger will result in the removal of an effective competitor;
    - ix. Any other information that the Commission may require in respect of the Merger.
    - x. Merger applications may be filed by separate financial advisers (registered as an issuing house) or solicitor registered with the Commission for each of the merging companies, provided that in case of a small merger one (1) financial adviser may be used.

*[SECRR(A) March 2010]*

#### **427. Lower and Upper Thresholds**

(1) The lower threshold for a small merger shall be below N1,000,000,000.00 of either combined assets or turnover of the merging companies, the intermediate threshold shall be between N1,000,000,000.00 and N5,000,000,000.00, while the upper threshold shall be above N5,000,000,000.00.

(2) The determination of the threshold shall be by the combination of assets or turnover or the combination of both turnover and assets in Nigeria.

*[SECRR(A)March 2010]*

#### **428. Clearance of Scheme Document.**

1. Prior to making an application for court ordered meeting in respect of intermediate and large mergers, the following documents should be filed for the review and clearance of the Commission:

- i. letters of consent given by the parties to the scheme duly notarized by a notary public or a commissioner of oath. Where a consent is contained by a power of attorney it shall be executed.
- ii. Any other document as may be required by the Commission.

*[SECRR(A)March 2010]*

2. Upon receipt of a favorable response to a merger notification from the Commission, a formal application for approval of a proposed merger, or any other form of business combination shall be filed with the Commission accompanied by the following:-

- (a) two hard copies and a soft copy of the scheme document containing among others, the following:-
  - (i) separate letters from the chairmen of the merging companies addressed to their respective shareholders;
  - (ii) explanatory statement to the shareholders by the joint financial advisers addressing the following:-
    - (a) the proposals;
    - (b) conditions precedent;
    - (c) reasons for the proposal;
    - (d) the synergies/benefits;
    - (e) plan for employees;
    - (f) capital gains tax;
    - (g) approved status;
    - (h) meetings and voting rights;
    - (i) instructions on proxies;
    - (j) settlement and certificate;
    - (k) information regarding each of the merging companies;
    - (l) recommendation;
    - (m) further information under appendices as follows:

#### **APPENDICES I and II**

A. Background information on the merging companies—

- i. beneficial ownership;

- ii. indebtedness;
  - iii. shareholders' resolution;
  - iv. extract from Memorandum and Articles
- B. Letters from financial advisers.
  - C. Documents available for inspection.

### **APPENDIX III**

Information on the enlarged company

- A. Pro forma statement of shareholding.
- B. Pro forma profit and loss account.
- C. Pro forma balance sheet.

### **APPENDIX IV**

#### ***STATUTORY AND GENERAL INFORMATION:***

- A. Responsibility statement.
- B. Disclosure of interest by the directors of the merging companies.
- C. Material contracts to the scheme.
- D. Claims and litigations against the merging companies.
- E. Consents of parties to the scheme.
- F. General information.

### **APPENDIX V**

#### ***BASIS OF VALUATION AND ALLOTMENT OF NEW SHARES:***

- A. Background.
- B. Basis and assumptions.
- C. Valuation method.
- D. Allotment of new shares.
- E. Post scheme shareholdings.

### **APPENDIX VI**

#### ***SCHEME OF ARRANGEMENT BETWEEN THE MERGING COMPANIES:***

- A. Preliminary (expressions and meanings);

- B. & C. Statement of the authorized share capital of the merging companies and shareholding positions;
- D. State the various resolutions for the proposed scheme;
- E. The Scheme, detailing the following:
  - i. state proposals of the scheme;
  - ii. effects of the scheme or allotment;
  - iii. consequences of the scheme or certificate;
  - iv. creditors;
  - v. employees;
  - vi. directors;
  - vii. conditions precedent;
  - viii. effective date of scheme;
  - ix. modification;
  - x. date.

## APPENDIX VII

- (a) Notices of court-ordered meetings to the shareholders of the merging companies.
- (b) evidence of increase in share capital of the resultant company to accommodate any anticipated increase in paid-up capital following the share exchange;
- (c) prescribed fees
  - (i) public companies – value of shares issued by the resultant company, calculated thus
 

1st N500 million	<b>3%</b>
next N500 million	<b>0.225%</b>
any sum thereafter	<b>0.15%</b>
  - (ii) private companies – nominal value of the issued and paid-up capital of the resultant company calculated as in (i) above;
- (d) scheme document (if necessary) or draft particulars in the case of listing on the second-tier securities market;
- (e) two (2) copies of the draft financial services agreement;
- (f) copies of draft proxy forms for each of the merging companies;
- (g) a certified copy of the court-order directing the holding of the shareholders' meeting;

- (h) a statement that the certificate of incorporation of one of the merging companies shall be the certificate of the surviving or resultant company (where applicable);
- (i) proposed amendment to the original Memorandum and Articles of Association of the resultant company (where applicable).

3. (a) The scheme document shall set out, on top of the front cover page, the following statement to be highlighted in bold letter:

**“THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION”;**

(b) immediately after the statement in (a) above, the following shall be stated in small letters:-

**“If you are in doubt as to what action to take, it is recommended that you consult your stockbroker, banker, solicitor, accountant, or any other independent professional adviser”;**

(c) immediately after the statement in (b) above the following shall be stated in small letters:-

**“If you have sold all your shares in (names of the merging companies) please hand over this document and the accompanying proxy forms to the purchaser(s), the stockbroker or bank through whom the shares were sold, for transmission to the purchaser”;**

(d) the scheme document shall contain, at the bottom of the front cover page, the following statement highlighted in bold letters:

**“THE PROPOSALS WHICH ARE THE SUBJECT OF THE SCHEME OF MERGERS (ARRANGEMENT) SET OUT IN THIS DOCUMENT HAVE BEEN CLEARED WITH THE SECURITIES AND EXCHANGE COMMISSION. THE ACTIONS THAT YOU ARE REQUIRED TO TAKE ARE SET OUT ON PAGES (STATE PAGE NUMBERS)”.**

4. Any document required to accompany a formal application which has been previously filed with the Commission may be incorporated by proper reference provided that such documents were filed within (6) months of the present application and is found acceptable by the Commission.

5. Where all requirements have been fulfilled, the Commission shall inform the court, by a statement in writing whether the merger is approved, **subject to conditions or prohibited.**

#### **429. Requirements for formal approval**

##### ***Documents to be forwarded:-***

1. Extract of the minutes of the court ordered meeting of the merging entities in support of the merger duly certified by a director and the company secretary. The extract shall capture the consideration as approved by majority shareholders, representing not less than three –quarters (3/4) in value of the shares of members being present and voting either in person or by proxy;
2. Two (2) copies of the scheme document duly signed by the parties to the merger;
3. Evidence of the executed resolutions passed at the separate court – ordered meetings;



4. Scrutineers report showing the result of voting and total number of votes casts;
5. Stamped Power of Attorney of directors who were absent at the separate court – ordered meetings (where applicable);
6. Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable);
7. Amended copy of the Memorandum and Articles of Association of the resultant company (where applicable).
8. CAC form showing particulars of directors;
9. CAC form showing allotments (for private companies) only;
10. Evidence of payment of processing fee;
11. Relevant SEC Form.

**430. Post-approval requirements**

After the approval given by the Commission and the court-order sanctioning the scheme, the following requirements shall be complied with by the applicant:-

1. file a copy of the court-order sanctioning the scheme within seven (7) days of the court making the order;
2. file a copy of the newspaper publication of the court-order;
3. file a statement of the actual cost of the scheme;
4. file a notification of the completion or otherwise of the exercise within three (3) months of the court's order;
5. file summary reports of the scheme in respect of the following:-
  - a. arrangement relating to employees of the acquired company;
  - b. settlement of shareholders;
  - c. utilization of monies injected into the company, if any.
  - d. Treatment of dissenting shareholders;
  - e. Submission of gazetted copy of the court sanction;
  - f. Evidence of allotment of shares;
  - g. Evidence of settlement of severance benefits of employees (*where applicable*).
  - h.** Statement of the actual cost of the scheme

**431. Post-Merger Inspection**

Three (3) months after approval by the Commission, a post- merger inspection shall be carried out by the Commission to ascertain the level of compliance with the provisions of the scheme documents.

***Documents to be inspected include:-***

1. The board minutes book;
2. Original certificate of incorporation of the resultant company (where applicable);
3. Copy of the amended Memorandum and Articles of Association (where applicable);

4. Severance benefits of employees of the dissolved companies;
5. Final settlement of shareholders;
6. Dispatch of share certificates;
7. Settlement of debts;
8. Report of shareholders representatives on the merger;
9. Any other document that may be required by the Commission from time to time.

**432. Power to Order the Break-up of Company**

- (1) Where the Commission determines that a company constitutes a restraint to competition or creates a monopoly in a particular industry, the Commission shall order the breakup of the company.

Before the Commission makes a determination to order the break up, it shall:

- a. Communicate the basis of its observation to the company in writing and the company will be expected to forward their response to the Commission within thirty (30) days of receipt of the letter;
  - b. Review the company's response and where it is found that competition is restrained, senior officers of the company shall be invited to further defend their position;
  - c. Communicate the final decision of the Commission to the Company.
- (2) The Commission shall forward its decision to the court for sanctioning.
  - (3) The following shall be considered as business practices capable of restraining competition and creating monopoly:
    - a. The entry into agreements with other companies or business undertakings which have as their object or effect the prevention, restriction or distortion of competition in any part of the Nigerian market, and in particular those which:
      - i. Directly or indirectly fix purchase or selling prices or any other trading conditions;
      - ii. Limit or control production, markets, technical development, or investment;
      - iii. Share markets or sources of supply;
      - iv. Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
      - v. Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

b. The abuse by companies or business enterprises of dominant positions achieved by them in any part of the Nigerian Market irrespective of how such positions of dominance were achieved. Such abuse may, in particular, consist in:

- i. Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- ii. Limiting production, markets or technical development to the prejudice of consumers;
- iii. Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- iv. Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

*[SECRR(A)March 2010]*

## ***I 2. Acquisition***

### **433. Definition**

Acquisition means where a person or group of persons buys most (if not all) of a company's ownership stake in order to assume control of a the target company.

### **434. Scope of regulation**

The Commission shall regulate acquisitions in both private and public unquoted companies through the following process:

- a. Filling requirements for acquisition by a corporate entity/individual:-
- b. The acquirer shall file a letter of intent accompanied with the following documents; the filling shall be done by a registered capital market operator registered to function as an issuing house:
  - i. Two (2) draft copies of Information Memorandum;
  - ii. Extracts of board resolutions of the acquirer and the acquiree agreeing to the acquisition signed by the company's secretary and a director. (where applicable);
  - iii. A recent CAC certified true copy of the Memorandum and Article of Association of the acquirer and the acquiree. (where applicable);
  - iv. A certificate of incorporation of the acquirer and the acquiree. (where applicable) certified by the company secretary;
  - v. Extracts of shareholders resolution of the acquirer and the acquiree to be signed by a director and company secretary. (where applicable);

- vi. Summary of the claims and litigations of the company to acquired;
- vii. A copy of “No Objection” letter from the relevant regulatory body (where applicable);
- viii. Copies of letters appointing the financial advertiser(s);
- ix. CAC certified form showing particulars of directors and allotment of shares of the acquirer and the acquiree (where applicable)
- x. Notarized consent of directors of the acquirer and the acquiree (where applicable);
- xi. Financial services agreement between the acquirer and the acquiree and their respective Financial Advisers (where applicable);
- xii. Share purchase agreement and any other relevant agreement executed between the acquirer and the acquiree (where applicable);
- xiii. Payment of N50,000 being application fee;
- xiv. Payment of processing fee based on the value to be acquired on the graduation fee.
- xv. Annual report and accounts of both companies for the proceeding period of five (5) years or a shorter period of three (3) years for private companies and those that have been operating for less than five (5) years;
- xvi. Source of fund to finance the acquisition must be clearly disclosed and backed by documentary evidence;
- xvii. Report of valuation shares/assets (where applicable);
- xviii. Publication of the acquisition in at least two national dailies after consummation.

#### **435. Contents of Publication**

The publication shall contain the following particulars:-

- 1. The number of fully paid up ordinary shares in the share capital of the target company;
- 2. The total number and percentage of shares;
- 3. The price per share;
- 4. The identity of the acquirer;
- 5. The existing holding of the acquirer in the target company (if any);
- 6. Objective of the acquisition and the future plans of the target company;
- 7. Any other information.

#### **436. Contents of the Information Memorandum**

The information memorandum shall contain the following among others:-

##### **1. Background Information**

- a) Background to the acquisition;
- b) Statement of acquisition objective;
- c) Parties to the acquisition;
- d) The list of assets to be acquired and their value (where applicable);
- e) Statement of financial capability of the acquirer.

##### **2. The Offer**

- (a) The purchase consideration;
- (b) Comparison of purchase consideration with historical market price (where applicable);
- (c) Effect of the acquisition on the management and employee of the acquire company;
- (d) Terms and conditions of the acquisition;
- (e) Manner of acceptance;
- (f) Treatment of dissenting shareholders (if any);
- (g) source of funding the acquisition.

##### **3. The Acquirer**

- (a) History and business;
- (b) Share capital & ownership structure;
- (c) Director's beneficial interest;
- (d) Three/five years financial summary.

##### **4. The Acquiree**

- (a) History and Business;
- (b) Share capital and ownership structure;
- (c) Director's beneficial interest;
- (d) Three/five years financial summary;
- (e) Summary of claims and Litigations and material contracts.

## **5. Effects of the Acquisition on the Relevant Industry**

- (a) Line of operation of the acquirer;
- (b) Statement of existing investment in a related line of business;
- (c) Analysis of the market share of the acquirer in the relevant industry.

### **437. Post- Acquisition**

The following documents shall be forwarded:-

- (a) Executed share/asset purchase agreement;
- (b) Evidence of settlement purchase consideration;
- (c) Evidence of settlement of severance benefits of employees who may lose their jobs as a result of the acquisition (where applicable).

### **438. Dissenting Shareholders**

Treatment of dissenting shareholders shall be as contained in Sections 146 & 147 of the ISA 2007 or as amended.

### **439. Post- Acquisition Inspection**

There shall be a post- acquisition inspection by the Commission three (3) months after the approval of the application.

## ***I 3. External Restructuring***

### **440. Definition**

External restructuring in this rules and regulations shall include restructuring of a group of companies and other related party transactions.

### **441. Procedure for obtaining approval for External Restructuring**

Companies proposing for external restructuring shall:-

1. File with the Commission an application for external restructuring;
2. Upon clearance of the application, the companies shall file an application in the Federal High Court seeking an order to convene a court ordered meeting;
3. Following the resolution of the shareholders at the court ordered meeting approving the scheme and sanctioning of the transaction by the court, the applicants shall file with the Commission a formal application for approval of the external restructuring.

### **442. Requirements for External Restructuring**

An application for external restructuring shall be filed by submitting the following documents:

1. Shareholders resolution of the companies approving the external restructuring;
2. A copy of certificate (s) of incorporation of the entities certified by the company secretary;
3. CAC certified true copies of particulars of directors and allotment of shares of the affected companies;
4. ‘**No objection**’ letter from relevant regulatory authorities (where applicable);
5. Scheme of external restructuring containing the following information:
  - a. Directors of the companies;
  - b. Profile/share capital history of the companies;
  - c. Shareholding structure of the companies;
  - d. Directors beneficial interest;
  - e. Status of the subsidiary (ies) after the external restructuring;
  - f. Status of the shares of the combined company;
  - g. Percentage or level of involvement of the combined companies (if they have similar products);
6. Any other information or document required by the Commission from time to time;
7. Additional requirements:
  - a. Consents of directors and other parties to the transaction;
  - b. Board resolutions;
  - c. 2 years Financial statement of the entities;
  - d. Evidence of payment of processing fees.

#### **443. Requirements for formal approval**

After the clearance of the documents and the court ordered meeting by the shareholders approving the restructuring, the following documents should be submitted to the Commission:-

1. Two copies of the Scheme of restructuring duly executed by the parties to the transaction;
2. Copies of duly executed shareholders resolution passed at the separate court order meeting approving the scheme;
3. Scrutineer’s report showing the result of the voting;
4. Power of attorneys of Directors who were absent at the separate court order meeting;
5. Any other document which the Commission may require.

#### **444. Post approval requirements**

After the final approval given by the Commission and the court order sanctioning the scheme, the following document requirement shall be complied with by the applicant:-

1. Obtain the court order sanctioning the scheme;
2. File a copy of court order sanctioning the scheme within seven (7) days of the court sanction;
3. File a copy of newspaper publication of court order;
4. File a statement of the actual cost of the scheme;
5. Report on the settlement of shareholders;
6. File a notification of completion or otherwise of the exercise within there (3) month.

#### ***I 4. Take-Over***

##### **445. Take-over bids**

- (1) (a) Where a person or group of persons acquire(s) or wishes to acquire a minimum 30% shares in a public quoted company with the intention of taking over control of that company, a take-over bid shall be made by such person or group of persons or through their agent to the shareholders of the target company;
- (b) The agent referred to in (a) above shall be a registered capital market operator.
- (2) Where a take-over bid is made by a corporate body, a resolution of the directors approving the bid shall accompany the bid. The resolution shall be signed by at least one director and the company secretary;
- (3) A take-over bid shall not be made:-
  - (a) to fewer than 20 shareholders representing 60% of the members of the target company or such other members as may be prescribed by the Commission from time to time, or
  - (b) where the shares to be acquired under the bid are shares in a private company.
- (4) A take-over bid shall for purpose of information, be advertised in at least two (2) national daily newspapers.

##### **446. Contents of a bid**

- (1) A bid being an invitation under a take-over bid shall be incorporated in a document that:-
  - (a)
    - (i) states the full names and addresses of the offeror;
    - (ii) the addresses should be a street address and post office box (if any) where the offeror is a corporate body, the name and current head office address and a statement of the date at which the approval of the directors of the company was given;
  - (b) specifies the maximum number and offer particulars of the shares the company proposed to be acquired during the period specified in the invitation to bid;
  - (c) specify the price and other terms on which those shares are proposed to be acquired;
  - (d) specifies the number and offer particulars of the shares in the offeree company to which:-
    - (i) the offeror; or
    - (ii) any company in the same group of companies as the offerors,  
is or are entitled immediately before the date of the take-over bid;
  - (e) state if applicable the following matters:-



- (i) where a bid under a take-over bid is for all the shares of a class in an offeree company, the offeror, if he so intends, shall state in the bid that he intends to invoke the right under the Act, to acquire the shares of shareholders of the offeree company who do not accept the bid and that the shareholder is entitled to dissent and to demand the fair value of the shares; or
- (ii) state in the bid if the offeror intends to purchase shares in the offeree company in the market during the period of time within which shares may be deposited pursuant to the bid;
- (f) specifies or sets out such other matter as may be prescribed by regulation from time to time.

(2) A bid being also an offer under a take-over shall be incorporated in a document which—

- (a) states or specifies the matter referred to in paragraphs (a) to (d) of (1) above;
- (b) specifies the number and other particulars of the shares in the offeree company proposed to be acquired during the period specified in the offer;
- (c) specify the price and offer terms of the offer in respect of those shares;
- (d) sets out how and by what date the obligations of the offeror are to be satisfied;
- (e) sets out all other particulars of the offer;
- (f) states, if applicable, matters specified in paragraph (e) of (1) above;
- (g) specifies or sets out such other matters as may be prescribed by regulation from time to time.

#### **447. Authority to proceed with take-over bid**

- (1) (a) A take-over bid shall not be made unless an authority to proceed with take-over had been obtained from the Commission.
- (b) An application for authority to proceed with a take-over bid shall be made to the Commission by or on behalf of the person proposing the bid before the proposed bid is made.
- (c) The application shall state the following:-
  - (i) the name and other particulars of the person making the bid;
  - (ii) the particulars of the proposed bid with supporting documents in compliance with the provisions of the Act and these rules and regulations;
  - (iii) any other information or documents that may be required by the Commission from time to time.
- (2) The authority to proceed with a bid granted by the Commission shall be for a period of three months subject to renewal upon application by the person making the bid.

The application for renewal of the authority to proceed with a bid shall be made within fourteen (14) days prior to the expiration of the authority and such renewal shall be for a period of not more than three (3) months.

(3) In addition to the take-over bid the following documents shall be filed with the Commission:-

- a. A letter of application;
- b. Two copies of the information memorandum (where applicable);
- c. A letter of “No objection” from relevant regulatory body (where applicable);
- d. A copy of shareholders and board resolutions of the offeror certified by the company secretary approving the takeover (where applicable);
- e. A copy of the certificate of incorporation certified by the company secretary;
- f. Copies of the memorandum and article of association of the offeror certified by the Corporate Affairs Commission;
- g. Copies of letters from the offeror appointing their financial adviser to the transaction.

(4) The Contents of an information memorandum shall include:

#### Background Information

##### A. Section I

- i) Background to the transaction;
- ii) Parties to the takeover;
- iii) Statement of intention/objective;
- iv) Statement of financial capability of offeror;

##### B. Section II

- i) Brief History of the offeror;
- ii) Share capital, ownership structure and directors of the offeror (where applicable);
- iii) The percentage market share of the offeror in the relevant industry;
- iv) Current shareholding of the offeror in the target company;
- v) Number of shares and percentage holding to be acquired;
- vi) The post-takeover status of the target company;
- vii) Likely effect of the take-over bid, if successful on:-
  - a. The economy of Nigeria;

- b. The staff of the target company.

#### **448. Registration of take-over bid**

- (1) The persons making a take-over bid shall lodge with the Commission, a copy of the proposed bid for registration before it is dispatched.
- (2) The Commission shall register the bid if it is satisfied that it has complied with the provisions of the Act and these rules and regulations.
- (3) Where the Commission is not satisfied, it shall refuse to register the bid and notify the applicant accordingly.
- (4) Within thirty (30) days after the service of the notice in sub (3) above, the applicant may by notice in writing require the Commission to refer the fact of its refusal to register a copy of the proposed bid to the tribunal for a review of the Commission's decision.

(5) Upon the receipt of authority to proceed with a takeover bid, the following documents shall be filed with the Commission:-

- a. Two (2) draft copies of the takeover bid;
- b. Consent letters of directors and other parties to the transaction;
- c. CAC form containing particulars of directors of the offeror;
- d. A copy of draft Financial Services Agreement between the financial adviser and the offeror, and any other agreement(s) entered into in the course of the transaction;
- e. Annual report and accounts of the offeror for the preceding period of five (5) years or the number of years the company has been in existence;
- f. Payment of N50,000 application fee and relevant SEC fee based on the value of shares to be taken over;
- g. A draft newspaper publication of the proposed takeover;
- h. Evidence of source of funds;
- i. Any other documents the Commission may require from time to time.

(6) The offeror shall file with the Commission, within seven (7) working days of the conclusion of the offer, the following:

- a. schedule of target company shareholders who accepted the offer containing the volume and value of the respective shares;
- b. evidence of settlement of consideration.

(7) A post-takeover inspection shall be carried out by the Commission not less than three (3) months after registration of the bid.

#### **449. Rules on Management Buy-Out**

(a) Management buy-out is the acquisition by a management team of a company, of controlling shares of that company or its subsidiaries with or without third-party financing.

(b) An application for the approval of a management buy-out shall be filed by the management team making the acquisition, accompanied by the following:-

- i. resolution of the shareholders of the company approving the management buy-out;
- ii. resolution of the management team to undertake the management buy-out;
- iii. a copy of the certificate of incorporation of the company;
- iv. a copy of the Memorandum and Articles of Association of the company;
- v. two copies of the Prospectus which shall contain the following, among others—
  - (a) profile of the company;
  - (b) profile of the management team buying over the company;
  - (c) objectives of the management buy-out;
  - (d) five (5) years audited financial statement of the company (or if less than five (5) years, the statement of affairs for the number of years in existence);
  - (e) claims and litigation;
- vi. sale agreement between the company and the management team which shall contain the following terms amongst others:
  - (a) terms and conditions of sale;
  - (b) indemnity against contingent liabilities by the seller to:-
    - (1) third-parties;
    - (2) pay tax not provided for in the account;
  - (c) if employees of the target company operate a pension scheme, the agreement should have a clause on the continuation of the scheme;
  - (d) sale and purchase of assets;
  - (e) contracts and creditors;
  - (f) **employees:** the liabilities and obligations under the existing contract of employment will pass to the buyer with accrued contractual and statutory rights unaffected;
  - (g) **debtors:** the agreement should reflect that monies owed the seller by its debtors should be paid to the seller unless assigned to the buyer. The purchase price must reflect the fact that the debts are assigned;

- (h) **name:** the agreement should state whether the buyer or seller would like to carry on the business under the existing name. Where a new name would be used, it should be so stated and copies of relevant documents shall be filed with the Commission;
- (i) Trust Deed (where applicable);
- (j) any other document that may be required by the Commission from time to time.

## **PART J**

### ***Regulation of Collective Investment Schemes***

#### **450. General Rules For Collective Investment Schemes.**

1. A Collective Investment Schemes shall have an Investment Committee comprising not less than three (3) persons knowledgeable in investment and financial matters one of whom shall be a party independent of the fund manager, trustee and custodian.
2. The sponsor of an authorized scheme shall subscribe to a minimum of 5% of the registered units of the Scheme at inception, and such units shall be held throughout the life of the scheme.
3. An authorized scheme shall effect the distribution of not less than 25% of the schemes income annually where such income is realized.

Provided however that this provision shall only apply to schemes with a stated objective of distributing income.

4. Where a meeting of a collective investment scheme is convened, the quorum shall be formed by at least five (5) unit holders holding not less than 25% of the issued units of the scheme.

#### **451. Allowable fees/expenses**

The allowable fees and expenses of a Scheme as provided in Rule 465(1) may include any of the following:-

- a. Management fee;
- b. Trustee fee;
- c. Custodian fee;
- d. Auditors fees;
- e. Registrars fees;
- f. Legal fees;
- g. Brokerage fee/transaction charges;

- h. Taxes/other duties;
- i. Valuation fees;
- j. Advertisement fees;
- k. AGM/EGM Expenses;
- l. Such other reasonable and justifiable expense incurred in the ordinary course of management of a scheme.

#### **452. Advertising**

- 1. Further to rule 94, every advertisement by a scheme shall be approved by the Commission;
- 2. No advertisement shall be made stating that a scheme has been fully subscribed or oversubscribed during the period the scheme is open for subscription, except to the effect that the issue is open or closed;
- 3. An advertisement shall not compare one scheme to another;
- 4. If any scheme indicates the past performance of the scheme in an advertisement, the basis for computing the rates of return/yield, and adjustments made (if any) shall be expressly indicated with a statement that such information is not necessarily indicative of future results and may not necessarily provide a basis for comparison with other investments.

#### **453. Winding up of schemes**

Where a scheme is wound up as provided in section 190 of the Act, the trustee shall:-

- a. give notice disclosing the reason for the winding up in two (2) daily national newspapers;
- b. in conjunction with the fund manager ensure that the assets of the scheme are disposed of in the best interest of the unit holders;
- c. ensure that the proceeds from the sale of assets of the scheme are distributed to unit holders in proportion to their holding after discharging all outstanding liabilities;
- d. ensure that the scheme is fully wound up within twelve (12) months of notifying the Commission;
- e. forward to the Commission on completion of the winding up:
  - i. a report on steps taken for realization of the assets of the scheme, expenses for winding up, and net assets available for distribution to unit holders;
  - ii. a certificate from the auditors of the scheme to the effect that all assets of the scheme are realized, and the details of the distribution of the proceeds;
- f. keep the unclaimed money (if any) in an interest yielding account for the purpose of meeting investors claim;

g. the fund manager shall cease to carry on any business activities in respect of the scheme, on or from the date of publication of the notice provided under these rules, except for the purpose of liquidating the schemes assets;

h. the Commission shall approve the winding up of the scheme, when it is satisfied that these rules have been complied with;

i. upon the approval of the winding up report by the Commission, the scheme shall cease to exist.

#### **454. Custodial services for Collective Investment Schemes**

1. In these rules, unless the context otherwise requires:-

**CIS** means CIS as defined in the ISA.

**Custodian** means Custodian as defined in the ISA.

**Custody of Assets** means the holding or control of assets belonging to, or on behalf of a CIS, by an entity hereinafter referred to as the custodian, acting in the course of rendering services under these rules.

#### **2. Requirements**

Any entity wishing to undertake the functions of a custodian of a collective investment scheme shall in addition to the general registration requirements stipulated in rule 117 of these rules also comply with the under listed requirements. The entity shall:

- a. Be appointed by a schemes' fund manager with the approval of the trustee and the Commission;
- b. Be a registered financial institution(s) with a minimum shareholders' fund of N15billion;
- c. Have the professional and technical capacity to provide custodial services as contemplated under these rules. However, where the custodian appoints a representative to act on its behalf such custodian will still be liable.
- d. Not have been found liable in the mismanagement of any fund.
- e. Have adequately insured collective investment scheme assets in its custody against loss through fire, theft, natural catastrophe and the like, as well as taken out a fidelity guarantee cover;
- f. Possess appropriate information and communication technology systems that could adequately cater for online real-time transactions in addition to keeping proper accounting records;
- g. Have a system of internal controls which ensures that the assets under its custody are safeguarded and segregated and records would adequately reflect the information they purport to present; and
- h. Have satisfied all requirements prescribed by the Act, and the rules and regulations or any such additional requirements as may be prescribed from time to time by the Commission.

#### **455. Functions of the Custodian of Collective Investment Scheme**

A custodian of a collective investment scheme shall:-

1. Provide custody services to the assets of collective investment scheme, hold and deal with such assets strictly in accordance with directives given by a fund manager or directors of an investment company in conformity with the schemes trust deed or Memorandum and Articles of Association of the investment company, the ISA and these rules and regulations.
2. Have its assets separate and distinct from the schemes assets and any other assets under its custody.
3. Provide services which shall include custody, transaction processing/settlement, periodic reporting of status of fund's asset to the fund manager, trustee and the Commission.
4. Make appropriate arrangements for the protection of assets held under custody and ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss.
5. Carry out monitoring ,oversight, administrative and other functions required in accordance with the terms and conditions of the agreement appointing it as custodian, the deed or other instrument establishing or regulating the scheme, the conditions of its registration and such other requirements as may be laid down by the Commission.
6. In the exercise of its functions, duties and responsibilities, the custodian shall act independently of the manager and of the management of the scheme and solely in the interest of the participants in the scheme and of the scheme itself, provided that the custodian shall act upon the instructions of the manager and the manager shall act upon the instructions of the custodian to the extent required by the provisions of the agreement between the two entities, the instrument establishing the scheme or other requirements of the Commission.

#### **456. Obligations of the Custodian of a Collective Investment Scheme**

1. The custodian shall:

- a. Be liable for any loss or prejudice suffered by the manager, the scheme or participants in the scheme due to fraud by the custodian, willful default or negligence including the unjustifiable failure to perform in whole or in part the custodians obligation arising under these regulations, the terms and conditions of the agreement appointing the custodian, the instrument establishing or regulating the scheme, conditions for the authorization and registration of the scheme or such other requirements as may be laid down by the commission.

The custodian shall not be liable for any loss or prejudice suffered by the scheme or participants in the scheme as a result of the acts or omissions of the manager except where and to the extent that the custodian has failed to perform its functions and duties as provided under these rule;

- b. Open and operate separate custody accounts in the joint name of the trustee and the scheme;
- c. Not create a charge on the assets of a scheme or loan out the assets of a scheme;



- d. Be accountable to the schemes manager, trustee and the Commission;
- e. Maintain adequate and proper books of accounts and records that include but are not limited to the following services:-
  - i. Custody register: a custodian shall maintain a collective investment scheme assets register in the name of each scheme/fund to which it acts as custodian;
  - ii. Investment register: an investment register shall be maintained to record all investments effected and settled on behalf of the scheme;
  - iii. Income collection register: a custodian shall maintain a register of income received on a scheme/fund's investment, which shall be categorized under income types (i.e. dividends interest etc.).
- f. Be independent of a scheme's fund manager, and not be affiliated to either of the parties;
- g. Render monthly, quarterly returns/reports on the account of a scheme/fund to the fund manager and trustee, and file quarterly returns on their activities in the prescribed format to the Commission;
  - i. Avail the fund manager of all relevant records of the scheme's affairs annually, to facilitate the annual auditing of the scheme;
  - ii. Avail a scheme's trustee with all/any information required from time to time;
- h. Charge an annual fee to be negotiated with the fund manager provided that such fee shall not exceed 0.25% of the value of the asset under custody in line with rule 469(l)
- i. Except as may be authorized by the Commission, a person shall not act as a member of the board of directors or similar organ or as an officer responsible for the administration and management of the manager and at the same time hold a similar position with the custodian entrusted with the custody of the assets of any scheme managed by the manager.
- j. within five (5) working days of becoming insolvent, file a report to the Commission, the scheme manager and the trustees of any schemes under its administration.

**457. Commission's Power of intervention**

- (1) Where, after an examination, the Commission is satisfied that the custodian is in a grave situation or the custodian informs the Commission that:
  - a. it is likely to become unable to meet its obligations under the Act and these rules and regulations;
  - b. it is about to suspend its obligations to any extent; or
  - c. it is insolvent;
- (2) The Commission may by order in writing exercise any one or more of the following:

- i. Prohibit the custodian from receiving funds or other assets from the public for a period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the period;
- ii. Require the custodian to take any steps or any action or to do or not to do any act or thing whatsoever, in relation to the custodian or its business or its directors or officers which the Commission may consider necessary and which is set out in the order, within such times as may be stipulated therein;
- iii. Remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the custodian;
- iv. Without prejudice to the provisions of any written law or any limitations contained in the memorandum and articles of association of the custodian, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, and for reasons to be recorded in writing-
  - (a) remove from office, with effect from such date as may be set out in the order, any director of the custodian; or
  - (b) appoint any person or persons to manage the affairs of the custodian in the interim, and provide in the order for the person or persons so appointed to be paid by the custodian such remuneration as may be set out in the order;
  - (c) appoint any person to advise the custodian in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the custodian such remuneration as may be set out in the order.

#### **458. Termination of custodial agreement**

Without prejudice to the provisions of these rules and regulations, an agreement for the custody of assets of a scheme may be terminated by the custodian, the manager or the directors of an investment company subject to or by order of the Commission.

1. Upon the termination of a custody agreement, the custodian shall convey for no consideration the assets held for the scheme, as instructed by the manager or the Commission without prejudice to the custodian's right to payment of any lawfully due fees or expenses in terms of the agreement entered into with the manager and to any obligations arising in favour of the manager thereafter.
2. The termination of the appointment of the custodian in accordance with the provisions of these rules and regulations shall not come into effect prior to the appointment of another custodian and the conveyance of the assets held in custody by the outgoing custodian to the new custodian. *[SECRR(A) January 2011]*

### *J 1. Unit Trust*

#### **459. Application for authorization of unit trust scheme**

An application for authorization of a scheme pursuant to the Act shall be filed with the Commission together with the application for registration of the units of the scheme.

#### **460. Requirements as to form of Prospectus**

(1) A prospectus to be used, in an offering for sales of the units of a proposed unit trust scheme shall contain the information specified in rules 461 and 463 provided that the information is set forth in such a manner as not to obscure any required information necessary to keep such from being incomplete or misleading.

(2) The information set forth in the prospectus shall be presented in clear concise English language under appropriate captions or headings reasonably indicative of the subject matter set forth thereunder.

#### **461. Statements as required in Prospectus**

(1) There shall be set forth on the outside front cover of every prospectus the following statement printed in red ink:-

**“THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS HAVE BEEN REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION. THE ACT PROVIDES FOR CIVIL AND CRIMINAL LIABILITIES FOR THE ISSUE OF A PROSPECTUS WHICH CONTAINS FALSE OR MISLEADING INFORMATION. REGISTRATION OF THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS DOES NOT RELIEVE THE PARTIES OF ANY LIABILITY ARISING UNDER THE ACT FOR FALSE OR MISLEADING STATEMENTS CONTAINED OR FOR ANY OMISSION OF A MATERIAL FACT IN ANY PROSPECTUS.”**

(2) Every prospectus shall set forth on the page describing the “offer” the following statement:-

“(a) a copy of this prospectus together with the documents specified herein, having been approved by the trustees, has been delivered to the Securities and Exchange Commission (“the Commission”) for registration;

(b) this prospectus is issued in compliance with the Act, and the rules and regulations of the Commission for the purpose of giving information to the public with regard to the offer for subscription of units in the scheme;

(c) the directors of the fund manager collectively and individually accept full responsibility for the accuracy of the information given and confirm, having made reasonable enquiries, that to the best of their knowledge and belief there are no material facts, the omission of which would make any statement contained therein misleading.

#### **462. Date of Prospectus**

Every prospectus shall be dated on the front cover and the effective date of registration of the units which it offers shall not be earlier than the date of execution of the approved registration documents by all parties at a completion board meeting.

#### **463. Contents of Prospectus**

Every prospectus shall contain the information required by the Act and shall in addition state the following information:-

a. the front cover shall state the name of the issuer/promoter, the fund manager, the registration number of the fund manager, the type of units offered, amount of units being offered, the price and amount payable in full on application;

b. the following statements shall appear in bold character on the cover page:

**“You are advised to read and understand the contents of the Prospectus. Before subscribing, please consult your stockbroker, solicitor, banker or an independent investment adviser registered by the Securities and Exchange Commission”;**

**“This Prospectus has been seen and approved by the directors of the fund manager and/or promoters of the unit trust and they jointly and individually accept full responsibility for the accuracy of all information given and confirm that, after having made all enquiries which are reasonable in the circumstances, and to the best of their knowledge and belief, there are no other facts, the omission of which would make any statement herein misleading”;**

c. a reasonably detailed table of contents in the forepart of the prospectus showing the subject matter of the various sections or subsections of the prospectus and page number on which each such section or subsection begins;

d. corporate directory of the fund manager which shall include details on:-

i. directors and principal officers of the manager;

ii. names and profile of the investment committee members specifying the independent members;

iii. e-mail and website address (if any) of the fund manager;

iv. three (3) to five (5) years financial summary. Where the fund manager is a new company, it shall furnish a statement of affairs;

e. The offer stating the requirements of rule 466, the dates of opening and closing of the offer, and the names of the trustee and custodian to the scheme;

f. names and addresses of the directors of the fund manager and the names of the other experts to the offer;

g. history and prospects of the scheme;

- h. objective of the Fund including strategy for achieving the stated objective and a statement that material changes to the investment objective would require unit holders' approval;
- i. offer price;
- j. management and advisory services;
- k. yield of the fund;
- l. preliminary charges;
- m. investment policy of the fund, including investment outlets;
- n. dividends, distribution and re-investment options;
- o. redemption policies;
- p. a forecast of income of the fund for the next three (3) years;
- q. statement as to consents of experts to the offer;
- r. statement as to consent of the directors of the fund manager;
- s. duration of the scheme and conditions relating to its termination, and modification of its trust deed;
- t. the period not exceeding ninety (90) days of launching the scheme during which subscription at the offer price would be valid;
- u. application forms;
- v. for ease of understanding, the prospectus may include the use of charts, diagrams/flowcharts in the presentation of information;
- w. the following statement shall be written boldly in the summary page—

**“Investors are advised to seek information on the fees and charges before investing in the funds”;**

- x. a breakdown of the fees stating clearly that the management fee would be based on the net asset value of the Fund. It shall also state that the initial expense shall be borne by unit holders and off set from the offer proceeds;
- y. detailed information about the trustee and custodian ;
- z. detailed information of the fund with respect to the following—
  - i. Where the fund invests in foreign securities or foreign currency denominated securities of Nigerian issuers:-
    - a) asset allocation of the fund (by asset category) and the principal market where investment will take place;

- b) the fund's policies and strategies relating to investment in the securities if not already covered in (i) above;
  - c) the experience or track record of the fund manager or any delegate thereof, and
  - d) other relevant information (e.g. cost to be borne by the Fund);
- ii. three (3) to five (5) years financial summary. Where the fund has just been created and is yet to solicit for investment, a statement of affairs of the fund including financial projection.

**464. Requirements as to form, number, etc., of Trust Deed**

- (1) Every trust deed filed pursuant to the provisions of the Act shall be printed and properly bound;
- (2) Two (2) copies of such trust deed shall be filed with the Commission together with a completed application for authorization of the scheme.
- (3) The trust deed shall state on the outside front cover in bold face capital letters the following information:-

- a. the date of the trust deed;
- b. the name of the fund manager
- c. the name of the trustee
- d. the name of the scheme constituted by the trust deed;
- e. that the trustee will be liable for breach of its duties where it fails to carry out its responsibilities under the trust deed or report breach of the terms of the trust deed to the Commission.

**465. Contents of Trust Deed**

Every trust deed in which are expressed the trust of a unit trust scheme shall contain among other things the following information:-

- (a) definition of terms used in the trust deed;
- (b) constitution of the trust;
- (c) issue/sale of units;
- (d) redemption of units by the fund manager at prices calculated in the manner prescribed under these rules and regulations, and for settlement in respect thereof to be effected not later than five (5) working days following the transaction;
- (e) investment policy, including investment outlets;
- (f) registration of holders of unit;

- (g) mode of execution and issuance of unit certificate;
- (h) a provision stating that the underlying assets of the scheme shall vest in the trustee or, subject to any prescribed conditions, in a nominee approved by the Commission;
- (i) prohibition or restriction of issue by and on behalf of the manager of any advertisements, circular or any statement with respect to the sale price of units, the payments of other benefits received or likely to be received by unit holders, or invitation to buy units without disclosing also the yield from the units; and unless such circulars, advertisements, etc., are cleared by the trustee and approved by the Commission;
- (j) a statement as to the annual management fee to be charged, which shall be a percentage of the net asset value which may be accruable daily and payable monthly, quarterly or annually;
- (k) in addition to (j) above, the fund manager of the Scheme shall be entitled to an incentive fee not exceeding 30% of total returns in excess of 10% of the Scheme's net asset value per annum;
- (l) a statement that the annual management fee and other expenses shall not exceed 5% of the net asset value of the Fund;
- (m) appointment of auditor;
- (n) annual auditing of the accounts of the scheme;
- (o) prohibition of the management company, trustee, custodian and their affiliates from dealing as principals in the sale of underlying assets to the trust scheme;
- (p) prohibition of deals in, or retention of any underlying securities of any company, if those individual officers of the management company or any of their affiliates own each beneficiary more than 1/2 of 1 percent of the securities of such company and together more than five (5) percent of the securities of that particular company;
- (q) duties and responsibilities of the fund managers and trustees;
- (r) remunerations of trustees;
- (s) removal and retirement of fund managers and trustees;
- (t) duration and termination of the trust;
- (u) notices and meetings of unit holders;
- (v) affirmation of the separate incorporation of the trustees and the management company under the CAMA;
- (w) provision that ensures that effective control over the affairs of the scheme is vested in and will be exercised independently by the trustee of the scheme on behalf of unit holders;

- (x) an undertaking by the trustee to notify the Commission about any proposed change in management of the fund during the currency of the scheme;
- (y) provision restricting the fund manager's absolute powers to invest the scheme's fund by requiring trustee's consent before investments are finalized;
- (z) provision prohibiting the fund manager from investing in its in-house, trustee's, custodian's or their associates' instruments;
- (aa) provision that promoters of unit trust schemes shall subscribe to a minimum of 5% of the registered units of the Scheme at inception, and such units shall be held throughout the life of the scheme;
- (bb) time frame for trustee to act whenever it becomes necessary to enforce the terms and that the trustee shall inform the Commission of any breach of the terms and conditions of the trust deed not later than ten (10) working days after the breach;
- (cc) a statement that where the trustee intends to withdraw or where the manager is seeking the removal of the trustee, the parties (i.e. the trustee and the manager) shall first notify the Commission and give reasons for the withdrawal or removal as well as the suitability of the new trustee to be appointed in his place;
- (dd) a statement that the scheme shall have an investment committee comprising of not less than three persons who are knowledgeable in investment and financial matters, one of whom shall be independent;
- (ee) a statement of the scheme's risk management processes.

#### **466. Filing executed and registered Trust Deed**

(1) After approval of the trust deed by the Commission, an applicant shall forward a duly executed and stamped copy of such trust deed to the Commission before commencing operation or dealing in units of the scheme constituted by such trust deed.

(2) The trust deed shall be executed by the manager and trustee to the scheme and stamped at the stamp duty's office of the internal revenue department.

(3) The names of the director and secretary signing on behalf of the fund manager/trustee shall be clearly indicated in the execution clause of the trust deed. Where the deed is executed by persons other than the director and secretary, the name and designation of such persons/officers signing the execution clause of the trust deed shall be stated against their signatures.

#### **467. Calculation of price of units**

The calculation of prices at which units of any unit trust scheme may be bought or sold shall be done in accordance with the formula in Schedule VI of these rules and regulations.



## ***J2. Money Market Fund***

### **468. Definition**

Money Market Fund: is a collective investment scheme authorized by the Commission having as its primary objective, the provision to investors/participants in the Scheme of steady streams of income derived from investments in high quality money market instruments with financial institutions rated by a registered rating agency as specified from time to time by the Commission.

### **469. Use of Name/Title**

1. The name and title '**Money Market Fund**' shall apply exclusively to schemes that qualify as such on the basis of the definition provided in rule 468 above and not to schemes with diversified portfolio notwithstanding the proportion of such portfolio invested in money market instruments;
2. No scheme or proposed schemes shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc) as a money market fund where such does not meet the definition specified in rule 468 above and other criteria specified in these rules. Accordingly any existing scheme with the name money market that does not meet the qualifying criteria set in these rules must drop the use of the name money market or upgrade to meet the criteria.

### **470. Approved/Permissible Instruments**

The deposited property of registered and approved money market funds shall only be invested in the following:-

- a. High quality money market instrument, unsubordinated short term debt securities, such as banker's acceptances, certificates of deposits, commercial papers, collateralised repurchase agreements etc;
- b. Deposits (fixed/tenured) with eligible financial institutions;
- c. Other instruments introduced and approved by the Central Bank of Nigeria (CBN) from time to time;

Provided that the instruments/ Issuer shall have a credit rating not below the investment grade approved by the Commission.

### **471. Term to Maturity of Investment Asset**

The approved investments in which a recognized money market fund will invest in shall:-

- a. Have a maximum term to maturity at the time of issuance of not more than 366 days;
- b. Undergo regular yield adjustments within a period not exceeding 366 days;
- c. The remaining term to maturity for short term unsubordinated debt securities in the fund's portfolio shall be taken to be the period of days remaining till the date of maturity.

**472. Portfolio Maturity**

The weighted average maturity of the fund's portfolio shall not exceed ninety (90) days.

**473. Asset Allocation**

The asset of the fund shall be invested 100% in permissible instruments with a term to maturity at the date of acquisition by the fund manager of not more than 366 days.

**474. Investment Restriction**

The investment restriction/limit imposed by any law for the time being for the regulation of trust funds shall apply with necessary modifications relating to the nature of the money market fund.

**475. Government Securities**

A fund shall invest a minimum of 25% of the fund's assets in short term debt securities issued or guaranteed by the Nigerian Government

**476. Authorized Collective Investment Schemes**

A fund may invest in another authorized money market fund provided that the fund is of a higher investment grade and the proportion of the investment shall not exceed 5% of its net asset value for a single fund and 20% for a group of money market funds.

**477. Valuation (Amortized Cost Method/Accumulated Net Asset Value)**

The fund manager and trustee of a scheme shall work to ensure a stable net asset value per unit or accumulated net asset value (ANAV) of the scheme of N1.00 determined on the basis of the amortized cost method.

**478. Stable Net Asset Value Per Unit**

A fund shall market and maintain the unit of the fund at a stable net asset value of N1.00 per unit.

**479. Valuation Review**

The fund manager of a scheme shall ensure periodic review of differences between amortized cost value of the fund and the market value as a result of changes in yield/prices and make a report of material deviation where amortized cost value falls below the market value.

(a) Whenever material discrepancies between the amortized cost value of the fund's portfolio and the market value is in excess of between 10 basis point (0.1%) and 30 basis point (0.3%), this should be brought to the attention of the board of the fund management company and fund's trustees in writing within five days of such discrepancy coming to light;

(b) where discrepancies in excess of between 30 basis points (0.3%) and 50 basis points (0.5%) occur between the amortized cost value of the fund's portfolio and the market value, the fund management company should with the trustees jointly notify the Commission,

within five (5) days of the trustees becoming so informed, in a report specifying the action to be taken to reduce the deviation.

**480. Dividend Distribution**

1. Dividend reflecting average accrual income to the fund and net of operating expenses shall be distributed every quarter of each financial year to eligible unit holders;
2. Dividend payment shall be computed on the basis of the amortized cost;
3. Information shall be disclosed to unit holders at the point of subscription of the option to elect for reinvestment or payment of dividend.

**481. Fund Rating**

Each fund shall be rated by a rating agency registered with the Commission and subject to annual review throughout the life of the fund

**482. Risk Assessment**

Each fund shall have a laid down risk assessment policy in place which shall be disclosed to unit holders in the prospectus or purchase document and at the fund's annual general meeting.

**483. Prohibitions**

***Limits of Investment***

1. Where the limits on investments in rules 474,475 and 476 above are affected as a result of diminution or appreciation in value of the related/affected part of the fund's portfolio, the fund manager shall not enter into any further transaction that will cause a further diminution or appreciation in the limit already breached;
2. Necessary action shall be taken to rectify the breach within three (3) months of occurrence.

*[SECRR(A) March 2010]*

**J3. Islamic Fund**

**484. Definition**

In these rules, except otherwise stated, the following terms are defined as follows:-

**Fund Manager** is as defined in the Act.

**Islamic Fund Management** means fund management that complies with shariah requirements.

**Shariah Advisory Council/Shariah Supervisory Board (SSB)** means a recognized body/group that advises/interprets shariah compliant/related issues. The shariah advisory council shall be set up by the regulators to serve the financial market.

**Shariah Adviser** means a person or a corporation that advise the fund manager on shariah related issues.

**485. Qualification for a Shariah Adviser:**

1. An individual acting as shariah adviser shall meet the following criteria;
  - a) The person shall not have been convicted for any offence arising from criminal proceedings.
  - b) The person has never been declared bankrupt
  - c) The person is of good repute and character
  - d) The person possesses the necessary qualifications and expertise, particularly on islamic fiqh/jurisprudence and has experienced exposure in islamic finance and capital market.
2. Fund managers engaged in islamic fund management may also appoint a non-resident shari'ah adviser who may be:
  - a) an individual,
  - b) a corporation or
  - c) an Islamic Bank.

**486. Information to be disclosed by fund.**

- (1) The Fund manager shall disclose to the Commission the following information:
  - a. *Information request on Shari'ah Adviser (Non-Resident) for an individual;*
    - i. Full name/address;
    - ii. Jurisdiction of residence;
    - iii. Contact information;
    - iv. Shari'ah/qualification and experience;
    - v. Letter of appointment/registration as shari'ah adviser from any other jurisdiction;
    - vi. Any other information as the Commission may require.
  - b. *For a Corporation:*
    - i. Name/registered address;
    - ii. Jurisdiction of incorporation/company number;
    - iii. Shari'ah qualification/experience of relevant personnel;
    - iv. Letter of appointment/registration as shari'ah adviser from other jurisdictions;
    - v. Contact person/contact details.

**(2) Role of Shari'ah Adviser**

The role of shariah adviser shall include, but shall not be limited to the following:-

- i. To advise on all aspects of islamic fund management in accordance with shari'ah principles;
- ii. To provide shari'ah expertise/guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant SEC rules including resolutions issued by shari'ah supervisory board;
- iii. To review reports of compliance of fund manager or any investment transaction reports to ensure that investment activities are shari'ah compliant;
- iv. To provide a periodic report to the trustees certifying whether the islamic fund has been managed/administered in accordance with the shari'ah principles and the rules.

In carrying out the above roles, the shari'ah adviser shall act with due care, skill and diligence.

#### **487. Content of a trust deed**

In addition to the trust deed requirements of unit trust schemes, the trust deed of any fund manager offering islamic fund management shall state that the islamic fund management aims to operate in accordance with shari'ah principles.

#### **488. Fund manager**

The fund manager managing shariah complaint fund shall:

- 1. At all times, have adequate employees with necessary qualifications, expertise and experience to achieve the objectives of the fund.
- 2. Provide adequate and sufficient training, whether internal or otherwise, for all its employees and licensed representatives so that they acquire the necessary knowledge for its business; and
- 3. Ensure its shari'ah adviser is well versed on islamic fund management and has adequate shari'ah knowledge on islamic finance and capital markets.

#### **489. Composition of Investment Committee**

In addition to the provision of the rules and regulation, the investment committee shall also include the shariah adviser who is knowledgeable on islamic finance and fiqh.

#### **490. Portfolio management**

##### **(1) *Shari'ah- compliant investments***

- a. The fund manager offering shari'ah compliant portfolio management must ensure that its investment activities are limited to shari'ah-compliant investments;
- b. The fund shall invest, at its discretion, in securities listed on a recognized securities or commodities exchange in Nigeria. However, part of the fund's assets may be invested in unquoted securities in line with the rules of the Commission.

- c. For investment in securities traded on a recognized stock or commodities exchange, the fund manager shall only invest in securities according to the methodology endorsed by internationally established standards board especially those issued by recognized shari'ah bodies such as the Accounting Auditing Organizations of Islamic Financial Institutions (AAOIFI) and Organization of Islamic Countries (OIC) Fiqh Academy.

## **(2) *Maintenance of accounts***

The fund manager shall ensure that the fund's asset and properties are properly safeguarded under the securities law in accordance with shari'ah requirements; and other relevant rules of the Commission. They shall not be mingled with accounts of other funds managed by the same fund manager.

## **(3) *Risk management***

The fund manager shall undertake appropriate risk management techniques (inclusive of temporary defense measures in line with current market conditions) and tools for its islamic fund management.

### **491. Written disclosure and declaration**

1. The fund manager shall prepare annually a written disclosure and declaration to the board of directors of the fund manager, and the trustees that the management of the fund is carried out in accordance with shari'ah principles;
2. A fund manager shall forward annually a certificate of compliance issued by the shari'ah advisory council to the board of directors of the fund manager and the trustees that the management of the islamic fund is carried out in accordance with shari'ah principles;
3. The fund manager shall ensure that the disclosure, declaration and other interpretations made by the shari'ah adviser are maintained and that the records shall be made available for examination upon the Commission's request.

### **492. Internal audit**

The fund manager shall put in place appropriate systems and mechanisms within its internal audit requirements to monitor shari'ah compliance according to the instructions of the sharia'ah supervisory board (SSB), these rules and regulation and other relevant SEC regulations and/or standards, including resolutions issued by the shari'ah adviser.

### **493. Acceptable principles /concepts**

The following, without limitation, are some of the acceptable principles and concepts which may be applied in an Islamic fund:

#### **1. Musharakah**

A partnership between two parties or more to finance a business venture where parties contribute capital either in cash or kind, and share the management. Any profit derived from the venture shall be distributed based on a pre-agreed profit-sharing ratio but a loss shall be shared on the basis of equity participation.

## **2. Mudharabah**

A contract made between two parties to finance a business venture. The parties are a rabbalmal or an investor who solely provides the capital, and a mudharib or an entrepreneur who solely manages the project. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. If there is a business loss, it should be borne solely by the capital provider.

## **3. Murabahah**

A contract which refers to the sale and purchase transaction for the financing of an asset whereby the cost and profit margin (mark-up) are made known and agreed to by all parties involved. The settlement for the purchase can be settled either on a deferred lump-sum basis or on an instalmental basis, and is specified in the agreement.

## **4. Ijarah**

An Islamic lease contract implying the sale of an asset /usufruct or service against a definite sum.

## **5. Wakalah**

A contract which gives the power to a person to act on his behalf, as long as he is alive, based on agreed terms and conditions.

## **6. Istisna**

A purchase order contract of assets whereby a buyer shall place an order to purchase an asset to be delivered in the future. In other words, a buyer shall require a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. Both parties to the contract shall decide on the sale and purchase prices and the settlement can be delayed or arranged based on the schedule of work completed. This merely applies in construction and manufacturing business only and parties can set the schedule of price payment and delivery at their negotiated terms.

## **7. Hawalah**

A contract which allows a debtor/creditor to transfer the debt obligation to a third party.

## **8. Musawamah**

Musawamah is the negotiation of a selling price between two parties without reference by the seller to either costs or asking profit. The seller is under no obligation to reveal the cost as part of the negotiation process.

*[SECRR(A)January 2011]*

#### ***J4. Investment by Collective Investment Schemes in Unlisted Securities***

##### **494. Eligibility Criteria**

1. Unlisted securities shall be eligible instruments in which the funds and assets of a Collective Investment Scheme may be invested.

2. ***Fund manager:***

A fund manager seeking approval to invest assets of a fund in unlisted securities shall have:

- (a) a minimum paid-up capital of N500,000,000 unimpaired by losses or such amount as may be prescribed by the Commission from time to time;
- (b) Partners, principals and sponsored individuals who have been in the business of private equity investment management for a minimum period of five (5) years.

3. ***Unquoted company:***

A fund manager shall only invest in unlisted securities of a Company that has:

- a. demonstrated compliance with the code of corporate governance;
- b. consistently produced audited accounts for the preceding five (5) years;
- c. a consistent history of profitability for at least the preceding five (5) years.
- d. The company shall not be leveraged above a reasonable amount as may be prescribed by the Commission from time to time.

##### **495. Investment Restriction**

The funds and assets of a collective investment scheme (CIS) shall not be invested in unlisted securities where the investment:

- a. is in early/start up stage of the target company, or will qualify as seed capital;
- b. shall cause the value of the assets of the fund so invested to exceed 20% of the net asset value of the fund;
- c. shall cause the value of the fund so invested in the securities of a single unlisted company to exceed 5% of the net asset value of the fund;
- d. is in a company where the board, management, or affiliate of the fund manager jointly or severally have more than 10% stake.

##### **496. Rating**

1. A collective investment scheme (CIS) shall only invest in the unlisted securities of a company that has been rated to be of investment grade by a reputable/SEC registered rating agency;
2. A collective investment scheme (CIS) which invests in unlisted securities shall undergo and submit a report of an annual rating by a SEC registered rating agency.



#### **497. Additional Disclosure**

A fund manager seeking to invest assets of a fund in unlisted securities shall disclose:

- a. the nature and extent of its professional indemnity insurance coverage, in the funds' offer documents;
- b. the interest of its board, management or affiliate (if any), in the target unquoted company;
- c. all risk associated with investments in unquoted securities, and proposed strategies to mitigate those risks;
- d. the fund's proposed maximum exposure to unlisted securities;
- e. To investors through the fund prospectus, the fact that the fund shall also invest in unlisted securities.

#### **498. Investor Protection**

1. The constituent documents of a fund which intends to invest in unlisted securities must provide for a liability clause stating that the fund manager takes full responsibility for any investment in unlisted security;
2. A copy of an agreement between the fund manager and the target company on the investment exit strategy shall be submitted to the Commission prior to making the investment.

#### **499. Valuation**

1. A collective investment scheme (CIS) fund manager who invests in unlisted securities shall perform a quarterly valuation of the portfolio of unlisted equities.
2. The methods or bases of valuation shall be adequately disclosed in the schemes prospectus.
3. Fair value shall be determined on methods or bases which have been verified by the schemes auditor and approved by the Trustees.
4. In estimating fair value of an investment the fund manager shall apply a methodology that is appropriate in the light of the nature, facts and circumstances of the investment and its materiality in the context of the total investment portfolio, and shall use reasonable inputs, assumptions and estimates.
5. Fair value shall reflect reasonable estimates and assumptions of all significant factors that parties to an arm's length transaction would be expected to consider including those which impact upon the expected cash flows from the investment.
6. The degree of risk associated with those cash flows.

#### **500. Reports/Returns**

A collective investment scheme (CIS) which invest in unlisted securities shall attach a detailed report on the investment in the monthly, quarterly, and annual reports/returns in the format prescribed by the Commission.

*[SECRR(A)January, 2011]*

## **J5. Fund of Funds and Feeder Funds**

### **501. Definition Of Terms**

**“Feeder Fund”** means a fund which invests solely through another fund known as the master fund. Units are sold to investors through the feeder fund, but are invested through the master fund i.e. it invests all its assets in another collective investment scheme called the master Fund.

**“Fund Of Funds”** means a collective investment scheme which invests in other mutual funds. Just as a mutual fund invests in a number of different securities, a fund of funds holds units of many different mutual funds.

**“Master Fund”** means a collective investment scheme (CIS) in which a feeder fund invests.

**“Recognized Jurisdiction/ Fund”** means a foreign jurisdiction that is a member of IOSCO and a fund registered/authorized in such a jurisdiction.

**“Sub-Fund Of Funds”** means a group of funds under a master fund and/or an umbrella fund.

**“Umbrella Fund”** means a mutual fund that invest primarily in other funds also called fund of funds.

### **502. Registration Requirements Of Fund Of Funds**

Requirement for the authorization of a Unit Trust scheme shall apply.

#### **1. *Investment by Fund of Funds:***

A fund of funds shall invest only in CIS that are registered and authorized by the Commission.

#### **2. *Investment Restrictions***

A fund of funds shall not invest in:

- a) Another fund of funds;
- b) A feeder fund;
- c) Any sub-fund of a master fund which is a fund of funds or a feeder fund.

#### **3. *Spread:***

A fund of funds shall invest in at least three (3) CIS at all times.

Not more than 30% of the fund of funds net asset value (NAV) shall be invested in units of any one CIS.

#### **4. *Fee/Charges***

- a. The management fee charged to Fund of funds shall be commensurate to the degree of investment strategies employed by the fund manager to achieve the stated objective and shall not be more than 3% of the NAV per annum.
- b. Where the fund of funds invest in funds managed by the same fund manager, then;
  - i) All initial charges on the target fund must be waived;
  - ii) Management fee shall only be charged once, either at the Fund of Funds or the target funds' level.

#### **503. Registration Requirements Of Feeder Funds**

Requirement for the authorization of a Unit Trust scheme shall apply.

##### **1. *Investment by Feeder Funds***

The permitted investment of a feeder fund is units in another CIS which ensure tax efficiency/advantage. A feeder fund shall only invest in a collective investment scheme that is:

- a) registered, authorized or recognized by the Commission.
- b) managed by a registered fund manager/management company.

##### **2. *Investment Restriction:***

A feeder fund shall not invest in:-

- a) A fund of funds;
- b) Another feeder fund;
- c) Any sub-fund of the master fund which is a fund of funds or a feeder fund.

##### **3. *Fee/Charges***

The total fees/charges (on the master and feeder funds levels) to the feeder-fund shall be commensurate with the degree of investment strategies employed by the fund manager to achieve the stated objective and shall not exceed 3% of the fund's NAV per annum.

#### **504. General Requirements Of Feeder Funds**

1. The underlying scheme of a feeder fund must be authorized by the Commission or authorized in another jurisdiction by the relevant authority which in the opinion of the Commission provides an equivalent level of investor protection provided under the ISA, and the rules and regulations governing collective investment schemes;
2. A feeder fund manager shall appoint a custodian/trustee for the fund;

3. An application for the registration and authorization of a feeder fund shall, in addition to the requisite documents for registration of a unit trust scheme, be accompanied by an agreement between the fund manager and trustee of the master fund and the proposed fund manager and custodian/trustee of the feeder fund.
4. The contents of the agreements referred to above shall include but not be limited to the following:
  - (a) the class of assets or units of the master fund available for investment by the feeder fund;
  - (b) the charges or expenses to be borne by the feeder fund and details of any rebate or retrocession of charges or expenses by the master fund;
  - (c) basis of conversion where the units of the feeder fund and master fund are denominated in different currencies, the basis for conversion shall be stated;
  - (d) settlement cycle and payment for purchase or subscriptions, and repurchase or subscriptions and repurchase or redemptions of the master Fund;
  - (e) details of breaches by the master fund management company of the applicable law, the trust deed, instrument of incorporation, or the agreement with the feeder fund manager;
  - (f) where applicable, any arrangement necessary to take account of information whether both of the funds are listed or to be listed and traded on a secondary market;
  - (g) The manner and timing of a notice by either funds that it intends to replace its management company, its depositary, its auditor, or other relevant party mandated to carry out investment management or risk management functions;
  - (h) the manner and timing of notice by either funds that it has ceased or will cease to meet the qualifying conditions to be a feeder fund or master fund respectively;
  - (i) the master fund and feeder fund must establish measures to coordinate the frequency and timing of NAV calculations and publications in order to minimize arbitrage by spectators;
  - (j) the manner and timing of a notice by the master fund of a planned or proposed liquidation, merger, or division;
  - (k) the provision of all necessary information by the master fund to the feeder fund in due course to allow the feeder fund meet its obligations;
  - (l) the rights and duties of the parties.
5. At least 85% of assets of the feeder fund must be invested in the approved master fund.

#### **505. Contents of Prospectus of a Feeder Fund**

The prospectus of a feeder fund shall contain (in addition to the general requirements of a unit trust prospectus) the following provisions.

1. Description of the master/feeder investment;
2. Disclosure on the type of underlying CIS the scheme proposes to invest;
3. Statements that the fees and charges are as prescribed for unit trust under the Commission's rules and regulation;
4. Statement indicating whether these fees will be borne at one level or divided between the master and feeder fund;
5. The periodic reports issued by the feeder fund shall provide full information in relation to the investment in the underlying master fund.

#### **506. Management of the Feeder Fund**

The feeder fund shall be administered by a fund manager registered by the Commission with the requisite expertise of managing at least a reasonable number of CIS as may be determined by the Commission.

#### **507. Target Investor of the Feeder Funds**

The fund shall be open for participation by only High-Net worth individuals or institutional investors who understand the risk of investing in such funds and shall be clearly stated in the funds offering documents.

*[SECRR(A)September 2011]*

### ***J 6. Real Estate Investment Schemes***

#### **508. Definitions Of Real Estate & Real Estate Related Assets**

**Real Estate:** in these rules real estate means income generating property consisting of land, buildings. It also includes special purpose vehicle (SPV) holding such income generating lands and buildings.

**Real Estate Related Assets:** includes but is not limited to shares of real estate companies and higher rated real estate investment schemes.

For the purpose of these rules, a real estate investment scheme shall qualify as an asset-backed security or a mortgage-backed security (in the case of a mortgage and hybrid real estate investment scheme).

#### **509. Title To Real Estate Investment Scheme Property**

(1) A real estate investment scheme shall wholly acquire and hold legal title to property or chose to hold equitable and beneficial title to such property vide a deed of trust or such other structure as may be acceptable to the Commission.

(2) where a real estate investment scheme property is held vide a deed of trust or such other structure acceptable to the Commission the following safeguards shall be maintained:

- a. Register a caution indicating the interest of the scheme in the relevant land registry that the property is located;
- b. Affix plaques and other notices on the relevant property indicating the interest of the scheme;
- c. Deposit the original title documents and other relevant pre-signed documents with the scheme's custodian;
- d. Provide such indemnity to the scheme as may be necessary in the circumstance.

( SECRR(A)February, 2013)

#### **510. Constitution of Real Estate Investment Schemes**

Real Estate Investment Scheme (REIS) may be constituted as a:-

- a. company; or
- b. trust.

##### **(A) COMPANY**

#### **511. Requirements for authorization as a company**

A company authorized to carry on business of real estate investment shall meet the following requirements before its securities can be registered by the Commission;

- a. 2 copies of certificate of incorporation certified by the C.A.C.;
- b. 2 copies of the Memorandum and Articles of Association certified by C.A.C. and the objects clause of the memorandum shall state, among other businesses, that it is registered to invest in real estate and real estate related businesses;
- c. 2 copies of the particulars of directors certified by C.A.C.;
- d. 2 copies each of the draft prospectus and abridged prospectus;
- e. evidence of increase in share capital (where applicable)
- f. evidence of appointment of a property manager registered with the Commission.
- g. A valuation report of the real estate property shall be filed with the Commission by a real estate valuer registered with the Commission in the subsequent quarter once an acquisition has occurred.

#### **512. Requirements as to form of Prospectus**

(1) The information required in a prospectus to be used or used in offering for sale or sale of units of a proposed real estate investment scheme shall follow the order provided in rule 515 and thereafter need not follow any particular order provided that the information is set forth in such a manner as not to obscure any required information from being incomplete or misleading.

(2) The information set forth in the prospectus shall be presented in a clear and concise manner under appropriate captions or headings reasonably indicative of the subject matter set forth thereunder.

### **513. Statements as required in Prospectus**

(1) There shall be set forth on the outside front cover of every prospectus the following statements printed in red ink;

**THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS HAVE BEEN REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION. THE INVESTMENTS AND SECURITIES ACT PROVIDES FOR CIVIL AND CRIMINAL LIABILITIES FOR THE ISSUE OF A PROSPECTUS WHICH CONTAINS MISLEADING INFORMATION. REGISTRATION OF THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS DOES NOT RELIEVE THE PARTIES OF ANY LIABILITY ARISING UNDER THE ACT FOR FALSE OR MISLEADING STATEMENTS CONTAINED OR FOR ANY OMISSION OF A MATERIAL FACT IN THE PROSPECTUS.**

(2) Every prospectus shall set forth on the page describing the “offer” the following statements—

- (a) A copy of this prospectus has been delivered to the Securities and Exchange Commission (the Commission) for registration;
- (b) This prospectus is issued in compliance with the Act and the rules and regulations made thereunder for the purpose of giving information to the public with regard to the offer for subscription of units of the scheme;
- (c) The directors of the issuer collectively and individually accept full responsibility for the accuracy of the information given and confirm, having made reasonable enquiries, that to the best of their knowledge and belief there are no material facts the omission of which would make any statement contained herein misleading;
- (d) The Commission has approved the issue, offer or invitation in respect of the public offering and the approval shall not be taken to indicate that the Commission recommends the public offering. The Commission shall not be liable for any non-disclosure on the part of the company and takes no responsibility for the contents of this document, makes no representation as to its accuracy or completeness, and expressly disclaims any liability whatsoever arising from reliance upon the whole or any part of the contents of the prospectus.

The valuation approved or accepted by the Commission shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be construed as an endorsement by the Commission on the value of the subject assets for any other purpose.

### **514. Date of Prospectus**

Every prospectus shall be dated on the front cover and the date shall not be earlier than the date of the completion board meeting or date of execution of the document.

## **515. Contents of a Prospectus**

Every prospectus shall contain the information required by the Act and shall, in addition, state the following information:-

1. the front cover shall state the name of the issuer/promoter, registration number, amount of units being offered, the price and amount payable in full on application; provided that the initial public offer shall not be less than N1 billion and subsequent offers not less than N500 million;
2. a reasonably detailed table of contents in the forepart of the prospectus showing the subject matter of the various sections or subsections of the prospectus and page number on which each such section or subsection begins;
3. the offer, stating the requirements of rule 514, the times of opening and closing the offer;
4. names and addresses of the directors;
5. corporate directory of issuer, valuer(s), issuing house, registrar, solicitor to the issue, reporting accountant and property manager, insurance company, rating agency, auditors and underwriter (where applicable);
6. history and prospects of the scheme;
7. objective of the scheme;
8. dividends, distribution or reinvestment options;
9. statement as to consents of professionals to the offer;
10. A cautionary statements stated in bold characters that the rental yield on real estate portfolio held by the company is not equivalent to the yield of the securities as well as that the value of the real estate may fluctuate;
11. full details of and description of the real estate held by the company and/or type of real estate to be acquired. The description of an existing property shall spell out the type (residential/commercial/ industrial) location, age, existing use and, net lettable area
12. brief particulars of the tenancies indicating major tenants, tenancy period, occupancy rates, average current rentals, outgoings, net income and assessment of future income and major capital expenditure likely to be incurred in the immediate future;
13. brief description of the property manager including its experience in real estate/property management, total property under management, number of years in property management and staff strength;
14. the inclusion of a photograph of any property in the prospectus will be permitted on the condition that the photograph is not more than six (6) months old as at the date of the prospectus and the depicted real estate is wholly-owned and confirmed by the Commission to be wholly acquired;



15. the inclusion of three(3) dimensional pictures will be permitted for proposed developments where such building plans have been approved by the relevant authorities.

16. details on the valuation of real estates' held by the company indicating date of last valuation, value of the estates and the basis of valuation, revaluation surplus/deficit, net book value and any other relevant information;

17. application forms.

## **516. Underwriting**

1) Underwriting shall be at the discretion of the issuer.

2) Where the issue is underwritten by a syndicate of underwriters, the issuing house shall act as the lead underwriter provided however that in the case of a debt issue, a lead underwriter other than the issuing house may be appointed but shall be registered by the Commission as such. The Issuing house to the debt issue shall be a member of the syndicate of underwriters.

3) All underwriting and sub-underwriting agreements shall be submitted to the Commission for clearance along with other registration documents.

4) Where any party or parties in an underwriting agreement intend to terminate the agreement, such party or parties shall give not less than five (5) working days' notice to the Commission and shall state the reasons for the intended termination. If the Commission is satisfied with the reasons given it may give approval for the termination of the agreement.

5) The arbitration clause (if any) in the underwriting agreement shall include provisions to the effect that:-

- (a) whenever a dispute arises between the parties, the Commission shall be notified within five(5) working days;
- (b) a maximum period of ten (10) working days will be allowed for the parties to resolve the dispute by themselves or appoint arbitrator(s);
- (c) the arbitrator(s) shall have a maximum period of ten (10) working days to resolve the dispute after the exchange of pleadings by the parties, failing which the matter shall be referred to the Commission for resolution;
- (d) any party aggrieved by the decision of the Commission may refer the matter to the Investments and Securities Tribunal (IST).

(6) The underwriting agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the Act and the Commission's rules and regulations made thereunder.

## **517. Amount to be underwritten**

(1) Where the issue is underwritten, the amount or percentage of the issue underwritten by any Underwriter shall not be less than 35% of the number of units issued for subscription.

(2) The level of underwriting commitment by a single underwriter at any time shall not be more than 3 times its shareholders funds.

**518. Underwriting Commission**

The underwriting commission shall be as agreed between the issuer and the underwriter(s) and shall be a percentage of the amount underwritten.

**519. Time Amount Underwritten is to be made available**

The underwriter(s) shall make the amount underwritten available to the issuer on the day the offer opens.

**520. Minimum Level of Subscription**

(1) The public issue of a real estate investment company shall be cleared for allotment by the Commission only if it is subscribed by at least 50% apart from the percentage underwritten.

(2) The issuing house shall notify the Commission of the level of subscription within six (6) weeks after the close of the offer and the Commission may, in the interest of the investing public, direct that the issue be aborted.

(3) The Issuing House shall publish in at least two (2) daily national newspapers, details of the decision to abort the offer not later than five (5) working days after the Commissions' directive that the issue be aborted.

(4) The Receiving banker shall forward return monies to the Registrar, within two (2) working days, after the Commissions' directive that the issue be aborted.

(5) The Registrar to the issue shall return monies to subscribers to the aborted issue not later than five (5) working days after the Commissions' directive that the issue be aborted.

**521. Asset allocation**

(1) For close-ended real estate investment company, the following requirements shall apply:

- a. Where the investment company is equity based, at least 75% of the fund's total assets shall be in real estate; the remaining 25% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- b. Where the investment company is mortgaged based, at least 75% of the fund's total assets shall be in mortgage assets; the remaining 25% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- c. Where the investment company is a hybrid, at least 40% of the fund's total assets shall be in real estate, at least 40% shall be in mortgage assets, while the remaining 20% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- d. the level of new development activity by the fund manager shall not exceed 20% of the fund's gross asset value;

- e. the manager shall hold on to any development for a minimum of two (2) years before disposing of it.

(2) For open-ended real estate investment company, the following shall apply

- a. Where the investment company is equity based at least 70% of the scheme's assets shall be in real estate or real estate related assets, a maximum of 10% of the schemes' assets shall be in liquid assets at all times and 20% may be in other assets;
- b. Where the investment company is mortgaged based, at least 70% of the fund's total assets shall be in mortgage assets; a maximum of 10% of the schemes assets shall be in liquid assets at all times and 20% may be in other real estate assets;
- c. Where the investment company is a hybrid, at least 40% of the fund's total assets shall be in real estate, at least 40% shall be in mortgage assets, while the remaining 20% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- d. the provisions of paragraphs (d) and (e) of sub-rule (1) above shall apply.

(3) The assets of real estate investment scheme, whether close-ended or open-ended shall not be invested outside Nigeria.

## **522. Valuation Report**

A valuation report of the company's real estate shall be filed with the Commission every two (2) years by a real estate valuer registered with the Commission.

## **523. Quarterly Report**

A quarterly report on the performance of the scheme shall be filed by the company with the Commission.

## **524. Insurance**

The company's real estate assets shall be insured and evidence of the insurance shall be filed with the Commission within ninety(90) days of commencement of the scheme and within thirty(30) days of any subsequent acquisition. Evidence of renewal of insurance shall also be filed with the Commission within thirty(30) days of the due date.

## **525. Borrowing**

Notwithstanding anything contained in its articles of association, the company shall not, in the exercise of its powers in relation to real estate investment, borrow beyond 25% of the shareholders' fund.

## **(B) TRUST**

### **526. Requirement for authorization as a Trust**

An application for registration for a real estate investment trust shall be filed with the Commission on the appropriate SEC forms.

### **527. Requirements as to Form of Prospectus**

(1) The information required in a prospectus to be used or used in the offering for sale or sale of units of a proposed real estate investment trust shall follow the order provided in rules 528 and 530 and thereafter it need not follow any particular order provided that the information is set forth in such a manner as not to obscure any required information from being incomplete or misleading.

(2) The information set forth in the prospectus shall be presented in a clear and concise manner under appropriate captions or headings reasonably indicative of the subject matter set forth thereunder.

### **528. Statement as required in Prospectus**

- (1) There shall be set forth on the outside front cover of every prospectus the following statements printed in red ink:-

**THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS HAVE BEEN REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION. THE ACT PROVIDES FOR CIVIL AND CRIMINAL LIABILITIES FOR THE ISSUE OF A PROSPECTUS WHICH CONTAINS FALSE OR MISLEADING INFORMATION. REGISTRATION OF THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS DOES NOT RELIEVE THE PARTIES OF ANY LIABILITY ARISING UNDER THE ACT FOR FALSE OR MISLEADING STATEMENTS CONTAINED OR FOR ANY OMISSION OF A MATERIAL FACT IN THE PROSPECTUS.**

- (2) Every prospectus shall set forth on the page describing the “offer” the following statements:-

- (a) a copy of this prospectus together with the documents specified herein, having been approved by the trustees, has been delivered to the Securities and Exchange Commission (“**the Commission**”) for registration;
- (b) this prospectus is issued in compliance with the Act and the rules and regulations of the Commission for the purpose of giving information to the public with regard to the offer for subscription of units of the scheme;
- (c) the directors of the manager collectively and individually accept full responsibility for the accuracy of the information given and confirm, having made reasonable enquiries, that to the best of their knowledge and belief there are no material facts the omission of which would make any statement contained therein misleading;
- (d) the Securities and Exchange Commission has approved the issue, offer or invitation in respect of the public offering and the approval shall not be taken to indicate that the Commission recommends the public offering. The Commission shall not be liable for any non-disclosure on the part of the company and takes no responsibility for the contents of this document, makes no representation as to its accuracy or completeness, and expressly disclaims

any liability whatsoever arising from reliance upon the whole or any part of the contents of the prospectus.

The valuation approved or accepted by the Commission shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be construed as an endorsement by the Commission on the value of the subject assets for any other purpose.

#### **529. Date of Prospectus**

Every prospectus shall be dated on the front cover and the date shall not be earlier than the date of the completion board meeting or date of execution of the document.

#### **530. Contents of a Prospectus**

Every prospectus shall contain the information required by the Act and shall, in addition, state the following information:-

a. the front cover shall state the name of the issuer/promoter, the fund manager, the RC number of the fund manager, the trustee, custodian, the type of units offered, amount of units being offered, the price and amount payable in full on application. Provided that initial public offer shall not be less than N1 billion and subsequent offer shall not be less than N500 million;

b. the following statements shall appear in bold character on the cover page;

**You are advised to read and understand the contents of the prospectus. Before subscribing, please consult your Stockbroker, Solicitor, Banker or an Independent Investment Adviser registered by the Securities and Exchange Commission;**

c. a table of contents in the forepart of the prospectus showing the subject matter of the various sections or subsections of the prospectus and page number on which each section or subsection begins;

d. a corporate directory of the fund manager which shall include details on:-

i. Directors and principal officers;

ii. Names and profile of the investment committee members specifying the independent members;

iii. e-mail and website address (if any);

iv. three(3) to five (5) years financial summary. Where the fund manager is a new company, it shall furnish a statement of affairs;

e. corporate directory of valuer(s), issuing house, registrar, solicitor to the issue, reporting accountant, trustee, rating agency, and property manager and underwriter (where applicable);

f. the offer stating the requirements of rule 533, the times of opening and closing of the offer;

g. history and prospects of the scheme;

h. objective of the fund, strategy for achieving the stated objective and a statement that material changes to the investment objective would require unit holders approval;

i. offer price;

j. management and advisory services;

k. preliminary charges. The following statement shall be written boldly in the summary page:

**“Investors are advised to seek information on the fees and charges before investing in the Scheme”;**

l. investment policy of the scheme;

m. dividends, distribution and reinvestment options;

n. redemption policies (in case of open- ended trust);

o. statement as to consents of professionals to the offer;

p. duration of the scheme and conditions relating to its termination, and modification of its trust deed;

q. a breakdown of the fees stating clearly that the management fee would be based on the net asset value of the scheme, except where part of the asset is applied to development, in which case it will earn fee on generating assets only . It shall also state that the initial expense shall be borne by unit holders and netted off the offer proceeds ;

r. the prospectus shall include a section on the real estate investment trust to provide prospective unit holders with detailed information on the scheme for the purpose of making an informed assessment of the scheme The following information about the scheme shall be disclosed:-

i. the schemes’ specific peculiar risks. The strategy for managing those risks shall also be disclosed;

ii. the management company’s policy on gearing and minimum liquid asset (in percentage terms) requirement of the scheme; Provided that the trustees may on the advice of the manager borrow on behalf of unit holders up to 15% of the schemes net assets;

iii. full details of and description of the real estate held by the scheme and/or type of real estate to be acquired. The description of an existing property shall spell out the type (residential/commercial/industrial) location, age, existing use and net lettable area

iv. brief particulars of current tenancies indicating major tenants, tenancy period, occupancy rates, average current rentals, outgoings, net income and assessment of future income and major capital expenditures likely to be incurred in the immediate future;

s. The prospectus shall contain a key data section with the following cautionary statements stated in bold characters:-

(a) that the rental yield on real estate held by the Scheme is not equivalent to the yield of the units; and

(b) that the value of the real estate may fluctuate.

t. information concerning the relationship between the management company and/or any of its associated/related companies with the vendors of real estate purchased or to be purchased and any conflict of interest arising thereof shall be disclosed;

u. information about the property manager including its experience in real estate/property management, total property under management, number of years in property management and staff strength;

v. the inclusion of the photograph of any property in the prospectus will be permitted on the condition that the photograph is not more than six (6) months old as at the date of the prospectus and the depicted real estate is wholly owned or confirmed by the Commission to be wholly acquired;

w. the details on the valuation of real estate(s) held by the scheme shall be disclosed, including date of last valuation, value of the estates and the basis of valuation, revaluation surplus/deficit, net book value and any other relevant information;

x. application forms.

### **531. Requirements as to Form, Number, etc of Trust Deed**

1. Every trust deed filed pursuant to the registration of real estate investment trust shall be printed and properly bound

2. Two (2) copies of such trust deed shall be filed with the Commission together with a completed application for authorization of the scheme.

3. The trust deed shall state on the outside front cover page, in bold print, the following information:-

(a) date of the trust deed;

(b) name of the management company;

(c) name of the trustee company;

(d) name of the scheme constituted by the trust deed;

(e) that the trustee will be liable for breach of its duties where it fails to carry out its responsibilities under the trust deed or report breach of the terms to the Commission

### **532. Contents of Trust Deed**

Every trust deed shall contain, among other things, the following information:-

a. definition of terms used in the trust deed;

b. constitution of the trust;

c. The value of the units being offered

- d. in case of an open-ended trust, redemption of units by the fund manager at prices calculated in the manner prescribed under these rules and regulations, and for settlement in respect thereof to be effected not later than five (5) working days following the transaction;
- e. investment policy; a statement that the scheme shall have an investment committee;
- f. registration of holders of units;
- g. mode of execution and issuance of unit certificate or electronic statement of holdings;
- h. a provision stating that the underlying assets of the scheme shall vest in the Trustee, or subject to any prescribed conditions, in a nominee approved by the Commission;
- i. a provision that no advertisements, circular or any statement with respect to sale price of units, the payments of other benefits received or likely to be received by unit holders, or invitation to buy units can be made without disclosing the yield from the units; and unless such circulars, advertisements, etc are cleared by the Trustee and approved by the Commission;
- j. all fund expenses, including the annual management fee shall not exceed 5% of net asset value of the fund;
- k. in addition to (j) above, the fund manager of the trust shall be entitled to an incentive fee not exceeding 30% of total returns in excess of 10% of the scheme's net asset value per annum;
- l. appointment of auditor;
- m. annual audit of the scheme;
- n. prohibition of the management company ,trustee, custodian and their affiliates from dealing as principals in the sale of underlying assets to the trust scheme;
- o. prohibition of deals in or retention of any underlying securities of any company if those individual officers of the management company or of their affiliates each own more than 1/2 of 1 per cent of the securities of such company and together more than 5 per cent of the securities of the particular company;
- p. duties and responsibilities of the managers and trustees;
- q. remuneration of Trustees;
- r. removal and retirement of managers and trustee; a statement that where the trustee intends to withdraw or where the manager is seeking the removal of the trustee, the parties (i.e. the trustee and the manager) shall first notify the Commission and give reasons for the withdrawal or removal as well as the suitability of the new trustee to be appointed in its place;
- s. duration and termination of the trust;
- t. notices and meetings of unit holders;
- u. affirmation of the separate incorporation of the trustees and the management company under the Companies and Allied Matters Act;



- v. provision that ensures that effective control over the affairs of the scheme is vested in and will be exercised independently by the trustee of the scheme on behalf of unit holders;
- w. an undertaking by the trustee to notify the Commission about any proposed change in management position of the fund during the currency of the scheme;
- x. provision restricting the fund manager's absolute powers to invest the scheme's fund by requiring trustee's consent before investments are finalized;
- y. provision prohibiting fund manager from investing in its in-house, trustees', custodians or their associates instruments;
- z. provision that promoters of real estate investment scheme shall subscribe to a minimum of 5% of the registered units of the scheme at inception, and such units shall be held throughout the life of the scheme ;
- aa. time frame for trustee to act whenever it becomes necessary to enforce the terms and that the trustee shall inform the Commission of any breach of the terms and conditions of the trust deed not later than ten (10) working days after the breach.

### **533. Filing Executed and Registered Trust Deed**

- (1) After approval of the trust deed by the Commission, an applicant shall forward a duly executed and stamped copy of such trust deed to the Commission before commencing operation or dealing in units of the scheme constituted by the trust deed.
- (2) The trust deed shall be executed by the manager and trustee to the scheme and stamped at the stamp duty's office of the inland revenue office.
- (3) The names of the director and secretary signing on behalf of the manager/trustee shall be clearly indicated in the position for signatures in the execution clause of the trust deed. Where the deed is executed by persons other than the director and secretary, the name and designation of such persons/officers signing the execution clause of the trust deed shall be stated against their signatures.

### **534. Underwriting**

- (1) Underwriting of a real estate investment trust shall be at the discretion of the issuer.
- (2) Where the issue is underwritten by a syndicate of underwriters, the issuing house shall act as the lead underwriter.
- (3) All underwriting and sub-underwriting agreements shall be submitted to the Commission for clearance along with other registration documents.
- (4) Where any party or parties in an underwriting agreement intend to terminate the agreement, such party or parties shall give not less than five (5) working days' notice to the Commission and shall state the reasons for the intended termination. If the Commission is satisfied with the reasons given, it may give approval for the termination of the agreement.
- (5) The arbitration clause (if any) in the underwriting agreement shall include provisions to the effect that:

- (a) whenever a dispute arises between the parties, the Commission shall be notified within five (5) working days;
- (b) a maximum period often (10) working days will be allowed for the parties to resolve the dispute by themselves or appoint arbitrator(s);
- (c) the arbitrator(s) shall have a maximum period of ten (10) working days to resolve the dispute after the exchange of pleadings by the parties or such further period as the Commission may approve, failing which the matter shall be referred to the Commission for resolution;
- (d) any party aggrieved by the decision of the Commission may refer the matter to the Investments and Securities Tribunal (IST).

(6) The underwriting agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the Act, and rules and regulations made thereunder.

### **535. Amount to be Underwritten**

The level of underwriting commitment by a single underwriter at any time shall not be more than 3 times its shareholders funds.

### **536. Underwriting Commission**

The underwriting commission shall be as agreed between the issuer and the underwriter(s) and it shall be a percentage of the amount underwritten.

### **537. Time Amount Underwritten is made available**

In all cases of firm underwriting the underwriter shall pay the amount underwritten to the issuer on the day the offer opens.

### **538. Minimum level of Subscription**

- a. The public issue of units of real estate investment trust shall be cleared for allotment by the Commission only if it is subscribed up to 50%.
- b. The issuing house shall notify the Commission of the level of subscription within six (6) weeks after the close of offer and the Commission may, in the interest of the investing public, direct that the issue be aborted.
- c. The issuing house shall publish in at least two (2) daily national newspapers, details of the decision to abort the offer not later than five (5) working days after the Commission's directive that the issue be aborted.
- d. The receiving banker shall forward return monies to the registrar, within two (2) working days, after the Commissions directive that the issue be aborted.
- e. The registrar to the issue shall return monies to subscribers to the aborted issue not later than five (5) working days after the Commissions' directive that the issue be aborted.

f. If return monies are not dispatched in compliance with rule 105 accrued interest shall be paid to unsuccessful applicants at a rate not below CBN MPR +5%.

### **539. Asset allocation**

(1) For close-ended real estate investment trust, the following requirements shall apply:

- a. Where the scheme is equity based, at least 75% of the fund's total assets shall be in real estate; the remaining 25% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- b. Where the scheme is mortgaged based, at least 75% of the fund's total assets shall be in mortgage assets; the remaining 25% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- c. Where the scheme is a hybrid, at least 40% of the fund's total assets shall be in real estate, at least 40% shall be in mortgage assets, while the remaining 20% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- d. the level of new development activity by the fund Manager shall not exceed 20% of the fund's gross asset value;
- e. the manager shall hold on to any development for a minimum of two (2) years before disposing of it.

(2) For open-ended real estate investment trust, the following shall apply:

- a. Where the scheme is equity based at least 70% of the scheme's assets shall be in real estate or real estate related assets, a maximum of 10% of the schemes' assets shall be in liquid assets at all times and 20% may be in other assets;
- b. Where the scheme is mortgaged based, at least 70% of the fund's total assets shall be in mortgage assets; a maximum of 10% of the schemes assets shall be in liquid assets at all times and 20% may be in other real estate assets;
- c. Where the scheme is a hybrid, at least 40% of the fund's total assets shall be in real estate, at least 40% shall be in mortgage assets, while the remaining 20% may be in real estate related assets. Provided that not more than 10% shall be in liquid assets;
- d. the provisions of paragraphs (d) and (e) of sub-rule (1) above shall apply.

(3) The assets of real estate investment trust, whether close-ended or open-ended shall not be invested outside Nigeria.

### **540. Rating and Valuation Reports**

- (1) A rating report by a registered rating agency shall be filed with the Commission every two (2) years.
- (2) A valuation report of the schemes' real estate assets shall be filed with the Commission every two (2) years by a real estate valuer appointed by the fund manager and registered with the Commission.

#### **541. Quarterly Reports**

- (1) A quarterly report on the performance of the scheme shall be filed with the Commission by the fund manager.
- (2) A half yearly report shall be filed with the Commission by the trustee.

#### **542. Insurance**

The underlying assets of the scheme shall be insured by the fund manager.

### *J 7. Specialized funds*

#### *A. Exchange Traded Fund(ETF)*

#### **543. Definitions**

**Authorized dealer agreement** means an agreement entered into between the authorized dealer and the fund manager setting out the terms and procedures by which the authorized dealer may request the creation and redemption of Units.

**Authorized dealer (broker dealer)** means a broker dealer registered with the Commission who is a member of a securities exchange and is appointed by the fund manager.

**Business days** as defined by these rules and regulations.

**Exchange Traded Fund (ETF)** means an undertaking which could be:

- i. a unit trust scheme;
- ii. an open-ended investment company;
- iii. any other such structure, as may be approved by the Commission, that issues unleveraged securities or units listed on a securities exchange recognized by the Commission that tracks the performance of a specified security or other assets which includes but is not limited to stocks, basket of assets, indices, commodity prices, foreign currency rates, or any other appropriate benchmark approved by the Commission from time to time.

**Creation unit** means the specified number of units determined by the fund manager and clearly disclosed in the fund's offer documents for the creation of etf units.

**Foreign company** means a company incorporated outside Nigeria.

**Foreign ETF** means an ETF whose primary listing is on an exchange outside Nigeria.

**Fund manager** means a duly authorized person that administers the affairs of the ETF.

**IOPV (indicative optimum value)** means an estimated net asset value ("NAV") of the portfolio securities of the fund calculated by the fund manager according to a methodology which is clearly stipulated in the offer documents

**Liquid assets** means:

- (a) cash;
- (b) deposits with banks or other licensed Institution approved to accept deposit;
- (c) any other instrument capable of being converted into cash within five (5) business days as may be approved by the trustee/fund manager.

**Offer documents** means a prospectus/trust deed, or information memorandum or any document for the offer or placements of units.

**Placement** means the offering of units to specified persons.

**Portfolio deposit** means the deposit of a portfolio of constituent underlying securities together with cash (if applicable) for the purposes of creation and redemption of units.

**Redemption unit** means the specified number of units determined by the fund manager upon consultation with the Trustee and clearly disclosed in ETF offer documents for redemption of the portfolio deposit.

**Unit(s) or security(ies)** includes a unit, share, debenture, or any other instrument of an ETF granting an entitlement to the investment or relevant income of an ETF.

#### **544. Parties to an ETF**

- 1. Fund or portfolio manager;
- 2. Trustee and/or custodian/depository;
- 3. Broker dealer (authorized dealer);
- 4. Auditor;
- 5. Solicitor;
- 6. Such other parties as may be necessary from time to time.

#### **545. General Requirements**

- 1. An ETF shall be subject to the approval, authorization, and registration of the Commission.
- 2. No person shall deal in the units of an ETF unless such units have been registered with the Commission.
- 3. The underlying assets of an ETF shall be held by a custodian/depository on behalf of the fund.
- 4. The Units and underlying assets of an ETF must:
  - a. be sufficiently liquid to satisfy the Commission that there will be proper price formation on the ETF;
  - b. have a NAV that is calculated in a transparent manner and published on the website of the ETF;

5. An applicant issuer of an ETF must:

- a. Provide evidence to the Commission that it has the relevant expertise to issue ETF or has access to such expertise; and
- b. Satisfy the Commission that a secondary market in the Units will be established and maintained.

**546. Authorized dealer (Broker Dealer)**

1. An ETF shall appoint one or more authorized dealers to execute the sale and purchase of units with retail investors.
2. The fund manager shall assess and ensure that the authorized dealer:
  - a. is duly registered with the Commission as a broker/dealer and is a licensed member of the relevant exchange;
  - b. has adequate and appropriate systems and procedures to execute transactions of the units in a proper and efficient manner;
  - c. has proper and adequate internal control procedures and satisfactory risk management procedures;
  - d. possess the necessary expertise and adequate resources to undertake the function of an authorized dealer;
  - e. has executed an “**authorized dealer agreement**” with the fund manager.

**547. Offering and listing of units of an ETF**

1. An ETF may issue/offer Units by any of the following methods:
  - a. an offer for subscription to qualified investors;
  - b. such other methods as may be acceptable or prescribed by the Commission from time to time.
2. The Commission has the discretion not to vary or to allow any particular method of offering if it is of the view that the method in question is not in the interest of the investors.
3. An ETF shall comply with the listing requirement of the relevant Exchange.
4. The fund manager shall endeavor at all times to notify the Commission of any events that will in the reasonable opinion of the fund manager materially affect the acceptability of the underlying security or asset which an ETF is tracking. These events may include but not be limited to a material change in the:
  - (a) methodology of compiling and calculating the index (if applicable);
  - (b) composition of the index due to (for example) the inclusion or deletion of any security;

- (c) weightings of the index constituents (if applicable) due to for example, corporate activities (such as mergers and acquisitions), or significant market movements;
- (d) identity of the party that sponsors and/or calculates the index (if applicable);
- (e) nature of the market of the asset tracked (such as a disruption or cessation in trading of the asset);
- (f) material contracts of the ETF;
- (g) the approved offer documents.

5. The Commission reserves the right to withdraw authorization of an ETF where it is no longer meeting its investment objectives.

6. These rules shall apply to commodity ETF's, with necessary modification(s), with respect to the asset class and the application of the relevant rules on commodities trading.

#### **548. Listing of foreign ETF**

1. An ETF shall not be listed on any exchange in Nigeria without the prior approval of the Commission.
2. The Commission may approve the listing of a foreign ETF on an exchange in Nigeria that complies with this rule, the relevant rules on cross border securities transactions (H2) and/or any other requirements that may be prescribed by the Commission from time to time.
3. A foreign operator applying for the listing of a foreign ETF must confirm:
  - a. the approval or registration of the ETF by the relevant foreign authority;
  - b. the name of its primary exchange;
  - c. that the said primary exchange is a member of the world federation of exchanges ("WFE");
  - d. that it has a minimum subscribed Units as may be prescribed by the Commission from time to time;
  - e. that the fund manager of the foreign ETF is in good standing in its country of operation.
4. A foreign operator applying for listing of a foreign ETF shall submit to the Commission:
  - a. Copy of its registration/license by the relevant authority;
  - b. Evidence of the approval of the foreign ETF by the relevant authority;
  - c. Copy of the prospectus/offer documents of the foreign ETF approved/cleared by the relevant authority.
5. The foreign operator shall ensure that the constitution of the foreign ETF provides for rights of investors which are at least equivalent to the rights provided for under these rules.
6. The foreign operator shall on an annual basis provide the Commission with all regulatory and audit filings submitted to its home regulator and primary exchange.

7. Subject to any other provision of the rules relating to ETF's and the payment of the relevant fees, the subsequent listing of additional units of an ETF shall be subject to the Commission's approval.

**549. Creation and redemption of ETF**

1. Instructions to create or redeem ETF units shall be in writing as stipulated in the offer documents;
2. Subject to any conditions clearly set out in the offer documents, units may be created and redeemed for in-kind consideration and in creation unit sizes or multiples thereof.
3. Participation in the in-kind creation and redemption process (where applicable) is restricted only to authorized dealers, unless otherwise stated in the offer documents.
4. All provisions and procedures relating to creation and redemption of units shall be adequately and clearly disclosed in the offer documents.
5. All cost and allowable expenses shall be adequately disclosed in the offer documents

**550. Pricing and dealing of units**

1. An ETF manager shall not issue units other than at the price calculated in accordance with the basis disclosed in the offer documents and/or trust deed;
2. The issue price shall be on a basis approved by the Commission and shall not include management charges and other fees. All management charges and other fees are required to be separately specified in the offer documents and/or trust deed;
3. An ETF manager shall base the price of units on market based principles, and at a level which is in the best interest of the ETF and the unit holders;
4. The calculation of the IOPV per unit and the end of the day NAV by the fund manager shall be based on a formula and process which is consistently applied, and which leads to valuation that are objective and independently verifiable;
5. In the event that the fund manager does not publish the NAV of the ETF on a daily basis, a determination of the IOPV per Unit shall be carried out by the fund manager on a regular basis as the fund manager considers necessary (as disclosed in the offer documents and/or trust deed), and this information shall be disseminated on a real-time or near real-time basis.

**551. Information to be provided**

1. An ETF fund manager shall provide the following information to the public via any suitable channels on the stipulated period as stated below:-

- a. IOPV per Unit – at the close of day;
- b. Portfolio Deposit and NAV per Unit – on daily basis;
- c. Number of Units in circulation – on a monthly basis;
- d. Index level or underlying asset price (as applicable) – for the preceding day;
- e. The constitution of any index basket – on a quarterly basis.



2. Acceptable communication channel may include one or more of the following:

- a. The ETF's or ETF manager's website;
- b. A hyperlink from the ETF's/ETF manager's website to the website of the relevant exchange;
- c. Information pages of vendors who disseminate trading information of securities in their ordinary course of business. The information pages must be easily accessed by retail vendors;
- d. Electronic medium for information dissemination as provided by the relevant exchange(s) from time to time;
- e. Any other channel considered acceptable by the Commission.

## **552. Valuation**

### **Investment Instruments And Valuation Basis**

**1. Securities/Commodities listed on the relevant Exchange** :– the valuation basis shall be market price.

Provided that where a valuation based on market price does not represent the fair value of the securities/commodities (for example during abnormal market conditions) then the securities/commodities shall be valued at fair value as determined in good faith by the fund manager based on the methods or basis approved by the trustee or disclosed in the offer documents after appropriate technical consultation, provided that the Commission is subsequently notified.

**2. Nigerian Government Securities, Government Bonds, Central Bank of Nigeria Certificates, Nigerian Treasury Bills, Banker's Acceptances, Government Investment Certificates, Negotiable Certificates of Deposit:**– the valuation basis shall be market price of the securities. In the absence of market quotation, valuation shall be:

- a. At cost and adjusted for accrued interest;
- b. Based on amortization of premium and accretion of discount; or
- c. Based on the average price obtained from at least three (3) primary market dealers (PDM).

In any case where the market interest rates of similar class of debt securities have changed materially, cost adjusted value shall be mark-to-market.

**3. Nigerian currency liquid assets** – valuation shall be nominal value.

**4. Foreign currency liquid assets** – the same valuation basis as Nigerian currency liquid assets of similar type, with such adaptation as maybe necessary.

**5. Any other investment** – Fair value as determined in good faith by the fund manager on methods or basis which have been verified by the auditor of the ETF and approved by the trustee or adequately disclosed in the offer documents.

### 553. Contents Of ETF Prospectus/Offer Documents

An ETF offer document shall contain the information required for a unit trust prospectus (where applicable) as prescribed by the rules, in addition to the following information:-

a. A disclaimer statement on the inside cover/first page, that:

**“the valuation approved or accepted by the Commission shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be considered as an endorsement by the Commission of the value of the subject assets for any other purposes”.**

b. The summary page shall state:

i. The underlying index, security(ies) or asset(s) which the ETF intends to track or replicate as well as a description of the market sector the index, security(ies) or asset(s) represents;

ii. The ETF's investment strategy and –if an ETF is tracking an index – state whether it will invest in all (full replication) or a representative sample (sampling) of component securities or commodities of the underlying index. If the ETF invests in a representative sample of component securities or commodities of the index, it shall disclose how the sample is constituted;

iii. The ETF's policy on investment income i.e whether it shall be distributed to unit holders or reinvested in the fund;

iv. Circumstances that may lead to tracking errors and strategies to be employed in addressing and minimizing such errors;

v. The material risks of investing in the ETF and the mitigants;

vi. The weightings of the major components securities or commodities of the underlying index. Where a representative sample of the component of the underlying index is used to track or replicate the index, the weightings of the major securities or commodities in the sample shall be disclosed;

vii. Procedures in relation to creation and redemption of units;

viii. A statement that there is no guarantee or assurance of exact or identical replication at any time of the performance of the index (if applicable).

c. An ETF's offer documents shall also disclose:

i. details of the pricing of units, including:

a. Basis for determination of the issue/offer price;

b. Basis for determination of the IOPV;

ii. The means by which investors may obtain update and relevant information or details on the underlying asset/security of a unit.

## **554. Reporting and Audit**

1. An ETF (with the exemption of a secondarily listed foreign ETF) shall comply with all reporting and audit requirement of a CIS as prescribed by the ISA and these rules;
2. Quarterly reports of an ETF shall be published in the fund's/fund manager's website within one month of the period to which the report relates;
3. The fund manager shall prepare and present the financial statements of the ETF in accordance with approved accounting standards, the ISA , the applicable rules and regulations, and the constituent documents of the ETF;
4. The financial statement of the ETF shall be audited annually by an auditor appointed by the fund manager (with the approval of the trustee or in accordance with the constituent documents of the ETF);
5. The annual report of the ETF shall be submitted to the Commission within three (3) months of the fund's financial year end;
6. The custodian/depository of an ETF shall on a quarterly basis conduct and submit a report or reconciliation of all Units as well as the underlying assets to the Commission;
7. The annual report of the ETF shall be published and distributed to unit holders within three (3) months of the fund's financial year end and as the Commission may prescribe from time to time.

*[SECRR(A) January 2011]*

## ***B. Venture Capital Fund***

## **555. Requirements for authorization**

1. An application for authorization of venture capital fund shall be filed by the manager on Form S.E.C. 6A accompanied with the following
  - a. two (2) copies of draft Prospectus;
  - b. two (2) copies of draft trust deed where no technical agreement is filed;
  - c. letters of consents from the prospective parties to the venture capital scheme;
  - d. two (2) copies of partnership agreement between fund providers and venture capitalist. (This shall apply only to classic venture capital). The agreement shall contain among others, the following:
    - i. that the fund provider shall be a limited or non-active partner;
    - ii. that the venture capital company shall be the general partner;
    - iii. that the venture capital company shall manage or participate in the management of the business in which the fund is invested;

- iv. duties and obligations of all parties to the agreement;
- e. copy of the certificate of incorporation of the manager of the venture capital fund;
- f. two copies of the Memorandum and Articles of Association of the manager of the venture capital fund certified by the Corporate Affairs Commission., with a provision authorizing the company to manage funds;
- g. detailed information about the fund provider;
- h. two (2) copies of the technical/management agreement between the venture capitalist and the beneficiary company of the fund;
- i. two (2) copies each of the certificate of incorporation and Memorandum and Articles of Association of the venture capital fund and the fund user company certified by the Corporate Affairs Commission;
- j. two (2) copies of the scheme of arrangement between the fund provider, the venture capitalist and the existing investors in the beneficiary company. (This shall apply only to the merchant venture capital). The agreement shall contain among others, the following:
  - (a) arrangement for new shareholding structure;
  - (b) valuation of existing shareholding structure;
  - (c) method of financing;
  - (d) asset securitization and valuation issues;
  - (e) nature of the charge on assets (whether floating or fixed);
- k. a sworn undertaken to obtain the approval of the National Risk Fund established pursuant to the Venture Capital (Incentives) Act, 1993;
- l. evidence that the minimum paid-up capital of the manager of the fund complies with the requirements of the Commission as stipulated in the rules and regulations;
- m. authorization fee of 1% of the fund;
- n. any other material information.

2. An application for registration of the venture capital fund shall contain such information as will indicate the type and general nature of the venture capital fund including the following:-

- a. the name of the proposed fund;
- b. the name under which the sponsors of the fund intend to do business;
- c. date of commencement of the fund;
- d. the name and addresses of the sponsors of the fund;

- e. the general nature of the business in which the fund will be invested;
- f. investment target of the fund;
- g. expected yield of the fund;
- h. sworn undertaking to file monthly reports and returns with the Commission;
- i. registration fee of N50,000;
- j. any other information required by the Commission from time to time.

#### 556. Contents of Prospectus

The Prospectus shall among others contain the following:-

- (a) summary of the issue – including key performance forecast of the “**Super Deal**”;
- (b) the placement offer;
- (c) directors and parties to the issue;
- (d) the name and every detail about the “**Super Deal**” company (fund user);
- (e) information on the venture capital firm as a party in the proposed partnership agreement with the fund provider including the functions of the venture capital firm in the management of the “**Super Deal**” company as follows:-
  - (i) establish fund: the venture capital firms raise funds from cheap sources. With negotiations and persuasion, the firms consider the payback period rate of returns, securitization involved, disbursement pattern, etc.;
  - (ii) target investment opportunities: this firm identifies and screen new and young innovations with companies and individual genius with high potential. It evaluates, screens, structures deals in order to identify projects of high potential referred to as “**Super Deal**”. Some of the characteristics of “**Super Deal**” are:
    - a. Project of high profitability with great industrial dominance e.g. electronic/information technology.
    - b. Company led by industry superstar; with proven entrepreneurial experience, leading innovation or technologies marketing head; dynamic with imagination and skill.
    - c. Project in respect of high, value-added properties resulting in early payback to users.
    - d. Project having no dominant competitor with monopolistic gross profit margins.
  - (iii) ability to add value: the venture capital firms design strategy for the management of the user/companies. They participate as active board members

and lend empirical experience to augment the plan of action. They do general co-ordination to see to the success of the investment;

- (iv) design and execute the exiting strategies: they plan and time the exiting strategies and procedures through the following methods: sale, initial public offer, merger, acquisition, leverage buyout, management buyout, liquidation, alliances;
- (f) information on the “**Super Deal**” company, specifying investment opportunities, target, the past performance and other unique factors of entrepreneurship/production in form of comparative advantages:-
  - i. market monopoly;
  - ii. franchise, patent rights;
  - iii. technological breakthrough;
- (g) any previous loan advance;
- (h) consents of all professional parties/persons whose names appear in the prospectus;
- (i) place where documents for inspection will be located;
- (j) procedure for application and allotment;
- (k) receiving banks and other agents where applicable (both foreign and local);
- (l) draft application form;
- (m) requirements mentioned in the fourth schedule of the Act,
  - i. statements of assets and liabilities for the past five (5) years, if any;
  - ii. statement of profit and loss accounts for the past five (5) years, if any;
  - iii. profitability forecast for the three (3) years ahead;
  - iv. cash flow forecast for three (3) years ahead;
- (n) duration of investment before harvest and exit indicating the possible harvest and exit strategies;
- (o) letter of consent that the periodic report will be sent to the regulatory authority for monitoring;
- (p) draft copy of introduction materials and names of the prospective investors (not more than 25 in number). Evidence of approval of the prospectus and technical and management agreement by the fund user company; preceding five (5) years financial status of venture capital firm.

### ***C. Private Equity Funds***

#### **557. Definition Of Terms**

In these rules, except otherwise stated, the following terms are defined as follows:-

**“Private Equity Funds”** means a type of collective investment scheme that invests primarily in private equity/unlisted companies, whether or not in an attempt to gain control of the company.

**“Qualified Investors”** shall have the same meaning as defined in these rules.

A Private Equity Fund shall be subject to authorization and registration by the Commission.

#### **558. Applicability**

These rules shall apply to all private equity funds with a minimum commitment of N1 billion investors' funds.

#### **559. Eligibility**

The fund manager of a private equity fund shall have a minimum paid-up capital as prescribed by the Commission.

#### **560. Restrictions**

A private equity fund shall not:

- a. solicit funds from the general public, but shall privately source funds from qualified investors alone;
- b. invest more than 30% of the Funds' assets in a single investment.

#### **561. General Requirements**

An application for authorization and registration of a private equity fund shall be filed along with the information memorandum to be issued to the target investors. The information memorandum shall amongst others contain the following information:

1. the investment policy and objective of the fund;
2. the industry or geographical focus of the fund;
3. the fund managers experience in private equity;
4. the investment criteria for target portfolio companies;
5. the names and profile of the fund managers principal officers and management team;
6. tax issues;
7. Material risks of investing in the fund;
8. a statement of any minimum investment commitment required of an investor;

9. total capital commitment;
10. net target investment return;
11. distribution of proceeds and sharing ratio;
12. relevant fees and charges connected with investment in the fund;
13. provision for admission of new and withdrawal of existing investors;
14. valuation methodology and frequency of valuation;
15. exit routes from investments;
16. management participation in the fund;
17. repayment of capital;
18. duration of the fund and extension;
19. prototype agreement between the fund manager and investors;
20. the establishment of an anti-money laundering program and duty to report suspicious activity;
21. the duties, responsibilities and liabilities of the fund manager;
22. provision for meetings and voting quorum.
23. economic development impact.
24. provision for termination or winding up.

## **562. Reporting**

1. A private equity fund manager shall submit to the Commission:
  - a. Quarterly returns of the fund which shall state amongst others:
    - i. The total number of investors in the fund;
    - ii. The total commitment received from investors;
    - iii. The total commitment already drawn-down;
    - iv. The current investments of the fund;
    - v. The current value of the assets of the fund.
  - b. Annual account/report of the fund.
2. A private equity fund manager shall issue semi-annual reports to the investors which shall contain relevant information including the following:
  - a. Details of total commitments;
  - b. Draw-down and distributions;
  - c. Changes to investment strategy (if any);
  - d. Current and new investments;
  - e. Detailed realization summary by investments;
  - f. Valuation of each investments;
  - g. Statement of benefits, fees and net management fee.



**563. Valuation**

1. A private equity fund investments' shall be valued at fair value, where fair value is the amount for which an asset could be exchanged between knowledgeable willing parties in an arm's length transaction.
2. In the absence of an active market for the financial instrument, the valuer shall estimate fair value utilizing a disclosed valuation methodology.

( SECRR(A)February, 2013)

**PART K**

***Fixed Income Securities***

***A. Borrowing by Federal ,States, Local Governments ,Government Agencies and Supra nationals.***

**564. Registration of Federal, States, Local Governments bonds/securities etc.**

Federal, State/Local Government and other Government agencies' bonds or securities shall be registered with the Commission by the issuer filing an application on Form S.E.C. 6 as provided in schedule III to these rules and regulations.

**565. Requirements for registration**

**1. a copy of the feasibility report on the specific project(s) to be financed;**

- (a) counterpart copy of original of the irrevocable letter of authority from the Local Government/State accountant-general or other Government agencies authorizing the Accountant-General of the Federation to deduct the principal and interest amount directly from statutory allocation in case of default;
- (b) letter of confirmation from the accountant-general of the Federation of receipt of the irrevocable letter of authority to deduct the principal and interest from statutory allocation of the State/Local Government in case of default;
- (c) Details of the sinking fund to be managed by the trustee and fully funded from the consolidated revenue account of the issuer
- d) audited account of the State/Local Government or other Government agencies for preceding five (5) years or such number of years in existence (if less than five (5) years);
- (e) two (2) copies each of draft prospectus and abridged prospectus;
- (f) two (2) copies of the law authorizing the issue of the bond;
- (g) two (2) copies of underwriting agreement(where applicable);

- (h) two (2) copies of trust deed;
- (i) two (2) copies of vending agreement;
- (j) the reporting accountant's report;
- (k) rating report by a registered rating agency;
- (l) a write-up on the issue;
- (m) schedule of claims and litigations;
- (n) bridging loan agreement if any;
- (o) material contracts;
- (p) letters of consent of the parties to the issue;
- (q) State and Local Government shall publish their audited annual financial statements in at least two (2) national newspapers throughout the life of the bond. Also, the rating of the state and local government bonds shall be reviewed annually provided that the rating shall be no more than twelve (12) months apart and shall be published in at least two (2) national newspapers;
- (r) State and Local Government shall publish information on funds utilization annually in at least two (2) national newspapers. The publication shall be subject to clearance by the Commission;
- (s) Underwriting shall be at the discretion of the issuer. In the event that the issuer and its financial adviser decide that there shall be no underwriting, the minimum level of subscription shall be in line with the provisions of this rules and regulations;

Provided that, where an issue not underwritten is undersubscribed, the Commission shall be informed of the source of the funding gap and such information shall be filed together with the proposed basis of allotment;

- (t) any other document or information required by the Commission from time to time.

(2) The total loans outstanding, including the proposed bond, shall not exceed 50% of the actual revenue of the issuer for the preceding year.

(3) (a) In the event of default by the issuer the trustee shall, within six months of such default take necessary steps to ensure that the accountant-general commences direct deduction from the issuer's statutory allocation.

(b) The trustee shall within thirty (30) days of such default notify the Commission and file a copy of the letter to the accountant-general in (a) above, with the Commission.

(4) A copy of the irrevocable letter of authority shall be lodged with the trustee not later than five (5) days before the issue is open to the public.

(5) The registrar to the issue shall issue a bond certificate to the bondholders within two (2) months of the allotment of the securities in accordance with rule 104 of these rules and regulations.

(6) Where the Commission is satisfied with the securities offered by the issuer, it shall on an application by the issuing house waive the requirement for an irrevocable letter of authority provided that the issuing house shall not revert to the use of the irrevocable letter of authority to the office of the accountant-general of the Federation for the recovery of the loan.

#### **566. Conditions to be satisfied by the Issuer**

The following conditions shall be satisfied by the issuer:-

(a) The internally generated revenue (IGR) of the issuer shall not be less than 60% of its total revenue of the state for the preceding year;

(b) Investment in the bond issue not backed by an irrevocable letter of authority shall be restricted to Qualified Institutional Investors and High Networth Individuals as defined under these rules and regulations;

(c) The guarantors rating shall not be below investment grade;

(d) In addition to the issuer's internally generated revenue (IGR), the issuer shall provide a third party guarantee from a bank, insurance company, supranational institutions, international financial institutions or any other acceptable to the Commission, to cover payment of the principal and interest in the event of default;

(e) The guarantor shall be the primary banker of the issuer for the purposes of its IGR through the tenure of the debt issue;

(f) In the event of default by the issuer, the trustee shall within three months of such default request the guarantor to pay the principal sum and interest outstanding on the debt issue. Notice of the request by the trustee to the guarantor shall be filed with the Commission.

(g) the trustee shall within thirty (30) days of such default notify the Commission and outline further steps it intends to take in the matter;

(h) A duly executed copy of the third party guarantee shall be lodged with the trustee not later than five (5) days before the issue is open to the public;

(i) The issuer shall disclose in the prospectus that the bond issue is not backed by an irrevocable letter of authority. This shall be boldly printed on the front cover of the prospectus

*[SECRR(A) January 2011]*

## ***B. Corporate Bonds***

### **567. Registration Requirement**

***These rules shall apply to all bond issuance by any public company, foreign public companies and supranational bodies.***

#### ***Documents/Information Required:***

In relation to any issue, offer or invitation made pursuant to these rules, the following documents shall be filed along with the registration statement:

- (a) Duly completed form SEC 6;
- (b) Appropriate filing and registration fees;
- (c) Two (2) copies of the board resolution authorizing the issue of the bond;

Provided that a resolution of the general meeting shall be required where;

- (i) The amount to be borrowed is beyond the specified limit on the borrowing powers of directors in the Memorandum and Articles of Association of the Issuer.

- (ii) The bond to be issued is convertible. *[SECRR(A)September 2011]*

- (d) Two (2) copies of the Memorandum and Articles of Association of the Issuer certified by the Corporate Affairs Commission;
- (e) A copy of certificate of incorporation of the issuer certified by the company secretary;
- (f) A signed copy of the Issuers latest audited accounts for the preceding three (3) years, with the latest account not more than nine (9) months old at the time of filing with the Commission;
- (g) Reporting accountant report;
- (h) Consent letters of the parties to the offer;
- (i) Two (2) copies of the draft vending agreement between the issuer and the issuing house;
- (j) Draft underwriting agreement (where applicable);
- (k) Rating report by a registered rating agency;
- (l) A letter of “**No Objection**” from the relevant regulatory body (where applicable);
- (m) Two (2) copies of draft trust deed;
- (n) A draft prospectus, right circular, placement memorandum or any form of information memorandum shall contain the following information:-

- i. Background information on the issuer and/or originator in the case of asset-backed securities (ABS) issue including mortgage backed securities (MBS);
- ii. Profile of directors of the issuer;
- iii. A description of the transaction and structure of the issue;
- iv. Details of the utilization of proceeds. If proceeds are to be utilized for project, details of the project;
- v. Details of estimated expenses for the issue;
- vi. Conflict of interest situations, risk factors and mitigating factors;
- vii. For issuances made for the purpose of refinancing an existing debt, information on the existing debt should be provided;
- viii. Coupon rate, the date of maturity or if the issue matures severally, a brief information on the serial maturities;
- ix. Names, telephone numbers and facsimile number and the e-mail addresses of principal officers of the issuer and principal advisers of the issue;
- x. Terms and conditions of the issue;
- xi. Any other material information in relation to the issue.

(o) Declaration by the issuer on compliance with all requirements of the Act;

(p) Such other material information as may be required by the Commission.

#### **568. Condition for Approval**

The issuance of bonds by public companies and supranational bodies shall be subject to the following conditions:

##### **a. *Eligibility of Debt Offering***

- i. Any public company, foreign public company or supranational body is eligible to issue corporate bonds;
- ii. All necessary approvals (where applicable) in relation to the issue, from other regulatory authorities shall be obtained and filed with the Commission together with the registration statement. Any conditions imposed by such regulatory authorities, shall be complied with throughout the tenor of the bond;
- iii. All issues of corporate bonds shall be rated by a rating agency (optional for private placements) [SECRR(A)September 2011]
- iv. For a bond that will be issued through public offering, the credit rating shall not be below an investment grade;

v. No Issuer shall offer bond if it is in default of payment of interest or repayment of principal in respect of previous debts issuance for a period of more than six (6) months.

(b) ***Mode of issue***

Corporate bonds may be issued by way of an offer for subscription, rights issue or private placement.

(c) ***Resolution***

There shall be a resolution by the board authorizing the issue of the bond.

Provided that a resolution of the general meeting resolution shall be required where:

(i) The amount to be borrowed is beyond the specified limit on the borrowing powers of directors in the Memorandum and Articles of Association of the issuer;

(ii) The bond to be issued is convertible. *[SECRR(A) September 2011]*

(d) ***Disclosure and creation of charge***

Where the debenture is secured, the issuer shall ensure the assets on which the debenture is secured are adequate and this should be specifically stated together with the ranking of the charge(s) in the offer documents.

In case of second or residual charge or subordinated obligation, the offer documents shall clearly state the risks associated with such subsequent charges by giving details.

*[SECRR(A) March 2010]*

***C. Sukuk***

**569. Definitions of Terms**

In these rules, the following words and expressions have the following meanings, unless the context otherwise requires—

**Adviser** Shariah adviser, registered or recognized by the SEC, reviews and gives rulings on shariah applicability of the sukuk transactions or an islamic development bank recognized to perform such function.

**A sharia adviser could be a fund manager registered by the Commission to manage an islamic fund or a bank licensed for non-interest (islamic) banking or any institution licensed by the relevant regulator to offer islamic financial products.**

**Ijtihad** refers to reasoning by qualified scholars based on rulings on shariah sources.

**Credit Rating Agency** as defined in SEC rules

**Sukuk** refers to investment certificates or notes of equal value which evidences undivided interest/ownership of tangible assets, usufructs and services or

investment in the assets of particular projects or special investment activity using shariah principles and concepts approved by the SEC.

<b>Sukuk Murabahah</b>	are certificates of equal value which evidences undivided ownership or interest on the asset including the rights to the receivables arising from the underlying contracts of exchange.
<b>Sukuk Ijarah</b>	are certificates of equal value which evidences undivided ownership on the leased asset and/or usufruct and/or services and rights to the rental receivables from the said leased asset and/or usufruct and/or services.
<b>Sukuk Mudharabah</b>	are certificates of equal value which evidence undivided ownership of the certificate holders in the mudharabah venture.
<b>Sukuk Musharakah</b>	are certificates of equal value which evidence undivided ownership of the certificate holders in the musharakah venture (partnership).
<b>Sukuk programme</b>	refers to a programme which allows multiple issues, offers or invitations of sukuk, including islamic medium term notes (MTNs), within a validity period which is specified in the Commission's rules.
<b>Ijarah (leasing)</b>	a contract whereby a lessor (owner) leases out an asset to a lessee at an agreed rental for a pre-determined period. The ownership of the leased asset shall always remain with the lessor.
<b>Ijarah thumma bai(lease to purchase)</b>	a contract which begins with an ijarah contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase contract.
<b>Istisna(purchase order)</b>	a purchase order contract where a buyer requires a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. The payment term can be as agreed by both parties in the contract.
<b>Mudharabah(profit sharing)</b>	a contract made between two parties to enter into a business venture. The parties consist of the rabb al-mal (capital provider who shall contribute capital to finance the venture, and the mudharib (entrepreneur) who will manage the venture. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a business loss, the loss shall be borne solely by the provider of the capital.
<b>Murabahah(cost-plus sale)</b>	a contract that refers to the sale and purchase of assets whereby the cost and profit margin (mark-up) are made known.
<b>Musharakah(profit and loss sharing)</b>	a partnership arrangement between two or more parties to finance a business venture whereby all parties contribute capital either in the form of cash or in kind for the venture. Any profit derived from the venture will be distributed based on a pre-agreed profit sharing ratio, but a loss will be shared on the basis of capital contribution.

<b>AAOIFI</b>	Accounting and Auditing Organization for Islamic Financial Institution.
<b>Kafalah (guarantee)</b>	a contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a debtor fails to fulfill his debt obligation. The same definition can be applied for Dhaman.
<b>Hibah (gift)</b>	a gift awarded to a person on voluntary basis.

## **570. Applicability**

### **1. These rules shall apply to:**

- (a) Sukuk which are offered by local or foreign entities that are within the regulatory purview of the Commission;
- (b) Sukuk which are denominated in Naira or in foreign currencies; and
- (c) Sukuk which are listed, convertible, exchangeable, redeemable or otherwise.

### **2. These rules also set out the relevant shariah rulings and principles to be complied with by all issuers of sukuk.**

### **3. All shariah principles and concepts applied in structuring an issue, offer or invitation of sukuk under these guidelines shall be consistent with the general shariah rulings, principles and concepts as approved by AAOIFI or any other standard setter recognized by Commission.**

## **571. Structuring Sukuk Transaction**

### **1. Sukuk shall be structured as follows:**

- (a) Sukuk Ijarah – ( leased contract)
- (b) Sukuk Musharakah– (sharing contract)
- (c) Sukuk Istisnah– ( exchange contract)
- (d) Sukuk Murabahah– ( financing contract)
- (e) Any other form of contract approved by the Commission

### **2. Requirement for Sukuk issuance:**

Under these rules, the Commission adopts a disclosure-based regulatory approach on the issue, offer or invitation of sukuk, for which an approval will be granted where the following requirements are met:

- a. All issues, offers or invitation of sukuk shall comply with rule 280 (B) of the rules and regulations of the Commission and any other regulatory requirement as provided by the Commission from time to time.
- b. An issuer or offeror shall also comply with other regulatory requirements as provided by the Commission from time to time.



Any issue, offer or invitation of sukuk by a public company which is capable of being converted or exchanged into equity with the intention of being listed shall be subjected to the additional requirements stipulated in the listing requirements of a securities exchange.

## **572. Eligibility**

Public companies (including SPV's), State Governments, Local Government, and Government agencies as well as multilateral agencies are eligible to issue, offer or make an invitation of sukuk upon seeking the Commission's approval under these rules.

## **573. Submission of proposals**

An issuer must appoint an issuing house to seek an approval of the Commission for the proposed issue, offer or invitation of sukuk under these rules.

## **574. Appointment of shariah adviser**

1. The issuer, with the agreement of the trustee and issuing house shall appoint a shariah adviser, registered or recognized by the Commission, to carry out the following primary responsibilities:

- (a) Advise on all aspects of the sukuk including documentation and structuring;
- (b) Issue a shariah certification which outlines the basis and rationale of the structure and mechanism of the sukuk issue, the applicable shariah principles used for the sukuk issue and relevant shariah matters relating to the documentation of the sukuk issue;
- (c) Ensure that the applicable shariah principles and any relevant resolutions and rulings endorsed are complied with; and
- (d) Apply ijihad (reasoning) to ensure all aspects relating to sukuk issuance are in compliance with shariah principles.

### **2. Qualification for a Shariah Adviser**

- (a) An individual acting as shariah adviser shall meet the following criteria;
  - i) The person shall not have been convicted for any offence arising from criminal proceedings.
  - ii) The person has never been declared bankrupt
  - iii) The person is of good repute and character
  - iv) The person possesses the necessary qualifications and expertise, particularly on islamic fiqh/jurisprudence and has experienced exposure in islamic finance and capital market.
- (b) The Commission shall recognize a sharia adviser such as an Islamic Development Bank, a bank licensed by the Central Bank of Nigeria (CBN) to operate as non-interest bank or a fund manager registered by the Commission to manage a sharia compliant Fund.

## **575. Shariah principles as applicable to Sukuk Issuance**

### **1. Requirement of Underlying Asset**

Under contracts of exchange (such as murabahah, istisna` and ijarah), an asset, whether tangible or intangible, shall be made available for sukuk to be issued subject to the following:

- (a) The underlying asset and its use shall comply with the requirements of shariah;
- (b) An encumbered asset, such as an asset charged to a financial institution, or an asset that is jointly-owned with another party, can only be used as underlying asset provided the issuer has obtained the consent of the chargee or joint owner; and
- (c) Where receivables are used as the underlying asset, they shall be established and certain (mustaqir) and transacted on cash basis (on spot).

### **2. Asset pricing**

Sukuk contract that involves the sale and purchase of underlying assets. When the (Issuer/originator) purchase the underlying assets, the purchase price shall comply with the following pricing guidelines:

- (a) The purchase price shall not exceed 1.51 times of the market value of the asset; and
- (b) This shall also be applicable to murabahah, ijarah and istisna contracts.

## **576. Issues relating to various Sukuk Contract**

### **1. Ijara contract**

a) A forward lease permissible for the issuance of sukuk. A forward lease is an ijarah contract on an asset that will exist in future. The rate of lease rental, the nature of the leased asset, the lease period and the method of lease payment are to be clearly stated in the contract as agreed between the contracting parties.

b) if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to reject the asset and either–

- (i) demand replacement of the asset that conforms to agreed specifications; or
- (ii) terminate the ijarah contract, and if the lessee has paid the advance rental, the lessor should refund the amount paid.

The rate of lease rental may be based on fixed or variable rates.

### **2. Transfer of ownership of Leased Asset**

At the end of the lease period, the ownership of the leased asset may be transferred from the lessor to the lessee or to any third party through any one of the following methods–

- (a) By way of selling the leased asset at an agreed price; or

- (b) By way of hibah (gift) of the leased asset.

### 3. Musharaka contract (profit and loss contract)

The following shariah rulings are applicable to the issuance of sukuk musharakah:

- (a) **Musharakah Capital**

Capital contributed by each of the musharik (partners) should be in the form of cash, in kind or a combination of both.

- (b) **Kafalah (guarantee) on musharakah capital**

Kafalah on musharakah capital may be provided by way of a third-party guarantee, with or without imposition of fee.

- (c) **Musharakah partners**

There should be at least two (2) partners to form a musharakah. However, there is no minimum number of sukuk investors.

- (d) **Profit and Loss**

The profit from musharakah venture will be distributed among the partners according to the pre-agreed profit sharing ratio. However, any loss should be shared among the partners according to their respective capital contribution.

- (e) **Tanazul (waiver of right)**

A partner may waive his right on the profit payment from the musharakah venture, if he so desires.

- (f) **Management of the Venture**

One of the partners or issuer or a third party may be appointed as the manager to manage the venture.

### 4. Mudharabah Sukuk (Profit Sharing Contract)

The following shariah rulings are applicable to issuance of sukuk mudharabah:

- (a) **Mudharabah Capital**

Capital contributed by a rabb al-mal (capital provider) shall be in the form of cash, in kind or a combination of both.

- (b) **Kafalah (guarantee) on Mudharabah Capital**

Guarantee (**Kafalah**) on mudharabah capital may be provided by way of a third-party guarantee, with or without imposition of fee.

(c) **Rahn (collateral)**

The rabb al-mal may request entrepreneur (mudharib) to place collateral (rahn) as protection from possibility of loss on capital that may occur as a result of negligence and misconduct by the mudharib (entrepreneur).

(d) **Profit and Loss**

The profit from mudharabah venture should be distributed between the rabb al-mal and the mudharib according to the pre-agreed profit sharing ratio. However, any loss should be borne in entirety, solely by the capital provider (rabb al-mal).

(e) **Tanazul (waiver of right)**

A partner may waive his right on the profit payment from the mudharabah venture, if he so desires.

(f) The management of the venture may be carried out by the mudharib or a third party appointed by the mudharib.

**577. Rating Requirements**

Rating shall be provided on all sukuk issues.

- 1) The issuer shall ensure that the issue is rated and made available throughout the tenure of the sukuk issue. The issuer must undertake to provide relevant information on continuous basis to the credit rating agency involved, in accordance with the format and frequency as agreed with the credit rating agency, so that timely dissemination of relevant information and rating analysis can be made available to investors and the Commission.
- 2) There shall not be any provision in any transaction documents that allows replacement of the credit rating agency during the tenure of the sukuk issue with recourse to Commission.

**578. Disclosure Of Material Information**

In addition to the requirements under these rules and regulations, the issuer shall disclose the following information in the offer document (where applicable):

- (1) If the issuer or its board members have been convicted or charged with any offence under the securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, for the last five (5) years prior to the date of the information memorandum or any document relating to the offer, issue or invitation;
- (2) If the issuer has been subjected to any action by a securities exchange for any breach of listing requirements or rules issued by a securities exchange, for the past five (5) years prior to the date of information memorandum or any document relating to the offer, issue or invitation; and
- (3) Any other information which is material to investors.

**579. Underwriting**

The underwriting of any issue, offer or invitation shall be at the discretion of the issuer.

## **580. Utilisation Of Proceeds**

1. Funds which are raised from any issue, offer or invitation of sukuk shall be shariah-compliant and shall be utilized by the issuer in accordance with the purpose disclosed in the offer document approved by the Commission.
2. Where the funds are disbursed to the issuer for a project which will generate cash flows for payments to sukuk holders, the transaction documents shall provide for the relevant parameters, conditions, supporting documents and certificates for the sukuk trustee or facility agent, where applicable, to manage the release of the funds to the issuer.

## **581. Additional Requirements for Sukuk Programmes**

1. Where a sukuk programme involves an issuance of Islamic Medium Term Notes (MTNs), the tenure for such programmes shall not exceed two (2) years.
2. The approval from the Commission for a sukuk programme is granted on the basis of continuous compliance by the issuer with all the relevant terms and conditions stated in these rules for shelf filing.
3. In the event of non-compliance with any requirement in these rules by the issuer of a sukuk programme, the Commission may impose further terms and conditions which could restrict the issuer from making further issues, offers or invitations under the sukuk programme until such non-compliance is remedied to the Commission's satisfaction.
4. For any sukuk programme approved by the Commission, the issuer must make available the following information and documents to its investors throughout the period of the sukuk programme:
  - a) A pricing supplement which provides the indicative terms (which includes, but not limited to issue date, size, tenure, credit rating, rental payment and utilisation of proceeds) of a specific issue or offer under the programme prior to such issue or offer to its targeted investors.
  - b) Publish the issuers'/originators latest annual audited financial statements, which shall not be more than nine (9) months old for body corporate and twelve (12) months for states, government agencies and supranational corporation.

The continuous disclosure requirement for the latest audited financial statements as provided in 4(b) will not apply under the following circumstances:

- (i) If the issuer is listed on the Nigerian Stock Exchange (NSE) on the basis that the disclosure will be made available in the public domain in accordance with the listing requirements of the NSE or any securities exchange which provides for similar disclosure listing requirement; or
- (ii) If the sukuk programme is listed on the NSE and such financial statements are required to be published.

## **582. Early Redemption Of Sukuk**

Where an issuer decides to make an early redemption or exercise a call option to redeem its outstanding sukuk prior to the maturity date of the sukuk, the trustee must inform the sukuk holders and the Commission, giving relevant details of such redemption (including broad details of the proposed sukuk holders' resolution where appropriate).

## **583. Implementation Time Frame For Sukuk Programme Or Sukuk Issuance**

1. Except in the case of a shelf registration or a sukuk programme, any approval given by the Commission under these rules shall be implemented within three (3) months from the date of the approval of the Commission.
2. In the case of a shelf registration or a sukuk programme, the initial issuance must be made within two (2) years from the date of the approval of the Commission.

## **584. Other regulatory approvals and compliance with relevant laws**

1. All the relevant requirements and approvals from other regulatory authorities, including the CBN, in relation to the issue, offer or invitation of sukuk shall be complied with and obtained prior to the submission of a proposal to the Commission.
2. Any conditions imposed by such regulatory bodies, if applicable, shall continue to be complied with throughout the tenure of the sukuk as approved under these rules.
3. A body who proposes an issue, offer or invitation of sukuk and its issuing house shall ensure that the issue, offer or invitation has complied with all the relevant laws, rules and regulations of the Commission.

## **585. Revision to terms and conditions**

1. Any revision made to the principal terms and conditions of an issue or offer of sukuk which has been approved by the Commission and has already been issued or implemented will require a prior clearance from the Commission.
2. For the provision in rule 586 to take effect, the trustees must notify the Commission of such revision.
3. Notwithstanding rule 586, any revision to increase the size of a sukuk issue shall not be allowed after the offer has closed and subscription level ascertained.
4. Any other revision made to an issue/offer of sukuk which has been approved by the Commission but not yet issued will require the Commission's prior approval.

### **5. Condition for revision of terms:**

- (a) Consent has been obtained, where applicable, resolution of the sukuk holders and the recertification of the shariah adviser and the consent of the trustee.

(b) Due process is to be observed in obtaining sukuk holders' approval for the proposed revision, where applicable.

(c) All material information pertinent to the revision, including the impact on credit rating and the shariah adviser's opinion on whether or not such revision complies with the principles of shariah together with the shariah basis and rationale, has been communicated and disclosed to sukuk holders.

6. Any revision to the principal terms and conditions of a sukuk issue shall not result in non-compliance with any regulatory requirements provided under these rules and other relevant rules.

7. During the tenure of a sukuk, any revision to the terms in the sukuk document such as the maturity date and the profit rate can only be implemented after cancellation of the initial contract. Thereafter, a new **`aqd** (contract) stating the new maturity date and profit rate have to be executed to replace the previous contract.

#### **586. Requirement For Sukuk Trustee**

All issuers of sukuk shall appoint a trustee registered with the Commission.

1. In enhancing the role and effectiveness of sukuk trustee in an issue or offer of sukuk, the lead issuing house (as the case may be) shall actively engage the sukuk trustee in the documentation processes of a sukuk programme or an issue or offer of sukuk on a timely basis. The trustee shall actively play its part in this process by providing comments and feedback to the documentation on a timely basis.

#### **2. Event of default**

The trust deed for issuance of sukuk shall provide that the occurrence of an event of default would entitle the sukuk holders to declare the sukuk immediately due and payable without any provision for period of grace, while provision for remedy may be negotiated to the extent appropriate.

#### **587. Offerings of Sukuk under a shelf registration**

Where an applicant seeks to issue, offer or make an invitation for sukuk under a shelf programme, such person shall comply with these rules as well as the Commission's rules on shelf registration.

#### **588. Sukuk Appendixes**

##### **APPENDIX 1**

#### **A. Documents To Be Submitted For The Purpose Of Obtaining The Approval Of The Commission**

1.01 Information memorandum/prospectus disclosing the following items:

(a) Background information on the issuer and/or originator in the case of an islamic asset-backed securities (ABS) issue/programme;

- (b) Profile of directors of issuer, including RC numbers;
- (c) A description of the transaction and structure of the issue/offer or programme (to specify clearly whether it is a one-time issue/offer or a sukuk programme);
- (d) Details of the utilisation of proceeds, including its schedule where applicable;
- (e) Primary and secondary sources of repayment;
- (f) Detailed breakdown of all upfront and recurring fees and expenses for the issue/programme;
- (g) Waiver(s) from complying with any relevant rules of the Commission obtained for the proposed issue/programme (if any);
- (h) Specific approval sought and obtained from the Commission in relation to the appointment of an independent shariah adviser and/or applicable shariah principle or concept;
- (i) Conflict-of-interest situations and appropriate mitigating measures;
- (j) Detailed information of the existing sukuk issue and/or loans to be refinanced by the proposed issue/programme, where applicable;
- (k) A copy of the letter from credit rating agency(ies) pertinent to the credit rating for the issue or offer;
- (l) Shariah certification issued by shariah adviser in relation to the sukuk issue;
- (m) Any other material information in relation to the issue/programme; and
- (n) Names, telephone numbers, facsimile number and e-mail addresses of the officer(s) -in - charge for the issue.

- 1.03 Issuer's declaration (as provided in Appendix 3)
- 1.04 Copies of approval letters from all other relevant regulatory authorities
- 1.05 Latest audited financial statements of the issuer(not less than nine (9) months old)
- 1.06 Compliance checklist on the sukuk guidelines

## **B. Principal Terms And Conditions Of The Proposal**

### **2.01 Background Information**



- (a) Issuer (where the issuer is a special purpose vehicle and is a conduit to another entity which receives proceeds from the proposed issue or offer, the following information on the said entity shall also be provided):
- i) Name
  - ii) Address
  - iii) Business registration no.
  - iv) Date and place of incorporation
  - v) Date of listing
  - vi) Status
  - vii) Principal activities
  - viii) Board of directors
  - ix) Structure of shareholdings and names of shareholders or, in the case of public company, of all substantial shareholders
  - x) Authorized and paid-up capital

## 2.02 Principal Terms and Conditions

- (a) Names of parties involved in the proposed transaction, (where applicable)

- i)
  - i. Sharia adviser
  - ii. Lead arranger
  - iii. Co-arranger
  - iv. Solicitor
  - v. Financial adviser
  - vi. Technical adviser

- (b) Facility description (including the description of islamic principle)
- (c) Issue/programme size
- (d) Tenure of issue/sukuk programme (or facility)
- (e) Availability period of sukuk programme (or facility)
- (f) Profit/coupon/rental rate
- (g) Profit/coupon/rental payment frequency
- (h) Profit/coupon/rental payment basis
- (i) Security/collateral (if any)
- (j) Details on utilisation of proceeds by issuer/obligor and originator (in the case of ABS).

If proceeds are to be utilized for project or capital expenditure, description of the project or capital expenditure, where applicable

- (k) Sinking fund and designated accounts (if any)

### (l) Rating

- i. Credit rating(s) assigned (Please specify if this is an indicative rating or if the credit rating is not assigned for the full amount in the case of sukuk programme, adequate disclosures to be made)
- ii. Name of rating agency

- (m) Mode of issue

- (n) Selling restriction, including tradability (i.e. tradable or non-tradable)

- (o) Listing status and types of listing
- (p) Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)
- (q) Conditions precedent
- (r) Representations and warranties
- (s) Events of default (or enforcement event, where applicable)
- (t) Covenants
- (u) Provisions on buy-back and early redemption of sukuk
- (v) Other principal terms and conditions for the issue

## **APPENDIX 2**

### **Declaration By The Issuer**

Date

The Director General

Securities and Exchange Commission

**ISSUER ... (Name of Issuer)...**

#### **Declaration under the Sukuk Rules;**

We, ...(Name of Issuer).... are proposing to undertake the following proposals--

(a) .....

(b) .....

(c) .....

(hereinafter referred to as “**the Proposal**”).

2. We confirm that having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the adviser(s)/expert(s) or to the Commission in relation to the above Proposal.

3. We declare that we are satisfied that after having made all reasonable enquiries that the Proposal is in full compliance with the following:

(a) The sukuk rules;

(b) The SEC rules and regulations;

(c) The trust deeds;

4. (Save as otherwise disclosed in the attachment accompanying this declaration) the Company has not—

(a) been convicted or charged with any offence under the securities laws, or other laws involving fraud or dishonesty in a court of law, for the last ten(10) years prior to the submission/since incorporation (if less than ten (10) years);

(b) been subjected to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past five (5) years prior to the submission.

5. We declare the following in accordance with the sukuk rules:

(a) The proposal results/does not result in a significant change in the business direction or policy of the listed company; and

(b) The proposal is/is not a related-party transaction.

6. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the Commission in relation to the above proposal and agree that we will continuously submit annual audited financial statements and other documents required by the Commission under the sukuk rules.

7. We undertake to provide to the Commission all such information as the Commission may require in relation to the proposal from time to time.

The above declaration has been signed by me as ... (designation of authorized signatory)...

of the issuer under the authority granted to me by a resolution of ...(the board of directors)...

on ...(date of resolution)...

Yours faithfully,

.....

Signature

Name :

Name of Issuer :

Date :

### **APPENDIX 3**

#### **Format For Electronic Submission**

1.01 All correspondences to be submitted to the Commission (except e-mails) must be accompanied by electronic copy in text-searchable format PDF (PDF-text) file in the following manner, unless otherwise stated in these rules:

(a) All signed correspondences (including appendices), such as cover letters, declarations, reports, etc, should be scanned with OCR (optical character recognition) and saved as PDF-text files; and

(b) The PDF-text files can be submitted to the Commission via a CD or e-mail (up to 10 MB in size per e-mail). The e-mail address is ***offerapplication@sec.gov.ng***. Please indicate in the cover letters on how the PDF-text files are to be submitted concurrently, as well as the particulars of the e-mail if relevant (i.e. sender, subject, date and time sent).

- 1.02 The electronic copy of the main applications, including the registerable prospectuses and supporting documents, must be submitted in text-searchable format PDF-text files. Please ensure that the PDF-text files should be in a readable and proper condition.

## **APPENDIX 4**

### **Documents To Be Submitted After Obtaining The Approval From The Commission**

- 1.01 The principal adviser(s) must submit the following information and documents to the Commission via ***offerapplication@sec.gov.ng*** prior to the issue date of sukuk or the first issue under a programme:

- (a) Date of issue, size of issue and tenure of issue; and
- (b) Soft copy of the following documents (clean version in 'PDF' format):
  - (i) Prospectus information memorandum (where applicable);
  - (ii) Islamic MTN base prospectus, where applicable, if the information memorandum or offering circular is prepared using the base prospectus;
  - (iii) Executed trust deed, where applicable; and
  - (iv) Principal terms and conditions;
- (c) Tenure of issue;
- (d) Mode of issue;
- (e) Profit/coupon rate of the issue;
- (f) Names of the primary subscriber(s)/place(s)/investor(s) and the respective amounts subscribed, primary subscription rates/yield-to-maturity;
- (g) List of tender panel members, if any;
- (h) Utilization of the proceeds raised from the issue;
- (i) A certified true copy of the executed trust deed, if applicable;
- (j) A copy of the rating report if the issue is rated or, if the issue is unrated because it is non-transferable and non-tradable and the investor(s) does/do not require a rating, confirmation from the principal adviser(s) that both the criteria have been met; and

1.02 Confirmation from the principal adviser(s) that:

- (a) designated account(s), if any, has/have been duly established and the authorized signatory(s) to those accounts has/have undertaken/agreed to administer the designated account(s) in accordance with the provisions stated in the principal terms and conditions of the proposal;
- (b) prospective investors and relevant parties have been informed of any instance where a conflict of interest situation may arise together with the relevant mitigating measures, including the agreement from the board of directors of the issuer to proceed with such arrangements;
- (c) the trustees has notified the Commission of any variation to or substitution/replacement of the underlying assets and confirmed to the Commission that the shariah adviser has given its approval for the variation or the substitution/replacement;
- (d) the trustee/sharia adviser undertakes the necessary internal measures that prior to each issuance/drawdown under the proposed sukuk programme, the issuance/drawdown is in full compliance with shariah principles;
- (e) the principal adviser has fully and clearly disclosed to all prospective investors and relevant parties of the sukuk, the details of the transaction structure, including but not limited to the risk factors of investing in the sukuk, and if any, the profit and loss sharing entitlement ratio between the investors/sukuk holders, the advance payment and purchase undertaking mechanism and the recourse available to the investors/sukuk holders; and
- (f) all other conditions of approval that has been/may be imposed by the Commission has been/will be complied with.

1.03 The principal adviser(s) must submit to the Commission confirmation from the shariah adviser prior to the issue date of sukuk or the first issue under a programme, confirming that:

- (a) all documentation for the sukuk issuance have been vetted;
- (b) all documentation for the sukuk issuance have been executed in proper sequence; and
- (c) all documentation comply with shariah requirements.

## **APPENDIX 5**

### **Documents Relating To Shariah Compliance To Be Submitted Prior To Seeking Deemed Approval Process**

- 1.01 A cover letter addressed to the Commission disclosing the following:
  - a) Background information on the issuer and/or obligor; and
  - b) A description of the transaction and structure diagram of the sukuk.
- 1.02 Shariah Pronouncement including detailed reasoning/justification.
- 1.03 Indicative principal terms and conditions of the proposal (as per Part B of Appendix 1).

- 1.04 Any other supporting documents/information as may be required by the Commission.

## **APPENDIX 6**

### **Documents And Information To Be Provided To The Commission For The Proposed Revision Of Principal Terms And Conditions**

- 1.01 A letter notifying the Commission of the proposed revision and rationale for each revision, accompanied by a confirmation that the relevant requirements (as set out in **paragraph 17** of these rules) have been duly complied with by the issuer. Also, the name, telephone number, facsimile number and e-mail address of the contact person of the principal adviser are to be disclosed in the letter should the Commission require further clarification on the revision;
- 1.02 A marked-up version copy of the revised principal terms and conditions and, where applicable, the supplemental information memorandum, supplemental offering circular, executed supplemental trust deed and other issue documents;
- 1.03 Any other material information in relation to the revision including the shariah adviser's opinion on whether or not such revision complies with the principles of shariah together with the shariah basis and rationale;
- 1.04 A copy of the written consent from the relevant parties in relation to the revision; and
- 1.05 A soft copy (clean version in PDF format) of the following documents to be e-mailed to the Commission
- (a) Revised principal terms and conditions
  - (b) Where applicable, the supplementary information memorandum, supplementary offering circular, executed supplementary trust deed and other issue documents.

## **APPENDIX 6(A)**

### **Documents And Information On Shariah Compliance To Be Submitted Prior To Notification**

- 1.01 A cover letter addressed to the Commission disclosing the detailed description of the revised transaction and structure diagram (where applicable) of the sukuk.
- 1.02 Shariah pronouncement including detailed reasoning/justification.
- 1.03 Revised principal terms and conditions of the proposal.
- 1.04 Any other supporting documents/information as may be required by the Commission.
- a) Detailed shariah reasoning/justification is required if the revision involves changes to the structure earlier approved by the Commission.
  - b) For a revision which does not affect the structure of the sukuk, consent from the shariah adviser is required to be submitted.

## PART L

### *Regulation of Solicitation and Use of Proxies*

#### **589. Definitions**

All the terms used in this regulation, unless the context otherwise requires, have the same meaning as in the Act and the rules and regulations made thereunder. In addition the following definitions apply:

**proxy** means any consent or authorizations, including a power of attorney, given by a holder of registered shares to another person empowering the latter to attend a meeting of shareholders of a public company and to exercise voting rights on behalf of the shareholder for the election of directors and approval of other corporate actions;

**proxy statement** shall mean the statement required by this regulation whether or not contained in a single document;

**registrant** shall mean the issuer of the securities in respect of which proxies are to be solicited;

**solicit** and **solicitation** shall include:-

- i. any request for proxy whether or not accompanied by or included in a proxy form;
- ii. any request to execute or not to execute, or to revoke a proxy; or
- iii. the furnishing of a proxy form or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

#### **590. Application of rules**

The rules contained in this regulation apply to every solicitation of a proxy with respect to securities registered pursuant to the Act and the Companies and Allied Matters Act (C.A.M.A) whether or not trading in such securities has been suspended except:

- (1) any solicitation not made by, or on behalf of the management of the issuer where the total number of persons solicited is not more than two, holding an aggregate number of shares not exceeding 1% of the paid-up capital;
- (2) any solicitation through the medium of a newspaper advertisement, which informs shareholders of a source from which they may obtain copies of a proxy form, proxy statement and other soliciting material and does no more than:
  - (a) give the name of the issuer,
  - (b) state the reason for the advertisement and
  - (c) identify the proposal or proposals to be acted upon by shareholders.

## **591. Requirements as to proxy**

(1) The form of proxy shall:-

- (a) indicate in bold-face type whether or not the proxy is solicited on behalf of the board of directors of issuer;
- (b) provide a specifically designated blank space for dating the proxy card; and;
- (c) identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the registrant or by shareholders.

(2) (a) A proxy form shall provide means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of, or abstention with respect to each matter referred to therein as intended to be acted upon, other than elections to office;

(b) A proxy form which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such proxy form shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee;

- (i) a box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or
- (ii) an instruction in bold-face type which indicates that the shareholder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or
- (iii) designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the security holder chooses to withhold authority to vote; or
- (iv) any other similar means provided that clear instructions are furnished indicating how the security holder may withhold authority to vote for any nominee.

(c) A proxy form may confer discretionary authority to vote with respect to any of the following:-

- (i) the election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause will not serve;
- (ii) matters incidental to the conduct of the meeting;

(d) No proxy form shall confer authority to;

- (i) vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or
- (ii) vote at any general meeting other than the next annual meeting to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders; or



(iii) vote with respect to more than one meeting or more than one consent solicitation; or

(iv) consent to authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c);

(e) For the purpose of this regulation a person shall not be deemed to be a bona fide nominee as director and he shall not be named as such unless he has consented to being named in the proxy form/statement and to serve if elected.

(f) A proxy form or statement shall provide subject to specified conditions that the shares represented by the proxy will be voted and that where the shareholder specifies in the ballot provided a choice concerning any matter to be acted upon, the shares will be voted in accordance with such specifications.

(3) Every issuer, company secretary or other agent of an issuer shall accept, process and formalize all duly executed powers of attorney, which meet the requirements of this regulation.

#### **592. Presentation of information in proxy statement**

(1) The information included in the proxy statement shall be clearly presented and the statement made shall be divided into groups according to subject matter and the various groups of statement shall be preceded by appropriate headings.

(2) Where practicable and appropriate the information shall be presented in tabular form. All amounts shall be stated in figures. Response shall be given for all items and where an information required is not applicable it shall be so stated.

(3) Any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

#### **593. Service of proxy statement and proxy forms**

(1) The registrant shall furnish the proxy statement and proxy form to the shareholder together with the notice of meeting and annual report twenty one (21) days to the date of the meeting in the case of annual general meeting (A.G.M.).

(2) Where proxies are solicited at the expense of the company on behalf of the board, proxy forms and materials must be sent to every member of the company entitled to notice of the meeting and to vote by proxy at the meeting.

#### **594. Filing Requirement**

(1) A copy of the proxy statement, proxy form and all other soliciting materials in the form in which such materials are furnished to shareholders, shall be filed with the Commission not later than 48 hours before the date such material is first sent or given to any shareholder.

(2) A copy each of all proxies exercised at any meeting of shareholders shall be kept by the registrant in a readily accessible place for a period of not less than two (2) years and made available to the Commission upon demand.

(3) The filing fee for proxy materials shall be as in schedule I or as may be prescribed by the Commission from time to time. The filing fee shall be non-refundable.

#### **595. Revised material**

(1) Where any proxy statement, proxy form or other material filed pursuant to this regulation is amended or revised, a copy of such amended or revised material shall be filed and marked to indicate clearly and precisely the changes effected therein.

(2) Any such amendment or revision of a proxy statement or material shall be communicated to every member entitled to attend and vote at a meeting ten (10) working days prior to such meeting.

#### **596. False or Misleading Statements**

(1) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by shareholders.

#### **597. Contents of a Proxy Statement**

Every proxy statement or material used in the solicitation of proxies shall contain among others the following information:-

##### **(1) Revocation**

A statement as to whether or not the person giving the proxy has the power to revoke it. It shall also state if the power of revocation before exercise of the proxy is limited or subject to conditions and if so, it shall briefly describe such conditions.

##### **(2) Persons seeking proxy**

- (a) Where solicitation is made on behalf of the issuer, state:-
  - (i) name of any director who has informed the issuer in writing that he intends to oppose any action intended to be taken by the issuer and indicate the action which he intends to oppose;
  - (ii) any interest direct or indirect, by shareholding or otherwise, of any director or officer of the company, in any matter to be acted upon other than elections to office;
- (b) (i) if the person soliciting proxies is other than the management of the company, indicate full names and addresses of the persons by whom and on behalf of whom it is made;

- (ii) any interest, direct or indirect, by shareholding or otherwise, in any matter to be acted upon other than election of officer.

(3) ***The method of solicitation***

- (a) State whether by:-
    - (i) mail;
    - (ii) employees or paid agents, or;
    - (iii) any other means.
  - (b) Give summary of any contract or arrangement for such solicitation with names and addresses of the parties and cost and anticipated cost thereof.
- (4) The names and addresses of the persons who will bear the cost of solicitation directly or indirectly.
- (5) (a) The classes entitled to vote at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.
- (b) The dates on which the register of shareholders entitled to vote at the meeting will be closed.
- (c) In substantially tabular form, any person who is a beneficial owner of five percent or more of any class of the issuer's voting shares and who is known to the person on whose behalf a proxy solicitation is made showing
- (i) total number of shares beneficially owned;
  - (ii) the percentage so owned;
  - (iii) the number of shares in which the person has acquired beneficial ownership through any contract arrangement.
- d) In substantially tabular form, each class of voting shares of the company or its parent, beneficially owned by all directors and officers of the company as a group without naming them and stating the total number of shares beneficially owned and the percentage of class owned including the amount of any shares beneficially acquired through any contract arrangement, understanding or relationship.
- e) Any change in control of the issuer within the last accounting year stating:-
- (i) the name and address of the person(s) who acquired such control;
  - (ii) the consideration made by such person(s);
  - (iii) the basis of the control, the date and description of the transaction resulting in the change;
  - (iv) percentage of voting shares of the company now beneficially owned directly or indirectly by the person(s) who acquired control;
  - (v) the identity of person(s) from whom control was acquired;

- (vi) if all or part of the consideration given is a loan made by a duly licensed bank or other financial institution, the identity of such a bank may be omitted in the proxy material but shall be filed separately with the Commission together with a copy of any such loan agreement;
- (vii) any arrangements or understandings among members of both the former and new controlling groups and their associates with respect to election of directors or other actions;
- (viii) any contractual arrangements including any pledge of issuer's securities or of its parent, known to the persons on whose behalf the solicitation is made, the operation of the terms of which may at a subsequent date result in a change in control of the issuer.

**(6) *Election of directors***

In case of election of directors, with respect to each person nominated and each other person whose term of office as a director will continue after the meeting

- (i) name and address;
- (ii) when term of office or the term for which he is a nominee will expire;
- (iii) all other positions and offices with the issuer presently held by him;
- (iv) other occupations or employments with names and addresses and main business of any company or other organizations in which such employments are carried on for the past five (5) years;
- (v) whether the person is or has previously been a director of the issuer and the period during which he served as such;
- (vi) as of the most recent practical date the approximate amount of each class of equity securities of the issuer or any of its parents or subsidiaries, beneficially owned directly or indirectly by him; where he is not the beneficial owner of any such securities, a statement to that effect should be made;
- (vii) the approximate amount of any class of securities of the issuer or any of its parents or subsidiaries beneficially owned by him and his associates, if more than 5 percent;
- (viii) if fewer nominees are named than the number fixed by or pursuant to the governing instruments state the reasons for this procedure and that the proxies cannot vote for a greater number of persons than the number of nominees named.

**(7) *Solicitation on behalf of management***

Where solicitation is made on behalf of management and action is to be taken with respect to—

- (a) the election of directors;
- (b) any bonus, profit-sharing or other remuneration plan, contract or arrangement in which any director, or officer of the issuer will participate;
- (c) any pension or retirement plan in which any such person will participate; or

- (d) the granting or extension to any such person of any options, warrants or rights issued to shareholders, as such, on a pro rata basis, the following information should be stated:
- (i) all direct remuneration paid by the issuer and its subsidiaries during the issuer's last accounting year to the following persons for services in all capacities—
    - (a) each director of the issuer whose remuneration in total exceeds N500,000 per annum and each of the highest paid officers of the issuer whose direct remuneration in total was that amount, naming each such director or officer;
    - (b) all directors and officers of the issuers as a group stating the number of persons in the group without naming them;
  - (ii) all annuity, pension or retirement benefits proposed to be paid to the above persons in the event of retirement at normal retirement date;
  - (iii) all remuneration payments other than payments reported under paragraphs (a) and (b) above proposed to be made in the future, directly or indirectly, by the issuer or any of its subsidiaries pursuant to any existing plan or arrangement;
  - (iv) all options to purchase any securities from the issuer or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the issuer's last fiscal year, and as to all options held by such persons as of the latest practicable date:
    - (a) as to options granted during the period specified, state—
      - (i) the title and aggregate amount of securities called for;
      - (ii) the average option price per share; and
      - (iii) if the option price was less than 100 percent of the date on grant, such fact and the market price on such date shall be disclosed;
    - (b) as to options exercised during the period specified, state—
      - (i) the title and aggregate amount of securities purchased;
      - (ii) the aggregate purchase price; and
      - (iii) the aggregate market value of the securities purchased on the date of purchase;
    - (c) as to all unexercised options held as of the latest practicable date, regardless of when such options were granted, state
      - (i) the title and aggregate amount of securities called for; and
      - (ii) the average option price per share;

- (iii) each of the following persons who was/is indebted to the issuer or its subsidiaries at any time since the beginning of the last fiscal year of the issuer:
  - (a) each director or officer of the issuer;
  - (b) each nominee for election and director; and
  - (c) each associate of any such director, officer or nominee.

**(8) *The information should state;***

- a. the largest aggregate amount of indebtedness outstanding at any time during such period;
- b. the nature of the indebtedness and of the transaction in which it was incurred.
- c. Where the solicitation is made on behalf of management of the issuer and relates to an annual general meeting of shareholders at which directors are to be elected and/or financial statements are included pursuant to section 344 of C.A.M.A., 1990, furnish the following information describing the issuer's relationship with its auditors:
  - (a) the name of the auditor selected or being recommended to shareholders for election, approval or ratification for the current year;
  - (b) the name of the auditor for the fiscal year most recently completed if different from the auditor selected or recommended for the current year;
  - (c)
    - (i) if an auditor has been changed since the date of the proxy statement for the most recent annual meeting of shareholders, and if the reason for the change is as a result of a disagreement between the auditor and issuer, the disagreement shall be disclosed;
    - (ii) prior to submitting preliminary proxy material to the Commission which contains or amends such description, the issuer shall furnish the description of the disagreement to the auditor to whom a disagreement has been reported;
    - (iii) where the auditor believes that the description of the disagreement is incorrect or incomplete, he may include a brief statement, in the proxy statement presenting his view of the disagreement;
    - (iv) this statement shall be submitted to the issuer within ten (10) working days of the date the auditor receives the issuer's description;
  - (d) the proxy statement shall indicate whether or not representatives of the auditor for the current year and for the most recently completed fiscal year are expected to be present at the shareholder's meeting with the opportunity to make a statement if they so desire and whether or not such representative are expected to be available to respond to appropriate questions;
  - (e) the names of members of the issuer's audit committee, if any shall be stated.

**(9) *Bonus, profit-sharing and other plans***

(1) Where action is to be taken with respect to any bonus, profit sharing or other remuneration plan, furnish the following information:

- (a) brief description of the material features of the plan, identifying each class of persons who will participate therein, indicating the approximate number of persons in each class and stating the basis of such participation;
- (b) separate statements of the amount which would have been distributable under the plan during the last accounting year of the issuer to
  - (i) directors and officers and;
  - (ii) employees where the plan had been in effect;
- (c) name and status with the issuer of each person who will participate in plan and the amount which each such person would have received under the plan for the last fiscal year if the plan had been in effect;
- (d) such information necessary to describe adequately the provisions already made pursuant to all bonus, profit-sharing, pension retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five (5) years for—
  - (i) each director or officer who may participate in the plan to be acted upon;
  - (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and
  - (iii) all employees, if employees may participate in the plan.

(2) If the plan to be acted upon can be amended otherwise than by a vote of shareholders, to increase the cost thereof to the issuer or to alter the allocation of the benefits as between the groups specified in (b), state the nature of the amendments which can be so made.

**(10) *Use of proxies in case of mergers, acquisitions etc.***

Where action is to be taken with respect to any plan for

- (i) the merger or external restructuring of the issuer into or with any other person or of any other person into or with the issuer;
- (ii) the acquisition by the issuer or any of its shareholders of at least 33 1/3 of interest in securities of another issuer;
- (iii) the acquisition by the issuer of any other going business or assets;
- (iv) the sale or transfer of all or substantial part of the operating assets of the issuer; or
- (v) the liquidation or dissolution of the issuer

- (a) outline briefly the material features of the plan and state the reasons therefore and the general effect thereof upon the rights of existing shareholders;
- (b) furnish the following information essential to an investor's appraisal of the action to be taken:
  - (i) detailed information about the product line of the companies;
  - (ii) a list of the major competitors in that product market and the market position or market share of each company;
  - (iii) the structure and organization of the merging companies;
- (iv) revenue information about the operations of the companies;
- (v) the latest financial statements of the companies;
- (vi) an analysis of the effect of the acquisition on the relevant market including the post-acquiring or surviving company.

**(11) *Other corporate actions***

Where action is to be taken with respect to the acquisition or disposition of any operating property, furnish the following information:

- (a) the general characters and location of the property;
- (b) the nature and amount of consideration to be paid or received by the issuer or any subsidiary;
- (c) the name and address of the transfer or transferee, as the case may be and the nature of any material relationship of such person to the issuer or any affiliate of the issuer;
- (d) any other material feature of the contract or transaction.

**(12) *Financial statement***

The proxy material may incorporate by reference any financial statement contained in an annual report sent to shareholders pursuant to section 344 (1) of the Companies and Allied Matters Act, 1990 with respect to the same meeting as that to which the proxy statement relates.

**(13) *Reports and minutes***

Where action is to be taken with respect to any report of the issuer or of its directors, officers or committees or any minutes of meeting of its shareholders, furnish the following information:

- (a) whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes;
- (b) identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.



(14) Where action is to be taken with respect to any matter which is not required to be submitted to a vote of shareholders, state the nature of such matter and what action is intended to be taken by management in the event of a negative vote on the matter by the shareholders.

**(15) *Alteration of Memorandum and Articles of Associations***

Where action is to be taken with respect to alteration of the issuer's Memorandum and Articles of Association state the alterations to be made, the reasons for and general effect of such alteration.

(16) Where action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each of such matters.

## **PART M**

### ***Administrative Procedures***

**598. Summary Sanctions**

The Commission may summarily sanction an erring operator or other regulated entity.

**599. Administrative Proceedings Committee**

- 1) Pursuant to sections 310 of the Act, there is hereby established an administrative body to be known as Administrative Proceedings Committee (the Committee) for the purpose of hearing capital market operators and institutions in the market who are perceived to have violated or have actually violated or threatened to violate the provisions of the Act and the rules and regulations made thereunder and such operators or persons against whom complaints/allegations have been made to the Commission.
- 2) The rules of procedure of the committee are contained in schedule VIII to these rules and regulations.

**600. Negotiated Settlement**

1. Any person notified that a proceeding is or may be instituted against him or any party to a proceeding already instituted, may, at any time, propose in writing to the Commission a request for a negotiated settlement with the Commission.

**2. *Procedure:***

- a. A notification of a request for negotiated settlement shall state that it is made pursuant to this rule;
- b. It shall recite or incorporate as part of the request the provisions of sub rule 3 (d) of this rule;
- c. The notification shall be signed by the person making the request and not by his/her counsel;
- d. In the case of a body corporate, notification shall be signed by the managing director or secretary and not by counsel to the company.

Provided that settlement shall not be available in respect of insider trading, accounting fraud, market manipulation and any party who had previously utilized the negotiated settlement.

**3. *Consideration of request for negotiated settlement:***

- a. Upon the receipt of request for a negotiated settlement, any proceedings against the erring party shall be suspended and the notification shall be forwarded to the appropriate department of the Commission for consideration.
- b. In considering the request for negotiated settlement regard shall be had to the submission of the party making the request and a settlement conference shall be convened where the party shall give reasons to warrant the grant of a negotiated settlement.
- c. The appropriate department of the Commission shall present its findings on the request for a negotiated settlement to the Commission within five (5) working days, from the date of the conclusion of the settlement conference.
- d. By submitting to a negotiated settlement, the party making the request shall, subject to the acceptance of the request, waive:
  - i. Its right to initiate further hearing pursuant to the statutory provisions under which the proceedings are to be or have been instituted;
  - ii. The filing of proposed findings of facts and conclusion of law;
  - iii. All post hearing procedures;
  - iv. Judicial review by any court.
  - v. Some provisions of the rules and regulations or other requirements of law as may be construed to prevent any member of staff of the Commission from participating in the preparation of, or advising the Commission as to, any order, opinion, finding or fact, or conclusion of law to be entered pursuant to the request; and,
  - vi. any right to claim of bias or prejudgment by the Commission based on the consideration of or discussion concerning settlement of all or any part of the proceedings.
- e. Where the request for negotiated settlement is rejected, the party making the request shall be notified by the Commission within five (5) working days of receipt of rejection from the appropriate department and the request for settlement shall be deemed withdrawn.
- f. The rejected request shall not constitute part of the record
- g. in any proceeding against the party making the request.
- h. The acceptance of the negotiated settlement shall occur only upon the issuance of findings and decisions by the Commission.
- i. The Commission shall not accept a partial fulfillment of a settlement and until a request is fully settled by the party making the offer, the event for which the request was made shall

continue to run against the party and the Commission may continue its instituted proceedings against the party.

*[SECRR(A) January, 2011]*

## **601. Administrative Sanctions**

The Commission shall have power to impose any of the following sanctions:-

1. suspension or cancellation of registration of capital market operators;
2. revocation of the certificate of a securities exchange or capital trade point;
3. suspension or expulsion or other decisions/actions against members of securities exchanges, capital trade points and other self-regulatory organizations (SROs) in respect of their members;
4. suspension or expulsion or other decisions/actions against members/officials of securities exchanges, capital trade points and other SROs where they fail to act against their members/officials;
5. removal of executive officers of a capital market operator, securities exchange, capital trade point and other SROs;
6. suspension of registration of securities;
7. fines for late registration and non-compliance with the ISA, rules and regulations of the Commission and the code of conduct for capital market operators and their employees;
8. restitution and compensation orders;
9. determination of compensation for insider dealing cases;
10. Disqualification of professionals or sponsored individuals from operating in the capital market.
11. imposing conditions for registrations;
12. imposing the rate of interest payable to subscribers by issuing houses for late return of monies;
13. payment of administrative charges;
14. any other sanction which the Commission may prescribe from time to time.

## PART N

### *Miscellaneous Rules*

#### **602. Attendance at General Meetings of Securities Exchanges/other S.R.O.s, public companies, collective investment schemes, and court-ordered meetings in mergers and take-overs**

1. All general meetings and completion meetings shall be held only on business days.
2.
  - a. All public companies, collective investment schemes, securities exchanges/other S.R.O.s, issuers of public securities and merging companies shall officially invite the Commission to their general meetings
  - b. the notice of such meeting shall reach the Commission not later than twenty (21) days before the date of the meeting;
  - c. the Commission may send two representatives to the general meetings of the public companies and unit/investment trust schemes;
  - d. the representative of the Commission shall ensure proper conduct of the meeting and may intervene at the meeting to make clarifications on regulatory issues and matters touching on the Act and the rules and regulations.
3.
  - a. All issuers of securities shall as a matter of policy invite the Commission to the completion board meeting for the signing of offer documents;
  - b. the notice of such meeting shall reach the Commission not later than three (3) working days before the date of the meeting;
  - c. the Commission shall send two representatives to the completion meeting for the purpose of monitoring compliance with the rules of the Commission;
  - d. the representative of the Commission shall ensure proper conduct of the meeting and may intervene at the meeting to make clarifications on regulatory issues and other matters touching on the Act and the rules and regulations.

## SCHEDULE I

[SECRR(A) 2002, s. 3.]

### **Registration Fees, Minimum Capital Requirements, Securities and others PART A**

#### **Registration Fees**

#### **A1. Market Operators**

		Initial	
		N k	
1.	Application Form	5,000.00	
2.	Broker/Dealer	100,000.00	
3.	Broker	100,000.00	
4.	Dealer	100,000.00	
5.	Inter-Dealer Broker	100,000	
6.	Corporate Sub-Broker	50,000.00	
7.	Underwriter	200,000.00	
8.	Issuing House	200,000.00	
9.	Registrar	100,000.00	
10.	Fund/Portfolio Manager	100,000.00	
11.	Corporate Investment Adviser	100,000.00	
12.	Individual Investment Adviser	50,000.00	
13.	Commodities Broker	50,000.00	
14.	Sponsored Individual	1,000.00	
15.	Banker to an Issue	100,000.00	
16.	Trustee	100,000.00	
17.	Rating Agency	100,000.00	
18.	Capital Market Consultant (Corporate)	100,000.00	
19.	Capital Market Consultant (Partnership)	50,000.00	
20.	Capital Market Consultant (Individual)	50,000.00	
21.	Venture Capital Company / Fund manager	100,000.00	
22.	Fund Manager	100,000	
23.	Portfolio Manager	100,000	
24.	Market Maker	200,000	
25.	Custodian of Securities	200,000	
26.	Depository Agency	N/A	
27.	Jobber	100,000	

## ***A2. Market Facilities***

		N	k
1.	Securities Exchange	250,000.00	
2.	Commodities Exchanges	200,000.00	
3.	Securities Exchange Branches	100,000.00	
4.	Commodities Exchange Branches	100,000.00	
5.	OTCs and other S.R.O.s	200,000.00	
6.	Capital Trade Points	100,000.00	
7.	Clearing, Settlement, Depository and Custodial Agencies	200,000.00	

## **PART B**

### ***Minimum Capital Requirement (N)***

1.	Broker/dealer	70 million
2.	Broker	40 million
3.	Dealer	30 million
4.	Interdealer Broker	50 million
5.	Corporate sub-broker	5 million
6.	Individual sub-broker (net worth)	500,000.00
7.	Underwriter	100 million
8.	Issuing house (non-bank)	150 million
9.	Registrar	50 million
10.	Portfolio manager	20 million
11.	Capital market Fund manager/Venture Capital Fund manager	20 million
12.	Corporate investment adviser	5 million
13.	Individual investment adviser (net worth)	500,000.00
14.	Commodities broker	40 million
15.	Stock Exchange	500 million
16.	Commodity Exchange	500 million
17.	OTCs and other S.R.O.s	500 million
18.	Clearing, Settlement and Custodial Agency	500 million
19.	Capital Trade Point	20 million
20.	Capital Market Consultant (corporate)	5 million
21.	Capital Market Consultant (partnership) (net worth)	2 million
22.	Capital Market Consultant (individual) (net worth)	500,000.00
23.	Trustee	40 million
24.	Rating Agency	20 million
25.	Venture Capital Company	20 million
26.	Fund/Portfolio Manager	40 million
27.	Market Maker	2 billion
28.	Receiving Banker	As stipulated by the CBN

## PART C

### *Securities*

- (1) Application fee for registration of a Collective Investment Scheme, flat rate of N35,000.00
- (2) Filing fee for registration of securities flat rate of N10,000.00
- (3) The registration fees of securities of public companies (including rights issue) special funds and processing fees on offer for sale are as provided hereunder—

#### **First Tier Market:**

For the first half a billion worth of securities

Offered	1%
Next half a billion	0.75%
Above one billion	0.50%

#### **Second Tier Market:**

Flat rate for securities offered at	0.50%
Bonus issue	1% of nominal value of shares

- (4) Fees on Federal/State/Local Government bonds and debentures of public limited companies:

i. Primary market (registration fee)	0.15% [SECRR(A)March 2010]
ii. Secondary market transaction	0.1%

- (5) Authorization fee for units of the fund of unit trust scheme:

First N10 million	0.1%
Next N10 million	0.075%
Above N20 million and up to N40 million	0.050%
Any sum thereafter	0.025% [SECRR(A)March2010]

- (6) Registration of real estate investment funds

First N50 million	0.1%
Next N50 million	0.075%
Above N100 million and up to N200 million	0.050%
Any sum thereafter	0.025% [SECRR(A)March2010]

(7) Registration of Venture Capital funds

First N100 million	0.1%
Next N100 million and up to N400 million	0.075%
Above N400 million and up to N900 million	0.050%
Any sum thereafter	0.025% [SECRR(A) March, 2010]

(8) Processing fee for schemes of merger/acquisition and take-over

Filing fee for pre-merger notice	N50,000
First N500,00 million share capital	0.3%
Next N500 million share capital	0.22 %
Any sum thereafter	0.15% [SECRR(A) February, 2013]

(9) Registration of existing securities (for public companies whose securities are not yet registered)

First N500 million (of paid-up share capital)	0.3%
Next N500 million	0.225%
Any sum thereafter	0.15% [SECRR(A) February, 2013]

**PART D**

***Others***

**S.E.C. FEES ON MARKET DEALS**

1. Payment to Commission by broker/dealer on every security traded on the Exchange (payable by buyer) 1% market value of security
2. Filing fee for proxy materials N5,000.00
3. Fees for inspection, copying and certifying records kept by S.E.C.:
  - (a) Inspection of any document N500.00
  - (b) Certification of any document:-
    - (1) first page N100.00
    - (2) every subsequent page N25.00
  - (c) Photocopying (each page) N10.00



**Note: These fees are subject to review by the Commission from time to time.**

## **SCHEDULE II**

### ***Penalties/Fines***

*Late filing fee:*

First two weeks – corporate body	N2,000.00
Sponsored individuals	N1,000.00 each
Every subsequent day the default subsists: corporate body	N1,000.00 per day
Sponsored individual	N500.00 per day
Late filing of allotment returns	2% above MPR on cumulative balance of issue proceeds.
Failure by a company to file Form S.E.C. IA within 30 days of concluding any transaction involving foreign portfolio investment	N50,000.00 flat.
Late filing of quarterly/yearly returns	N2,000.00 per day for the period of default.
Non-filing of quarterly/yearly returns	N5,000.00 per day for the period of default.
Late remittance of S.E.C. fees on market deals	N100,000.00 flat rate and in addition payment of interest on the amount due to the Commission at the rate of 8% above the ruling monetary policy rate (MPR) of the Central Bank of Nigeria (CBN), and where the default continues for a period exceeding 60 days, the operator shall be referred for enforcement action.
Underpayment	Any underpayment of SEC fee shall attract a penalty of three months NIBOR plus 2% compounded interest monthly. Further default shall result in the market operator being referred for enforcement action.

*[SECRR(A) January 2011]*

Failure to seek prior approval of the Commission  
before issuing securities

up to N5,000.00 per day for the  
period of default.

Failure to attend registration meeting

- |     |                      |  |
|-----|----------------------|--|
| (a) | Corporate            | equivalent amount of registration fee payable<br>for the function applied for. |
| (b) | Sponsored individual | equivalent amount of registration fee payable.                                 |
| (c) | Re-appearance fee    | equivalent amount of the registration fee for<br>the function applied for.     |

**Note: These penalties/fines are subject to review by the Commission from time to time.**

### **SCHEDULE III**

#### ***Forms***

- |                 |  |
|-----------------|--|
| FORM S.E.C. 1A: | Foreign Direct and Portfolio Investments   |
| FORM S.E.C. 1B: | Registration of Bonus/Script Issues  |
| FORM S.E.C. ID  | Notification to the Commission of intention to inspect documents   |
| FORM S.E.C. 2:  | Application for Registration of Sponsored Individuals, Individual Investment Adviser, Principal Officers of Securities Exchange, Capital Trade Point, Securities Clearing, Settlement, Depository and Custodial Agency, Capital Market Experts |
| FORM S.E.C. 2A: | Notification of Resignation of Sponsored Individual by the Sponsoring Company  |
| FORM S.E.C. 2B: | Transfer of Registration of Sponsored Individual to Another Corporate Body   |
| FORM S.E.C. 2C: | Registration of Sub-broker   |
| FORM S.E.C. 3:  | Registration as a Broker/Dealer, Broker, Dealer, Issuing House, Investment Adviser (Corporate Bodies), Fund/Portfolio Managers, Underwriters, Banker to an Issue, etc  |
| FORM S.E.C. 3A: | Rating Agency  |
| FORM S.E.C. 3B: | Registration of Venture Capital  |
| FORM S.E.C. 4:  | Registration of Registrar and Share Transfer Agent   |
| FORM S.E.C. 4A: | Registration of Trustees   |

FORM S.E.C. 5:	Registration of Securities Exchanges, (Stock Exchanges, Commodity Exchanges, etc.)
FORM S.E.C. 5A:	Registration of Body or Association of Securities Dealers
FORM S.E.C. 5B:	Registration of Capital Trade Point
FORM S.E.C. 5C:	Registration of Clearing, Settlement, Depository and Custodial Agencies
FORM S.E.C. 6:	Registration of Securities of Public Companies, State/Local Government Bonds/Securities and Special Funds
FORM S.E.C. 6A:	Registration of Unit/Investment Trust Scheme
FORM S.E.C. 6A1:	Registration of Private equity funds
FORM S.E.C. 6A2:	Registration of Venture Capital
FORM S.E.C. 6B:	Report of Subsequent Transactions by Holders of 5% or More Shareholdings in any Company
FORM S.E.C. 6C:	Registration of Interest in Securities
FORM S.E.C. 6D:	Registration of Securities Arising from Cross-border Transactions
FORM S.E.C. 6F	Registration of Foreign Securities
FORM S.E.C. 7:	Amendment of Registration Information by Capital Market Operators
FORM S.E.C. 7A:	Notification of Change of Registrar by Companies
FORM S.E.C. 8:	Withdrawal from Registration as a Market Operator
FORM S.E.C. 8A:	Withdrawal from Registration of Securities
FORM S.E.C. AR-1:	Annual Report by Public Companies
FORM S.E.C. AR-2:	Annual Report by Capital Market Operators
FORM S.E.C. AR-3:	Annual Report by Self-regulatory Organisation
FORM S.E.C. QR1:	Quarterly Return by Self-regulatory Organisation on Dealing Members
FORM S.E.C. QR2:	Quarterly Return from Broker/Dealer
FORM S.E.C. QR3:	Quarterly Return by Issuing House on Sale of Securities
FORM S.E.C. QR4:	Quarterly Return from Registrar
FORM S.E.C. QR5:	Quarterly Return from Fund/Portfolio Manager
FORM S.E.C. QR6:	Quarterly Return by CIS Schemes
FORM S.E.C. QR7:	Quarterly Return by Custodians

FORM S.E.C. QR8: Quarterly Return for Private equity funds

FORM S.E.C. QR9: Quarterly Return from Public Unquoted Company

FORM S.E.C. QR9A: Quarterly Return by Public Companies on Unclaimed Dividends

FORM S.E.C. QR10: Quarterly Return from Investment Adviser

FORM S.E.C. ID: Application for Inspection of Document

FORM S.E.C. CD: Application for Certification of Document

FORM S.E.C/QR/IDB/2A Quarterly Return from Inter-Dealer Broker

..... Quarterly Return from Underwriter

..... Quarterly Returns by Issuing House on Securities and Use of Issue Proceeds

#### **SCHEDULE IV**

***Information, Returns and Reports Required to be Filed by Public Companies, Capital Market Operators, Collective Investment Schemes and other Self-regulatory Organizations. [SECRR(A) February 28, 2013]***

1. Annual report and accounts of public companies.
2. Quarterly and Half yearly return by public companies.
3. Continuous reporting of material changes in activities by public companies.
4. Quarterly Report/Return from Capital Market Operators.
5. Annual Report and Accounts by Capital Market Operators.
6. Monthly Return from Capital Market Operators.
7. Miscellaneous Returns by Capital Market Operators.
8. Quarterly Return by Securities Exchanges and other Self-regulatory Organizations.
9. Monthly and quarterly returns of Collective Investment Schemes.
10. Quarterly Returns of Venture Capital and Private Equity Funds

## **SCHEDULE V**

### ***Report on Securities and Use of Proceeds***

#### **FORM S.E.C. QR8**

##### ***PART A—Report to be Filed by Issuing house***

1. Name of issuer.
2. Name of issuing house.
3. Name(s) of underwriter(s).
4. Date of the report.
5. (a) Date offering commenced.  
(b) Date offering closed (if closed).  
(c) State reasons for extension of time granted.  
(d) If offering was terminated prior to completion, state the date and describe briefly the reasons for such discontinuance.
6. (a) Total number of shares or units offered.  
(b) Number of such shares or units sold from commencement of offering to date.  
(c) Number of such shares or units still being offered.
7. (a) Total amount received from the public from commencement of offering to date.  
(b) Amount underwritten.  
(c) Underwriting commission.  
(d) Other expenses paid to date or for the account of the issuer;-
  - i. legal;
  - ii. accounting;
  - iii. printing and advertising;
  - iv. others.  
(e) Total costs and expenses.  
(f) Proceeds paid to issuer after above deductions.
8. List the names and address of all brokers/dealers who have, to the knowledge of the issuer, participated in the distribution of the securities offered.

9. State the number of shares held by each promoter, director, officer or controlling person of the issuer if different from the amount stated in the Prospectus.
10. Signature.
11. Date.

***PART B—Report to be Filed by Issuer***

1. Name of issuer.
2. Name of issuing house.
3. Information on securities
  - (a) amount;
  - (b) description;
  - (c) date offering commenced;
  - (d) date offering closed (if closed);
  - (e) amount of proceeds received;
  - (f) time proceeds received.
4. Furnish a reasonably itemised statement of the use made of the proceeds from the sale of the securities from the commencement of the offering to date.
5. State any amount of bridging loan received, which was paid from proceeds, and give date and manner of receipt of such loan.
6. If the proceeds from the sale of the securities have been temporarily invested pending their ultimate use, give a statement as to the nature and terms of such temporary investment and when the proceeds shall be used for the purposes for which they were intended.
7. State briefly the nature and extent of each type of the issuer's principal activities to date.
8. List the names and addresses of all brokers/dealers who have to the knowledge of the issuer participated in the distribution of the securities offered.
9. State the number of shares held by each promoter, director, officer or controlling person of the issuer if different from the amount stated in the Prospectus.
10. Signature.
11. Date.

## SCHEDULE VI

### *Basis of Computation of Bid and Offer Prices for Collective Investment Schemes*

The bid and offer prices of units in a collective investment scheme shall be based on the net asset value of the scheme calculated on a weekly basis by the scheme manager as follows:

#### **Offer Price:**

*Value per unit = (1) minus (summation of 2- 10) divided by number of units on sale rounded off.*

1. Total market value of securities based on the Exchange daily official list as at the date of valuation (lowest market offer price).
2. Stamp duties;
3. Brokerage fee;
4. S.E.C. fee;
5. Other relevant approved costs
6. Actual cost of investment in unquoted securities(if applicable);
7. Estimate of capital appreciation/diminution in value for unquoted companies(if applicable);
8. Un-invested cash;
9. Undistributed income to date less expenses;
10. Total value of money market instrument;
11. Manager's charge.

#### **Bid Price:**

Value per unit = summation of (1) minus (2 - 8) divided by number of units on sale rounding off.

1. Total market value of securities based on exchange daily official list as at date of valuation (highest market bid price).
2. Actual cost of investment in unquoted securities(if applicable).
3. Estimate of capital appreciation for unquoted companies(if applicable).
4. Un-invested cash.
5. Undistributed income to date less expenses.
6. Total value of money market instruments.
7. Stamp duties.

8. Brokerage fee.
9. S.E.C. fee.
10. Other relevant approved costs.

**Note:**

Securities traded on a Stock Exchange or any regulated market will generally be valued at the last traded price quoted on the relevant exchange or market as at the date of computation. If no trade is reported for that date or if the exchange was not open on that day, the last published sale price or the recorded bid price (whichever is more recent) shall be used. Unlisted equity securities will be valued initially at cost and thereafter, as the Scheme's Manager shall in its discretion deem appropriate. Unlisted securities (other than equities), for which there is an ascertainable market value will be valued generally at the last known price dealt on the market on which the securities are traded on or before the day preceding the relevant date of valuation and unlisted securities (other than equities), for which there is no ascertainable market value, will be valued at cost plus interest (if any) accrued from purchase to (but excluding) the Valuation Date plus or minus the premium or discount (if any) from par value written off over the life of the security. Any value otherwise than in Nigeria Naira shall be converted at the prevailing market exchange rate.

## **SCHEDULE VII**

### ***METHOD OF CALCULATION OF ANNUAL TURNOVER OR ASSETS TO BE APPLIED IN RELATION TO MERGER THRESHOLDS***

Nigerian Statement of Accounting Standards (SAS) 30 Apply.

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the assets, and the turnover, of a firm must be calculated in accordance with the Nigerian Statement of Accounting Standards (SAS)30, subject only to the following provisions as contained in this schedule.

#### **METHOD OF CALCULATION OF ASSETS**

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet at the end of the last audited financial year, subject to the provisions of sub-items (1) and (2).

1. In particular:

- (a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
- (b) the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in the merging entities balance sheets;
- (c) no deduction may be taken for liabilities or encumbrances of the firm;



(d) the calculation of the combined assets shall be based on the combined assets of the companies before the merger. The combined assets, excludes any goodwill or intangible assets that would arise as a result of the merger;

(e) the combined assets are not adjusted for any investments the acquiring firm might have in the target firm or amounts due by one firm to the other; and

(f) assets in Nigeria includes all assets arising from activities in the country.

2. If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired or any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements:-

(a) The following items must be added to the calculation of the firm's asset value:

i) The value of those recently acquired assets; and

ii) Any asset received in exchange for those recently acquired asset.

(b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:

i) The value of those recently divested assets at the date of their divestiture.

## **METHOD OF CALCULATION OF TURNOVER**

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from Nigeria, arising from the following transactions and events as recorded on the firm's income statement for the last audited financial year, subject to the provisions of sub-items (1), (2) and (3):-

(a) the sale of goods;

(b) the rendering of services; and

(c) the use by others of the firm's assets yielding interest, royalties and dividends.

1. In particular:

(a) When calculating turnover, the following amounts may be excluded:

i) any amount that is properly excluded from gross revenue in accordance with any relevant SAS;

ii) taxes, rebates or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(b) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the target firm;

(c) revenue excludes gains arising ‘from non-current assets and from foreign currency transactions; and

(d) for banks and insurance firms, revenue includes those amounts of income required to be included in an income statement in terms of any relevant SAS, but excluding those amounts contemplated in paragraph (c).

2. If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture, asset, shares or any other interest not shown on those financial statements OR divested itself of any subsidiary company, associated company, joint venture, assets, shares or any other interest shown on those financial statements;

(a) the turnover generated by those recently acquired assets, must be included in the calculation of the firm’s turnover if this turnover should in terms of any relevant SAS be included in the turnover of the firm;

(b) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm’s turnover if this was included in the turnover of the firm.

3. If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub item (2) are for more or less than 12 months, the values recorded on those statements must be pro-rated or extrapolated to the equivalent of 12 months.

*[SECRR(A)March 2010]*

## **SCHEDULE VIII**

### ***Rules of Procedure of S.E.C. Administrative Proceedings Committee***

#### ***Introduction***

These rules of procedures shall apply for the time being to proceedings of the Administrative Proceedings Committee of the Securities and Exchange Commission.

The Administrative Proceedings Committee of the Commission is a body established pursuant to the Investments and Securities Act for the purpose of resolving disputes in the capital market and giving opportunity for fair hearing to capital market operators and other institutions in the market who are perceived to have violated or have actually violated or threatened to violate the provisions of the ISA and the Rules and Regulations made thereunder or such operators against whom investors have lodged complaint.

#### **Rule 1: Definitions**

**“Appropriate Department”** means the Department for the time being responsible for investigation and enforcement in the Commission.

**“Commission”** means the Securities and Exchange Commission established by the Investments and Securities Act (ISA).

<b>‘Committee’</b>	means the Administrative Proceedings Committee of the Securities and Exchange Commission.
<b>‘Complainant’</b>	means a person who has filed a complaint before the Committee or on whose behalf a complaint has been filed.
<b>‘Respondent’</b>	means the person against whom a complaint has been made before the Committee.

## **Rule 2: Parties**

The parties to the proceedings before the Committee shall be:

- a) In a matter initiated by the Commission:
  - i. the Head of Department responsible for investigation in the Commission;
  - ii. the person or institution against whom an allegation of violation of the Act or Rules has been made;
  - iii. any other person required by the Committee to be joined or joined by leave of the Committee.
- b) In any other case:
  - i. the Complainant;
  - ii. the Respondent;
  - iii. any person considered by the Committee to have an interest in the proceedings or joined by leave of the Committee.

## **Rule 3: Reference of matters to the Committee**

- a) Complaints shall be forwarded to the Commission by the Complainant or its/his representative or any interested party and the Commission shall cause the complaint to be investigated by the appropriate Department;
- b) Where the appropriate Department is of the opinion that any provision of the Investments and Securities Act (ISA), the Rules and Regulations or the Code of Conduct for Capital Market Operators and their Employees made there under have been or is threatened to be violated, it shall prepare a report of the matter and formulate appropriate claim(s) and particulars thereof or details of the alleged violations and forward them to the Secretary of the Committee with all documents considered by the Department.

## **Rule 4: Service of Notice and Commencement of Hearing**

- a) On the directive of the Chairman of the Committee, the Secretary shall fix a day for hearing of the matter and shall serve notice thereof on each party to the proceedings.

- i. The Secretary shall serve on each party, copies of the particulars of claims or details of the alleged violations prepared by the appropriate Department and all the documents considered relevant to the hearing of the matter;
- ii. The notice of hearing which shall contain the names of the parties, the particulars of claim(s) and or details of the alleged violations, date, place and time of hearing may be served personally, electronically or by registered post addressed to the last known address of each party to the proceedings.

Provided that where a notice is returned undelivered, the Chairman of the Committee may direct that the notice of hearing be advertised in two (2) National daily Newspapers or such acceptable mode of service and such publication/service shall be deemed to be adequate service on the parties;

- iii. There shall be at least fourteen (14) working days between the service of the Hearing Notice and the date fixed therein for hearing;
- iv. The Respondent(s) shall, within seven (7) working days from the date of service of the claims and particulars thereof and/or hearing notice file with the Secretary, any defence or answer in response to the claim(s) or alleged violations which shall also be served on any other party named in the matter;
- v. The parties may file and serve any additional documents they may wish to file within three (3) working days from the service of the Respondent's defence or answer;
- vi. Upon the expiration of the period specified under this Rule, the matter shall be set down for hearing;
- vii. No adjournment shall be allowed except the Committee believes that declining to grant such will lead to a grave miscarriage of justice against the party seeking it.

**Rule 5: Hearing in absence of Parties**

- a) If any party fails to appear at the hearing, the Committee may, upon proof of service on such party of the notice of hearing, proceed to hear and determine the matter in its/his absence;
- b) Any party who failed to appear at the hearing may within one (1) month from the pronouncement of the findings and decisions of the Committee apply for a re-hearing adducing compelling reasons for its/his absence and if the Committee is satisfied that it is just to re-hear the matter, it may grant the application upon such terms as to payment of administrative charges or otherwise.

**Rule 6: Hearing of Witnesses and Reception of Documents**

- a) The Committee may in the course of the proceedings hear such witnesses and receive such documentary, electronic or other type of evidence as in its opinion may assist it in arriving at a decision in any matter before it;

- b) Where a witness will not appear in person, a sworn witness statement shall be filed with the Committee;
- c) The Committee may compel the attendance of witnesses or production of documents or other materials to be used as evidence in proceedings before it, when it considers such attendance or production of evidence necessary.

**Rule 7: Amendment to claim(s)/alleged violations before the Committee**

If in the course of the proceedings it appears to any of the parties or the Committee that any process filed by any party requires amendment, the Committee may allow such amendments as it shall deem fit upon such terms as it may consider appropriate.

**Rule 8: Counter-Claim, Set-off and Similar Actions**

- a) A party in an action before the Committee shall have a right of Counter-Claim or Set Off against the other party or parties;
- b) Any Counter-Claim or Set Off filed by any party shall be in writing with details or particulars of such Counter-Claim or Set Off;
- c) Copies of the Counter-Claim or Set Off shall be served on the other party to the proceedings who shall have a right of reply exercisable within seven (7) days of such service.

**Rule 9: Venue and Time**

- a) Unless otherwise indicated, the venue for hearing of proceedings before the Committee shall be the head office of the Commission;
- b) Unless otherwise indicated, the time of sitting of the Committee shall be 10.00 am or so soon thereafter on the date(s) contained in the Notice(s) or as may be adjourned by the Committee.

**Rule 10: Inter-Party Settlement**

- a) During the pendency of matters before the Committee, parties are at liberty to apply for adjournment to enable them explore an amicable settlement of the matter amongst themselves;
- b) Settlements arrived at through the process in (a) above, shall be signed by the affected parties and their legal representatives (if any) and if acceptable to the Committee be made the decision of the Committee and implemented accordingly;
- c) This Rule shall not apply to matters initiated by the Commission or matters involving manipulation, insider dealing and any other serious violations to be determined by the Commission from time to time.

**Rule 11: Appearance before the Committee**

- a) All parties to matters before the Committee shall have a right of audience;
- b) A party to the proceedings before the Committee may appear in person or be represented by a legal practitioner acting as counsel provided that the Committee may order a party to

appear in person if it is of the opinion that in the interest of justice and the protection of investors it is necessary to do so;

- c) The Committee shall be entitled to administer oath in matters and proceedings brought before it.

**Rule 12: Administrative Charges**

The Committee may order any party to pay administrative charges in respect of proceedings before it.

**Rule 13: Record of Proceedings**

- a) The Secretary shall cause to be taken, written and/or electronic record of proceedings of the Committee;
- b) The Secretary shall make available on request to any person entitled to be heard upon an appeal against the decision of the Committee, or to any other person he deems fit, a copy of the records referred to in paragraph (a) of this Rule on payment of such fees as may be determined by the Commission.

**Rule 14: Dispensing with provisions**

The Committee may abridge, enlarge, modify or dispense with any time, condition or requirement of these Rules with respect to time, notices or modalities in any case where it appears to the Committee to be just and expedient and shall be at liberty to adopt any procedure it deems appropriate for a prompt, just and efficient determination of matters before it.

**Rule 15: Powers of the Committee**

- (a) The Committee shall have jurisdiction in respect of:
- (b) disputes between investors and Capital Market Operators;
- (c) disputes between Capital Market Operators;
- (d) disputes between Securities Exchanges, Capital Trade Points and other Self-Regulatory Organizations (SROs);
- (e) disputes arising from public offers by companies;
- (f) disputes between Investors and Issuers of securities;
- (g) disputes between Investors;
- (h) disputes between SROs;
- (i) violations or probable or threatened violation of the provisions of the Investments and Securities Act, the Rules and Regulations made there under and the Code of Conduct for Capital Market Operators and their Employees;
- (j) violation of the Code of Corporate Governance for public companies;
- (k) activities and dealings of public companies and their employees;
- (l) issues relating to the registration of Market Operators and SROs;
- (m) public sale or trading in unregistered securities;
- (n) dealing in securities or sale of securities to the public;
- (o) unethical and unprofessional practice, manipulations and use of deceptive devices or contrivances in securities transactions;
- (p) denial of registration;

- (q) non-compliance with orders, guidelines and directives of the Commission;
- (r) any other matter which the Commission may direct it to hear.

**Rule 16: Sanctions**

The Committee shall have power to impose any of the following sanctions:

- a. suspension or cancellation of registration of Capital Market Operators;
- b. revocation of the certificate of a Securities Exchange or Capital Trade Point;
- c. suspension or expulsion or other decisions/actions against members of Securities Exchanges, Capital Trade Points and other Self-Regulatory Organizations (SROs) in respect of their members;
- d. suspension or expulsion or other decisions/actions against members/officials of securities exchanges, capital trade points and other SROs where they fail to act against their members/officials;
- e. removal of executive officers of a capital market operator, securities exchange, capital trade point and other SROs;
- f. suspension of registration of securities;
- g. fines for late registration and non-compliance with the ISA, Rules and Regulations of the Commission and the Code of Conduct for Capital Market Operators and their Employees;
- h. restitution and compensation orders;
- i. determination of compensation for insider dealing cases;
- j. Disqualification of professionals or sponsored individuals from operating in the capital market.
- k. imposing conditions for registrations;
- l. imposing the rate of interest payable to subscribers by issuing Houses for late return of monies;
- m. payment of administrative charges;
- n. any other sanction which the Commission may prescribe from time to time.

**Rule 17: Decisions of the Committee**

- a) Every decision of the Committee shall be confirmed by the Commission before it becomes effective. The confirmation shall be made not later than thirty (30) days after the decision was taken by the Committee, provided that in the absence of the Board of the Commission, confirmation of the Committees' decision shall be by the Minister of Finance or any person performing that function.
- b) Decisions of the Commission shall be communicated in writing to the parties by the Secretary to the Committee within five (5) days of the confirmation of the decision.

**Rule 18: Appeals**

Any party who is not satisfied with the decision of the Committee as confirmed by the Commission may within 30 days of the receipt of the decision appeal to the Investments and Securities Tribunal (IST).

**Rule 19: Citation**

These Rules shall be cited as Rules of Procedure of the Administrative Proceedings Committee (APC) of the Securities and Exchange Commission

**Rule 20: Commencement**

These Rules shall take effect from any date approved by the Commission and shall regulate any further steps that may be taken by the Committee and parties in respect of all pending proceedings before the Committee.

*[SECRR(A)March 2010]*

**SCHEDULE IX*****Code of Conduct for Capital Market Operators and their Employees*****PREAMBLE:**

The Nigerian capital market has experienced considerable growth and development in recent years. The number and range of Issuing Houses and Stockbrokers have expanded significantly. Similarly, there has been considerable growth in the number of other market operators such as Registrars, Trustees and Financial Advisers. A natural consequence of this growth has been the increased complexity of transactions. In such an environment, there is a paramount need to ensure that high standards are maintained in order to protect the integrity of the capital market. In essence, this code of ethics is necessitated by the need to ensure discipline, enhance professionalism, integrity and protect the interest of clients of market operators and indeed the reputation of their institutions. It should be borne in mind that the unethical activities of one member of a registered institution could jeopardize the reputation of the entire institution and the securities market. The following code of ethics is merely a guide as each institution is free to add to it, in line with observed practices.

**Definitions:**

<b>SEC or Commission</b>	–	Securities and Exchange Commission;
<b>APC</b>	–	Administrative Proceedings Committee of SEC;
<b>Operators/Registered Institution</b>	–	All capital market operators and Individuals registered with the Securities and Exchange Commission;
<b>SRO</b>	–	Self-Regulatory Organisation;
<b>His</b>	–	Refers to both genders;



**Director**

– Refers to Executive or non-Executive Directors.

**Scope:**

All operators and their employees are bound by this code. When in doubt about any of the provisions of this code, clarification should be sought from the S.E.C.

Persons having business interest with these institutions such as auditors, accountants, lawyers etc., who in the course of such business relationship might have access to price-sensitive, non-public information about clients of registered institutions, must enter into an undertaking (oath of secrecy) to keep such information confidential.

It is obligatory for employees to bring to the notice of management, suspected breaches of the securities laws or other unethical behavior by other employees. Such reports should be treated in strict confidence. In essence, the identity of the reporting officer must under no circumstance be disclosed to other members of staff.

**1. CODE OF CONDUCT FOR CAPITAL MARKET OPERATORS (INSTITUTIONS)****All Operators**

- (i) Shall strictly abide, at all times, by all existing Securities Laws, Rules and Regulations made thereunder;
- (ii) Shall ensure that any dispute among themselves will initially be referred to the relevant SRO or other organisation established for the resolution of dispute between members. If this body is not able to settle a dispute to the satisfaction of the parties involved, such dispute will then be referred to the Administrative Proceedings Committee of SEC. Under normal circumstances, it is only where the APC is also unable to resolve such dispute to the satisfaction of all the parties involved that a court action can be instituted in respect of such dispute;
- (iii) shall not engage in any act that would adversely affect the general investing public's image of, and confidence in, the capital market;
- (iv) shall ensure that their employees act in a manner that is consistent with the best interest of their clients. To this end, operators shall preserve the confidentiality of all clients' information;
- (v) shall operate securities trading accounts strictly according to clients' instructions;
- (vi) shall segregate clients' monies and keep such funds in a separate account;
- (vii) shall ensure that employees maintain their securities trading accounts with their employers, where practicable, or provide full disclosure of such accounts and all activities therein to their employers;
- (viii) shall monitor the transactions in securities by all directors, employees and their spouses, dependent children and relatives;
- (ix) shall have a duty to report in writing to the S.E.C. any actual or suspected breach or infringement or non-compliance with any of the regulations of the SEC. Operators

will immediately notify the Commission in writing of any other events or matters that the Commission may from time to time specify;

- (x) shall not recommend or connive in the employment of any person who has been employed by another operator and has had his employment terminated or who was dismissed for reasons relating to fraud, dishonesty or any such dishonourable behavior, or who has been convicted of an offence involving same;
- (xi) shall communicate to the S.E.C. and SROs the names of staff dismissed for any fraudulent act, dishonesty, misbehavior or, any other acts of misconduct;
- (xii) may pay or be paid for services provided free of charge with respect to financial products and services. For example, research material may be provided to investment companies in return for commission income from securities trading orders. However, in such cases the volume/amount of financial products and services must be reasonable and commensurate with the services provided; and
- (xiii) shall not discriminate or give preferential treatment to any customer, including members of the general public, in the conduct of their professional business.

## **2. CODE OF CONDUCT FOR EMPLOYEES OF CAPITAL MARKET INSTITUTIONS (OPERATORS)**

### **An employee shall**

- (i) at all times conduct himself with integrity and display high level of professionalism expected of the industry;
- (ii) not engage in any act that would adversely affect the general investing public's image of, and confidence in, the capital market;
- (iii) not discriminate or give preferential treatment to any client, in the conduct of his professional business;
- (iv) comply with all existing securities laws, rules and regulations thereunder.

### **Disclosure of Information by Employees**

- (1) To prevent possible conflict of interest, insider dealings and impropriety, an employee must disclose to his employer, transaction in securities by himself, spouse, dependent children and relatives;
- (2) Periodically, (as may be determined by the institution) employees must submit to management, statement of their personal securities investment portfolio in the securities market;
- (3) All new employees must at the time of assumption of duty lodge details of their holdings in long term securities of government and public companies with their employers;

- (4) Although employees may be allowed to invest in securities of private companies, such investment shall be disclosed to the employer when the affected company is about going public.

### **Avoidance of Conflict of Interest**

An employee shall ensure that his personal interest does not at any time conflict with his duty to his employer's clients. In this regard, all personal interests beneficial or not, in any company assigned to him must be disclosed to his employer. He must also ensure that his advice to clients or his employer on investment decision on behalf of clients is not beclouded by any conflict of interest which might exist. In other words, in the performance of his duty, his client's best interest must be given priority over his personal interest.

An employee shall not engage in any activity which might directly or indirectly influence his judgment prior to or during a business transaction.

### **Trading with Insider Information**

An employee shall not trade in securities either for himself or on behalf of others based on non-public price-sensitive information. Such information shall under no circumstance be disclosed to a third party for the purpose of trading. Employees of Broker/Dealer firms must pay particular attention to substantial orders from clients in companies in which such clients are directors, employees, or have business relationship, e.g. auditors, reporting accountants and lawyers. Furthermore, all orders which are out of tune with established trading pattern should be investigated.

All suspected cases of insider dealings including those involving employees should be promptly brought to the notice of management which should in turn lodge a formal report with the S.E.C. for necessary action.

### **Market Manipulation**

An employee must not on his own or in connivance with others engage in activities aimed at manipulating the market. Unverified information which might impact on the market must not be circulated or form the basis of advice to clients.

### **Staff Employment**

An employee shall not recommend or connive in the employment of any person who has been employed by another operator and has had his employment terminated or who was dismissed for reasons relating to fraud, dishonesty or any such dishonourable behaviour, or who has been convicted of any offence involving same.

### **Clients' Account**

An employee shall uphold the confidentiality of clients' accounts. No information in a clients' account must therefore be disclosed to other employees who have no bona-fide reasons to know.

### **Deposits/Credit Arrangements and Gifts**

An employee shall not:

- a. deposit clients' funds in his personal account or accounts of others or vice versa;

- b. act as trustee or executor for clients;
- c. enter into direct or indirect undisclosed arrangements, before or subsequent to transactions, to share in profits or losses;
- d. enter into a credit arrangement on behalf of clients unless through the institution.

### **Duty to Employer**

An employee shall not, except with the approval of his employer, engage in any activity whether or not for compensation, which is in direct competition with his employer.

### **3. CODE OF CONDUCT PECULIAR TO EMPLOYEES OF BROKER/DEALER FIRMS**

An employee of a broker/dealer firm shall

- a. operate strictly within the Rules and Regulations of the Stock Exchange or other licensing authority with which he is registered;
- b. willingly and promptly disclose to his superior officer mistakes or errors that may lead to monetary loss to clients;
- c. not under any circumstance utilize a client's funds other than in strict compliance with the client's instructions and requirements;
- d. keep proper records and books of account of clients;
- e. fully disclose any dealing in securities to the firm's management;
- f. maintain personal trading accounts with his firm of employment. No account should be held with another broker/dealer firm without the prior approval of the management;
- g. operate securities dealing account in accordance with client's instruction.
- h. An employee of a broker/dealer firm shall not
  - i. manipulate the demand for or supply of securities in the market in order to influence prices of securities. In this regard, a broker/dealer must not falsify orders thereby creating artificial supply or demand in the market;
  - j. Act in concert with others without reasonable justification to influence price movements of securities in the market;
  - k. on his own or in connivance with others alter or forge share/stock certificates, transaction records and other related documents;
  - l. accept or execute any order not emanating from the beneficial owner of an account or certificate;
  - m. accept or execute any order in which the true identity of the beneficial owner is concealed;

- n. take advantage of a client's order by first buying into or selling from his own or the institution's account or advise others to do same. This could amount to market manipulation;
- o. transact business for his account or advise others to do same based on an order by a client perceived to have insider knowledge about the security.

#### **4. CODE OF ETHICS PECULIAR TO EMPLOYEES OF ISSUING HOUSES**

1. Once an issue is before an issuing house for sponsorship, an employee with unpublished price-sensitive information shall not:

- a. effect transaction on the security for his own account;
- b. disclose such information about the issue to other members of staff or professionals who have no reason to access the information.

2. An employee shall not:

- a. lodge proceeds from an issue in his account or in the accounts of others;
- b. engage in fraud, bribery, or attempt to engage in fraud, extortion, fronting for ineligible investors and other dishonourable conduct or behavior inconsistent with equitable principles of business;
- c. engage in market conduct aimed at creating a false market or unduly affecting the value of securities such as the provision of false information to the market and circulation of unsubstantiated or false rumors;
- d. knowingly submit false information to management or regulatory authorities;
- e. engage in un-business-like conduct or any acts detrimental to the interest and progress of the capital market;
- f. knowingly connive or recommend persons of dubious character and record for employment by any firm in the securities industry;
- g. engage in any alliances or arrangements with a view to interfering with the market, in order to increase profits or limit losses arising from underwriting activities.

3. An employee shall:

- a. be careful and diligent in giving advice to prospective issuers of securities;
- b. exhibit care, objectivity and competence in the valuation of securities and general handling of issues before him;
- c. separate all application monies that come into his possession and promptly lodge all such funds into the designated accounts;
- d. hold for a minimum period of six months subsequent to the issue any holding in security packaged by his employer before sale may be effected. Unit Trust Schemes are however exempted from this restriction.

## **5. CODE OF ETHICS FOR INVESTMENT ADVISERS/PORTFOLIO MANAGERS**

An investment adviser shall:

- a. exhibit diligence, thoroughness and competence in his investment advice to clients and in managing investors' funds where he also acts as a portfolio manager. The clients' best interest must influence his investment decision at all times;
- b. maintain proper records of all investment decisions made on behalf of clients;
- c. send at the end of every quarter statements to clients showing their investment positions during the period;
- d. disclose to clients when giving investment advice whether the advice is based on facts or opinion;
- e. bear in mind at all times, that investment is a risk. In advising his clients therefore, no guarantee as to the future performance of the investment must be given;
- f. be compensated (i.e. charge fees) for advisory services and investment management in accordance with industrial standards as approved by the Securities and Exchange Commission from time to time;
- g. take adequate care and display integrity in the management of investors' funds. A portfolio manager must avoid the mismatch of term commitments;
- h. not deposit investors' funds in his personal account or the accounts of other persons;
- i. not employ investors' funds to acquire assets for himself, his companies or others' or otherwise employ the funds in violation of his mandate;
- j. display impartiality and objectivity in his relationship with his clients;
- k. not invest his clients' funds in his business or businesses controlled by him, his associates, relations and subsidiaries of those companies without a prior disclosure of his relationship with the companies to the clients.

## **6. CODE OF ETHICS PECULIAR TO EMPLOYEES OF REGISTRARS' DEPARTMENTS**

An employee of a Registrar's Department shall:

- a. in all cases of transfer of securities, carefully and properly verify all signatories with specimens lodged with the department;
- b. properly reflect all changes in address and/or signature in the register;
- c. act honestly and in good faith in the ordinary course of business and in a manner that is consistent with the best interest of the investing public and growth of the capital market;
- d. not delay without reasonable cause and authorization, the dispatch to any share-holder of his dividend warrant, return money, share/stock certificate and notices of annual and extra-

ordinary general meetings. In addition, care must be exercised in addressing mails for dispatch to share/stock holders;

e. not on his own or in concert with others, forge, deface, alter or convert any security document;

f. not lodge in his own account or in the account of others or in any manner, misappropriate funds meant for share/stock holders.

### **Sanctions for Violations**

1. A registered capital market operator who shall be found guilty under a disciplinary proceeding of a registered SRO or of S.E.C. for a violation of any provision of this code of conduct shall be suspended or expelled from the capital market and may in addition be liable for any other penalty prescribed by law.

2. (a) Any violation of this code of conduct by a member of an SRO or registered individual or an employee of a market operator shall be cause for appropriate disciplinary and/or remedial action by the market operator or for disqualification from membership of an SRO which action may be in addition to any other penalty prescribed by law.

(b) Remedial action by a market operator may include:-

(i) Changes in assigned duties;

(ii) Divestment by sponsored individual or an employee of his conflicting interests;

(iii) Disciplinary action; or

(iv) Disqualification for a particular assignment.

(c) Any disciplinary or remedial action taken by a registered market operator shall be reported in writing to the appropriate SRO and to the Commission.

(d) Any suspension or expulsion of a member by an SRO for violation of this code shall be notified and communicated in writing to the Commission.

### **7. CODE OF CONDUCT FOR CUSTODIAN OF SECURITIES**

A custodian of securities shall:-

a. maintain the highest standard of integrity, fairness and professionalism in the discharge of its duties;

b. be prompt in distributing dividends, interest, or any income received or collected by it on behalf of its clients on the securities held in custody;

c. be continuously accountable for the movement of securities in and out of custody account, deposit, and withdrawal of cash from the client's account and shall provide complete audit trail, whenever called for by the client or the Commission;

- d. establish and maintain adequate infrastructural facilities to be able to discharge custodial services to the satisfaction of clients, and the operating procedures and systems of the custodian of securities shall be well documented and backed by operations manuals;
- e. maintain client confidentiality in respect of the client's affairs.
- f. create and maintain the records of securities held in custody in such manner that the tracing of securities or obtaining duplicate title documents is facilitated, in the event of loss of original;
- g. extend to other custodial entities, depositories and clearing organizations, all such co-operation that is necessary for the conduct of business in the areas of inter custodial settlements, transfer of securities and transfer of funds;
- h. ensure that an arm's length relationship is maintained, both in terms of staff and systems, from its other businesses.;
- i. exercise due care and diligence in safekeeping and administration of the assets of clients in its custody for which it is acting as custodian.
- j. not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time.

## 8. **CODE OF CONDUCT FOR PARTICIPANT**

A participant shall;

- 1. make all efforts to protect the interests of investors.
- 2. always ensure that:
  - (a) the best possible advice to the clients having regard to the clients' needs and his own professional skills are given;
  - (b) all professional dealings are effected in a prompt, effective and efficient manner;
  - (c) enquiries from investors are adequately dealt with;
  - (d) grievances of investors are redressed without delay;
- 3. maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.
- 4. be prompt and diligent in opening of a client account, dispatch of Dematerialization Request Form, and execution of Debit Instruction Slip and in all other activities undertaken by it on behalf of clients;
- 5. resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible but in any event not later than one month of receipt of complaint;
- 6. not increase charges/fees for the services rendered without giving at least 30 days proper notice to the beneficial owners;



7. not make any exaggerated statement to the clients about its qualifications and capability to render services or about its achievements with regard to services rendered to other clients;
8. not divulge to other clients, the press or any other person any information about its clients which has come to its knowledge except with the approval of the clients or when required by law or competent authorities;
9. maintain the required level of knowledge and competence at all times and abide by the provisions of the Act, Rules and Regulations, Circulars and directives issued by the Commission and the depository;
10. not make any untrue statement or suppress any material fact in any document, report, paper or information furnished the Commission and the depository;
11. ensure that the Commission is promptly informed about any action, legal proceedings etc initiated against it in respect of breach or non-compliance by or against it, of any law, rules and regulations, directives of the Commission or of any other regulatory body;
12. take adequate steps to ensure that continuity in data and record keeping is maintained and that the data and records are not lost, falsified or destroyed. It shall also ensure that an up to date back up for electronic records and data is always available;
13. provide adequate freedom and powers to its compliance officer for the effective discharge of his or her duties;
14. ensure that the senior management, particularly decision makers, have access to all relevant information about the business on a timely basis;
15. ensure that best practices of corporate governance are in place.

## **Schedule X**

### **CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES**

#### **INTRODUCTION**

It is generally agreed that weak corporate governance has been responsible for some recent corporate failures in Nigeria. In order to improve corporate governance, the Securities and Exchange Commission, in September 2008, inaugurated a National Committee chaired by Mr. M. B. Mahmoud for the Review of the 2003 Code of Corporate Governance for Public Companies in Nigeria to address its weaknesses and to improve the mechanism for its enforceability. In particular, the Committee was given the mandate to identify weaknesses in, and constraints to, good corporate governance, and to examine and recommend ways of effecting greater compliance and to advise on other issues that are relevant to promoting good corporate governance practices by public companies in Nigeria, and for aligning it with international best practices.

The Board of SEC therefore believes that this new code of corporate governance will ensure the highest standards of transparency, accountability and good corporate governance, without unduly inhibiting enterprise and innovation.

Whilst the Code is limited to public companies, the Commission would like to encourage other companies not covered by the Code to use the principles set out in the Code, where appropriate, to guide them in the conduct of their affairs.

## **1. Application of the Code**

1.1. The Code of Corporate Governance shall apply to the following entities:

- (a) all public companies whose securities are listed on a recognised securities exchange in Nigeria;
- (b) all companies seeking to raise funds from the capital market through the issuance of securities or seeking listing by introduction;
- (c) all other public companies;

1.2. The Code shall apply to the entities listed in sub-section 1.1 above in the following manner:

- (a) All public companies whose securities are listed on a recognized securities exchange shall comply with the principles and provisions of this code which should form the basis of the minimum standard of their corporate behavior;
- (b) All companies seeking to raise funds from the capital market, through the issuance of securities or seeking listing by introduction will be expected to demonstrate sufficient compliance with the principles and provisions of this code appropriate to their size, circumstances or operating environment;

1.3. The following shall guide the application of this code:-

- (a) The Code is not intended as a rigid set of rules. It is expected to be viewed and understood as a guide to facilitate sound corporate practices and behavior. The Code should be seen as a dynamic document defining minimum standards of corporate governance expected particularly of public companies with listed securities;
- (b) The responsibility for ensuring compliance with or observance of the principles and provisions of this code is primarily with the Board of Directors. However, shareholders, especially institutional shareholders, are expected to familiarize themselves with the letter and spirit of the code and encourage or whenever necessary, demand compliance by their companies;
- (c) The question whether a company or entity required to comply with or to observe the principles or the provisions of this code, has complied with or has so observed the provisions of the Code shall, in the first instance, be determined by the Board and its shareholders and thereafter by SEC;
- (d) Whenever SEC determines that a company or entity required to comply with or observe the principles or provisions of this code is in breach, the SEC shall notify the company or entity concerned specifying the areas of non-compliance or non-observance and the specific action or actions needed to remedy the non-compliance or non-observance;

(e) SEC shall from time to time issue guidelines or circulars to facilitate compliance with or observance of the principles and provisions of this Code;

(f) In their Annual Report to Securities & Exchange Commission (SEC), public companies shall indicate their level of compliance with the Code of Corporate Governance;

(g) Where there is a conflict between this code and the provisions of any other code in relation to a company covered by the two codes, the code that makes a stricter provision shall apply.

## **PART B THE BOARD OF DIRECTORS**

### **2. Responsibilities of the Board**

2.1. The Board is accountable and responsible for the performance and affairs of the company. It should define the company's strategic goals and ensure that its human and financial resources are effectively deployed towards attaining those goals.

2.2. The principal objective of the Board is to ensure that the company is properly managed. It is the responsibility of the Board to oversee the effective performance of the Management in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.

2.3. The primary responsibility for ensuring good corporate governance in companies lies with the Board. Accordingly, the Board should ensure that the company carries on its business in accordance with its articles and memorandum of association and in conformity with the laws of the country, observing the highest ethical standards and on an environmentally sustainable basis.

2.4. The Board shall define a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board. The delegation of any duty or authority to the Management does not in any way diminish the overall responsibility of the Board and its directors as being accountable and responsible for the affairs and performance of the company.

### **3. Duties of the Board**

3.1. The duties of the Board shall include the following:

- (a) formulation of policies and overseeing the Management and conduct of the business;
- (b) formulation and management of risk management framework;
- (c) succession planning and the appointment, training, remuneration and replacement of board members and senior management;
- (d) overseeing the effectiveness and adequacy of internal control systems;
- (e) overseeing the maintenance of the company's communication and information dissemination policy;
- (f) performance appraisal and compensation of board members and senior executives;
- (g) ensuring effective communication with shareholders;
- (h) ensuring the integrity of financial reports;
- (i) ensuring that ethical standards are maintained; and
- (j) ensuring compliance with the laws of Nigeria.

#### **4. Composition and Structure of the Board**

4.1. The Board should be of a sufficient size relative to the scale and complexity of the company's operations and be composed in such a way as to ensure diversity of experience without compromising independence, compatibility, integrity and availability of members to attend meetings.

4.2. Membership of the Board should not be less than five (5).

4.3. The Board should comprise a mix of executive and non-executive directors, headed by a Chairman. The majority of Board members should be non-executive directors, at least one of whom should be independent director.

4.4. The members of the Board should be individuals with, upright personal characteristics, relevant core competences and entrepreneurial spirit. They should have a record of tangible achievement and should be knowledgeable in Board matters. Members should possess a sense of accountability and integrity and be committed to the task of good corporate governance.

4.5. The Board should be independent of Management to enable it carry out its oversight function in an objective and effective manner.

#### **5. Officers of the Board**

##### **5.1. The Chairman**

(a) The Chairman's primary responsibility is to ensure effective operation of the Board and that it works towards achieving the company's strategic objectives. He should not be involved in the day-to-day operations of the company. This should be the primary responsibility of the Chief Executive Officer and the management team.

(b) For all public companies with listed securities, the positions of the Chairman of the Board and Chief Executive Officer shall be separate and held by different individuals. This is to avoid over concentration of powers in one individual which may rob the Board of the required checks and balances in the discharge of its duties.

(c) The Chairman of the Board should be a non-executive director.

(d) The Chairman's functions should include the following:

- (i) providing overall leadership and direction for the board and the company;
- (ii) setting the annual board plan;
- (iii) setting the agenda for board meetings in conjunction with the CEO and the Company Secretary;
- (iv) playing a leading role in ensuring that Board and its committees are composed of the relevant skills, competencies and desired experience;
- (v) ensuring that Board meetings are properly conducted and the Board is effective and functions in a cohesive manner;

- (vi) ensuring that board members receive accurate and clear information in a timely manner, about the affairs of the company to enable directors take sound decisions;
- (vii) acting as the main link between the Board and the CEO as well as advising the CEO in the effective discharge of his duties;
- (viii) ensuring that all directors focus on their key responsibilities and play constructive role in the affairs of the company;
- (ix) ensuring that induction programmes are conducted for new directors and continuing education programmes is in place for all directors;
- (x) ensuring effective communication and relations with company's institutional shareholders and strategic stakeholders;
- (xi) taking a lead role in the assessment, improvement and development of the Board; and
- (xii) presiding over general meetings of shareholders.

## **5.2. The Chief Executive Officer/Managing Director**

- (a) The Chief Executive Officer (CEO) or Managing Director (MD) should be the head of the management team and is answerable to the board.
- (b) The CEO/MD should be knowledgeable in relevant areas of the company's activities. He should demonstrate industry, credibility and integrity and should have the confidence of the Board and management;
- (c) The CEO/MD and the senior management should establish a culture of integrity and legal compliance which should be imbibed by personnel at all levels of the company.
- (d) The functions and responsibilities of the CEO/MD should include the following:
  - i. day-to-day running of the company;
  - ii. guiding the development and growth of the company;
  - iii. acting as the company's leading representative in its dealings with its stakeholders;
- (e) The authority of the CEO/MD and the relationship between the office and the Board should be clearly and adequately described in a letter of appointment.
- (f) The Board may delegate such of its powers to the CEO/MD as it may deem appropriate or necessary to ensure smooth operation of the company.
- (g) The remuneration of the CEO/MD should comprise a component that is long-term performance related and may include stock options and bonuses which should however, be disclosed in the company's annual reports.

### **5.3. Executive Directors**

- (a) Executive directors, like the CEO/MD, should be persons knowledgeable in relevant areas of the company's activities in addition to possessing such other qualifications needed for their specific assignments or responsibilities.
- (b) Executive directors should be involved in the day-to-day operations and management of the company. In particular, they should be responsible for the departments they head and should be answerable to the Board through the CEO/MD.
- (c) Executive directors should not be involved in the determination of their remuneration.
- (d) The remuneration of executive directors should comprise a component that is long-term performance related and may include stock options and bonuses which should however, be disclosed in the company's annual reports.
- (e) Executive directors should not receive the sitting allowances or director's fees paid to non-executive directors.

### **5.4. Non-Executive Directors**

- (a) Non-executive directors should be key members of the Board. They should bring independent judgment as well as necessary scrutiny to the proposals and actions of the management and executive directors especially on issues of strategy, performance evaluation and key appointments.
- (b) Non-executive directors should accordingly be persons of high caliber with broad experience, integrity and credibility.
- (c) Non-executive directors should be provided with a conducive environment for the effective discharge of their duties. Adequate and comprehensive information on all Board matters should be provided in a timely manner.

Board papers should be made available to them at least one week ahead of Board or committee meetings.

### **5.5. Independent Directors**

- (a) An independent director is a non-executive director who:
  - (i) is not a substantial shareholder of the company, that is one whose shareholding, directly or indirectly, does not exceed 0.1% of the company's paid up capital;
  - (ii) is not a representative of a shareholder that has the ability to control or significantly influence management;
  - (iii) has not been employed by the company or the group of which it currently forms part, or has served in any executive capacity in the company or group for the preceding three financial years;
  - (iv) is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity;

(v) is not a professional advisor to the company or the group, other than in a capacity of a director;

(vi) is not a significant supplier to or customer of the company or group;

(vii) has no significant contractual relationship with the company or group and is free from any business or other relationship which could materially interfere with his/her capacity to act in an independent manner; and

(viii) is not a partner or an executive of the company's statutory audit firm, internal audit firm, legal or other consulting firm that have material association with the company and has not been a partner or an executive of any such firm for three financial years preceding his/her appointment;

(b) an independent director should be free of any relationship with the company or its management that may impair, or appear to impair, the director's ability to make independent judgments;

(c) every public company should have a minimum of one independent director on its Board

## **6. Multiple Directorships**

6.1. There should be no limit on the number of concurrent directorships a director of a company may hold. However, concurrent service on too many boards may interfere with an individual's ability to discharge his responsibilities. The Board and the shareholders should therefore give careful consideration to other obligations and commitments of nominees in assessing their suitability for appointment into the Board. Accordingly,

(a) A prospective nominee to the Board of a company should disclose memberships on other Boards;

(b) The Board should consider the other directorships held by such a prospective nominee and determine whether the prospective nominee can contribute effectively to the performance of the Board and the discharge of its responsibilities before recommending such a person for appointment;

(c) Serving directors should notify the Board through the Chairman of prospective appointments on other Boards;

(d) Directors should not be members of Boards of companies in the same industry to avoid conflict of interest, breach of confidentiality and misappropriation of corporate opportunity.

## **7. Family and Interlocking Directorship**

7.1. To safeguard the independence of the Board, not more than two members of the same family should sit on the Board of a public company at the same time.

7.2. To safeguard the objectivity and independence of the Board, cross memberships on the boards of two or more companies should be discouraged. However, where that will lead to a conflict of interest situation as in cross-memberships of boards of competing companies, then it must be disallowed.

## **8. Company Secretary**

8.1. The company secretary should be a person possessing the relevant qualification and competence necessary to effectively discharge the duties of his office. Accordingly, the company secretary should be appointed through a rigorous selection process that is applicable for appointment of new directors.

8.2. The company secretary has the primary duty of assisting the Board and management in implementing this code and developing good corporate governance practices and culture.

8.3. The Company secretary shall report directly to the CEO/MD but shall also have a direct channel of communication to the Chairman.

8.4. In addition to his statutory functions, the company secretary should carry out the following duties and responsibilities:

- (a) provide the Board and directors individually, with detailed guidance as to how their responsibilities should be properly discharged in the best interest of the company;

- (b) coordinate the orientation and training of new directors;

- (c) assist the Chairman and CEO/MD to determine the annual Board plan and with the administration of other strategic issues at the Board level;

- (d) compilation of the Board papers and ensuring that the Board's discussions and decisions are clearly and properly recorded and communicated to the relevant persons;

- (e) notify the Board members of matters that warrant their attention; and

- (f) provide a central source of guidance and advice to the Board and the company, on matters of ethics, conflict of interest and good corporate governance;

8.5. The company secretary should be properly empowered by the board to effectively discharge his duties and responsibilities. His appointment and termination should be tabled and ratified by the Board.

## **9. Board Committees**

9.1. The Board should determine the extent to which its duties and responsibilities should be undertaken through committees. It should determine the number and composition of such committees ensuring that each committee comprises the relevant skills and competences and its members are able to devote sufficient time to the committee's work.

9.2. The Board may in addition to the Audit Committee required by CAMA establish a Governance/Remuneration Committee and Risk Management Committee and such other committees as the Board may deem appropriate depending on the size, needs or industry requirements of the company.

9.3. It is the responsibility of the Board to facilitate the effective discharge of the duties and responsibilities of Board committees. Accordingly, the Board should ensure that committees are provided all necessary information in a timely manner. Committees should in addition be free to seek independent professional advice at the expense of the company subject to the approval of the Board.



9.4. Only directors should be members of Board committees, however, senior management may be in attendance.

## **10. The Risk Management Committee**

10.1. The Board shall establish a Risk Management Committee to assist it in its oversight of the risk profile, risk management framework and the risk-reward strategy determined by the Board.

10.2. The functions of the Committee should be guided by a written terms of reference or a charter and should include the following:-

- (a) review and approval of the companies risk management policy including risk appetite and risk strategy;

- (b) review the adequacy and effectiveness of risk management and controls;

- (c) oversight of management's process for the identification of significant risks across the company and the adequacy of prevention, detection and reporting mechanisms;

- (d) review of the company's compliance level with applicable laws and regulatory requirements that may impact the company's risk profile;

- (e) periodic review of changes in the economic and business environment, including emerging trends and other factors relevant to the company's risk profile; and

- (f) review and recommend for approval of the Board risk management procedures and controls for new products and services.

10.3. To enhance the risk management function, a senior management staff should be detailed to perform the function and attend the meetings of the Risk Management Committee.

10.4. The CEO/MD, executive directors and the head of the internal audit unit should attend the meetings of the Risk Management Committee.

## **11. The Governance/Remuneration Committee**

11.1. The Board may establish a Governance/Remuneration committee which should comprise solely of non-executive directors.

11.2. The functions of the Governance/remuneration committee should be guided by a written terms of reference or charter and should include the following:-

- (a) establish the criteria for board and board committee memberships, review candidates qualifications and any potential conflict of interest, assess the contribution of current directors in connection with their re-nomination and make recommendations to the Board;

- (b) prepare a job specification for the Chairman's position, including an assessment of time commitment required of the candidate;

- (c) periodically evaluate the skills, knowledge and experience required on the Board;

- (d) make recommendations on experience required by Board committee members, committee appointments and removal, operating structure, reporting and other committee operational matters;
- (e) make recommendations on compensation structure for executive directors;
- (f) provide input to the annual report of the company in respect of director compensation;
- (g) ensure that a succession policy and plan exist for the positions of Chairman, CEO/MD, the executive directors and the subsidiary managing directors for Group companies;
- (h) ensure that the Board conducts a Board evaluation on an annual basis;
- (i) review the performance and effectiveness of the subsidiary company Boards on an annual basis where applicable; and
- (j) review and make recommendations to the Board for approval of the company's organizational structure and any proposed amendments.

## **12. Meetings of the Board**

12.1. To effectively perform its oversight function and monitor management's performance, the Board should meet at least once every quarter.

12.2. Every director should be required to attend at least two-thirds of all Board meetings. Such attendance shall be a criteria for the re-nomination of a director except there are cogent reasons which the Board must notify the shareholders of at the annual general meeting.

## **13. Appointment to the Board**

13.1. The Board should develop a written, clearly defined, formal and transparent procedure for appointment to the Board of directors.

13.2. The criteria for the selection of directors should be written and defined to reflect the existing Boards strengths and weaknesses, required skill and experience, its current age range and gender composition.

13.3. The Board should ascertain whether nominees for the position of directors are fit and proper and are not disqualified from being directors.

13.4. Shareholders should be provided with biographical information of proposed directors including:

- (a) Name, age, qualification and country of principal residence;
- (b) whether the appointment is executive, non-executive or independent and any proposed specific area of responsibility;
- (c) work experience and occupation in preceding ten years;
- (d) current directorships and appointments with statutory or regulatory authorities in the preceding five years;
- (e) shareholding in the company and its subsidiaries; and

(f) any real or potential conflict of interest, including whether he is an interlock director.

13.5. A section of the company's annual report should state the processes used in relation to all Board appointments.

## **14. Remuneration**

14.1. Companies should develop a comprehensive policy on remuneration for directors and senior management. Levels of remuneration should be sufficient to attract, motivate and retain skilled and qualified persons needed to run the company successfully. The remuneration policy should:-

- (a) define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism;
- (b) define a process, if necessary with the assistance of external advisers, for determining executive and non-executive directors' compensation; and
- (c) provide how and to what extent executive directors' reward should be linked to corporate and individual performance.

14.2. The Board should approve the remuneration of each executive director including the CEO individually taking into consideration direct relevance of skill and experience to the company at that time.

14.3. Only non-executive directors should be involved in decisions regarding the remuneration of executive directors.

14.4. Where share options are adopted as part of executive remuneration or compensation, the Board should ensure that they not priced at a discount except with the authorization of the SEC. Any such deferred compensation should not be exercisable until one year after the expiration of the minimum tenor of directorship.

14.5. Where share options are granted as part of remuneration to directors, the limits should be set in any given financial year and subject to the approval of the shareholders in general meeting.

14.6. Compensation for non-executive directors should be fixed by the Board and approved by shareholders in general meeting. However, the fees and allowances or other incentives tied to corporate performance, paid to non-executive directors, should not be at a level that could compromise their independence.

14.7. Companies should disclose in their annual report, details of shares of the company held by all directors, including on an **"if-converted"** basis. This disclosure should include indirect holdings.

14.8. All directors should be required to disclose their share-holding whether on a proprietary or fiduciary basis in the public company in which they are proposed to be appointed as directors, prior to their appointment.

14.9. The Board should undertake a periodic peer review of its compensation and remuneration levels to ensure that the company remains competitive

14.10. The company's remuneration policy and all material benefits and compensation paid to directors should be published in the company's annual report.

## **15. Performance Evaluation of the Board**

15.1. The Board should establish a system to undertake a formal and rigorous annual evaluation of its own performance, that of its committees, the Chairman and individual directors.

15.2. The evaluation system should include the criteria and key performance indicators and targets for the Board, its committees, the Chairman and each individual committee member.

15.3. The Chairman should oversee the annual evaluation of the performance of the chief executive officer. The CEO/MD should similarly perform an annual evaluation for the executive directors based on agreed criteria or performance indicators.

15.4. The result of the Board performance evaluation should be communicated and discussed by the Board as a whole; while those of individual directors should be communicated and discussed with them by the Chairman.

15.5. Where the performance of a director is determined to be unsatisfactory, the director concerned should undergo further training. Where such is not feasible or practicable, the director may be removed in accordance with established procedures.

15.6. The Board may engage the services of external consultants to facilitate the performance evaluation of the Board, its committees; or individual directors.

15.7. The cumulative result of the performance evaluation of the Board and individual directors should be used as a guide in deciding eligibility for re-election.

## **16. Conflict of Interest**

16.1. Companies should adopt a policy to guide the Board and individual directors on conflict of interest situations. Such a policy should include the following principles:

(a) Directors should promptly disclose any real or potential conflict of interest that they may have regarding any matters that may come before the Board or its committees.

(b) A director should abstain from discussions and voting on any matter in which the director has or may have conflict of interest.

(c) If a director is not certain whether he is in a conflict of interest situation, the director concerned should discuss the matter with the Chairman of the Board or with the company secretary for advice and guidance.

(d) If any question arises before the Board as to the existence of a real or perceived conflict, the Board should by a simple majority determine if a conflict exists. The director or directors potentially in the conflict of interest situation shall not participate in any discussion and shall not vote on the issue.

(e) Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow director, have a responsibility to promptly raise the issue for clarification, either with the director concerned or with the Chairman of the Board.

(f) Disclosure by a director of a real, potential or perceived conflict of interest or a decision by the Board as to whether a conflict of interest exists should be recorded in the minutes of the meeting.

## **17. Insider Trading**

Directors of public companies, their immediate families, that is spouse, son, daughter, mother or father, and other insiders as defined under Section 315 of ISA and Rule 400 (3) of the SEC Rules and Regulations, in possession of price sensitive information or other confidential information, shall not deal with the securities of the company where such would amount to insider trading as defined under the Investment and Securities Act 2007.

## **18. Orientation and Training of Directors**

18.1. The Board should establish a formal orientation programme to familiarize new directors with the company's operations, strategic plan, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities.

18.2. It is mandatory for all directors to participate in periodic, relevant, professional continuing education programmes in order to update their knowledge and skills and keep them informed of new developments in the company's business and operating environment. The objective of the training is to assist the directors to fully and effectively discharge their duties to the company. The training shall be at the company's expense.

## **19. Tenure and Re-election of Directors**

19.1. Subject to satisfactory performance and the provisions of CAMA, all directors should be submitted for re-election at regular intervals of at least once every three (3) years. In order to guide decision of shareholders, names and sufficient biographical details of directors nominated for re-election should be accompanied by performance evaluation results and any other relevant information.

19.2. Non-executive directors of public companies should serve for reasonable periods on the Board. However, it is necessary to continually reinforce the Board by injecting new energy, fresh ideas and perspectives. The Board should ensure the periodic appointment of new directors to replace existing non-executive directors.

## **20. Terms and Conditions of Service**

20.1. The terms and conditions of a director's employment or service on the Board should be in writing and issued to the director in the form of a contract.

20.2. The letters of appointment should cover the following issues:-

- (a) duration or term of appointment;
- (b) remuneration package and method of remuneration;
- (c) explanation of the duties of care, skill and diligence and other responsibilities of the director;
- (d) requirement to disclose any material interests in the company and other entities related to the company;

- (e) requirement to periodically disclose material interests in contracts in which the company is interested or involved;
- (f) specific requirements, such as Board meeting attendance
- (g) synopsis of directors rights;
- (h) formal orientation programme or training required for the director to attend;
- (i) copy of Board charter, code of ethics or code of conduct and the directors responsibility to observe same;
- (j) director evaluation programme used by the company; and
- (k) Any other contractual responsibilities.

## **PART C RELATIONSHIP WITH SHAREHOLDERS**

### **21. Meetings of Shareholders**

21.1. The general meetings of the company should be the primary avenue for meeting and interaction between the shareholders, Management and Board;

21.2. The Board should ensure that all shareholders are treated fairly and are given equal access to information about the company;

21.3. General meetings should be conducted in an open manner allowing for free discussions on all issues on the agenda. Sufficient time should be allocated to shareholders to participate fully and contribute effectively at the meetings.

21.4. The chairmen of all Board committees and of the statutory audit committee should be present at general meetings of the company to respond to shareholders queries and questions.

### **22. Protection of Shareholder Rights**

22.1. The Board should ensure that shareholders' statutory and general rights are protected at all times. In particular, the Board should ensure that shareholders at annual general meeting maintain their effective powers to appoint and remove directors of the company.

22.2. The Board should ensure that all shareholders are treated equally. No shareholder, however large his shareholding, and whether institutional or otherwise, should be given preferential treatment or superior access to information or other materials.

22.3. It is the responsibility of the Board to ensure that minority shareholders are treated fairly at all times and are adequately protected from abusive actions of controlling shareholders.

22.4. The Board should ensure that the company promptly renders to shareholders documentary evidence of ownership interest in the company such as share certificates, dividend warrants and related instruments. Where these are rendered electronically, the Board should ensure that they are rendered promptly and in a secure manner;

22.5. Shareholder representation on a Board should be proportionate to the size of shareholding. The company should stipulate that shareholders holding more than a specified ratio of the total issued capital of the company should have a representative on the Board unless there are cogent reasons that make that impracticable.

### **23. Venue of Meeting**

The venue of a general meeting should be accessible to shareholders. The Board should ensure that shareholders are not disenfranchised on account of choice of venue.

### **24. Notice of Meeting**

Notices of general meetings shall be twenty-one (21) days from the date on which the notice was sent out. Companies shall allow at least seven days for service of notice if sent out by post from the day the letter containing the same is posted. The notices should include copies of documents, including annual reports and audited financial statements and other information as will enable members prepare adequately for the meeting.

### **25. Resolutions**

25.1. The Board should ensure that unrelated issues for consideration are not lumped together at general meetings. Statutory business should be clearly and separately set out. Separate resolutions should be proposed and voted on for each substantial issue.

25.2. The Board should ensure that decisions reached at general meetings are properly and fully implemented.

### **26. The Role of Shareholder Associations**

The Board of every public company should ensure that dealings of the company with shareholder associations are always transparent and in strict adherence with the Code for Shareholder Association published by the SEC.

### **27. Institutional Shareholders**

Shareholders of public companies should play a key role in good corporate governance. In particular, Institutional shareholders and other shareholders with large holdings should seek to positively influence the standard of corporate governance in the companies in which they invest. They should demand compliance with the principles and provisions of this Code. They should seek explanations whenever they observe non-compliance with the Code.

## **PART D RELATIONSHIP WITH OTHER STAKEHOLDERS**

### **28. Sustainability Issues**

28.1. Companies should pay adequate attention to the interests of its stakeholders such as its employees, host community, the consumers and the general public. Public companies should demonstrate sensitivity to Nigeria's social and cultural diversity and should as much as possible promote strategic national interests as well as national ethos and values without compromising global aspirations where applicable.

28.2. Companies should recognize corruption as a major threat to business and to national development and therefore as a sustainability issue for businesses in Nigeria. Companies, Boards and individual directors must commit themselves to transparent dealings and to the establishment of a culture of integrity and zero tolerance to corruption and corrupt practices.

28.3. The Board should report annually on the nature and extent of its social, ethical, safety, health and environmental policies and practices. Issues should be categorized into the following levels of reporting:

- (a) disclosures of the company's business principles and codes of practice and efforts towards implementation of same;
- (b) description of workplace accidents, fatalities and occupational and safety incidents against objectives and targets and a suitable explanation where appropriate;
- (c) disclose the companies policies, plans and strategy of addressing and managing the impact of HIV/AIDS, Malaria and other serious diseases on company's employees and their families;
- (d) application, in the company's operations, of options with the most benefit or least damage to the environment, particularly for companies operating in disadvantaged regions or in regions with delicate ecology in order to minimize environmental impact of the company's operations;
- (e) the nature and extent of employment equity and gender policies and practices, especially as they relate to the executive level opportunities;
- (f) information on number and diversity of staff, training initiatives, employee development and the associated financial investment;
- (g) disclosure on the conditions and opportunities created for physically challenged persons or disadvantaged individuals;
- (h) the nature and extent of the company's social investment policy; and
- (i) disclosure on the company's policies on corruption and related issues and the extent of the compliance with the policies and the company's code of ethics.

## **PART E - RISK MANAGEMENT AND AUDIT**

### **29. Risk Management**

29.1. The Board is responsible for the process of risk management. It should accordingly form its own opinion on the effectiveness of the process. Management is accountable to the Board for implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the company.

29.2. The Board should:-

- (a) Oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits. The framework should be formally approved by the Board.



The company's risk management policies should be communicated in simple and clear language to all employees to ensure the integration of risk awareness at all levels of the company;

(b) Ensure that the risk management framework is integrated into the day-to-day, operations of the business and provides guidelines and standards for administering the acceptance and on-going management of key risks such as operational, reputational, financial, market, technology and compliance risk;

(c) Undertake at least annually, a thorough risk assessment covering all aspects of the company's business. The results of the risk assessment should be used to update the risk management framework of the company;

(d) Obtain and review periodically relevant reports to ensure the ongoing effectiveness of the company's risk management framework;

(e) Ensure that the company's risk management policies and practices are disclosed in the annual report;

### **30. The Audit Committee**

30.1. Every public company is required under Section 359 (3) and (4) of the CAMA to establish an audit committee. It is the responsibility of the Board to ensure that the committee is constituted in the manner stipulated and is able to effectively discharge its statutory duties and responsibilities. At least one board member of the committee should be financially literate.

30.2. Members of the committee should have basic financial literacy and should be able to read financial statements. At least one member should have knowledge of accounting or financial management.

30.3. Whenever necessary, the committee may obtain external professional advice.

30.4. In addition to its Statutory functions, the audit committee, should have the following additional responsibilities:

(a) assist in the oversight of the integrity of the company's financial statements, compliance with legal and other regulatory requirements, assessment of qualifications and independence of external auditor; and performance of the company's internal audit function as well as that of external auditors;

(b) establish an internal audit function and ensure there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal controls in the company;

(c) ensure the development of a comprehensive internal control framework for the company; obtain assurance and report annually in the financial report, on the operating effectiveness of the company's internal control framework;

(d) oversee management's process for the identification of significant fraud risks across the company and ensure that adequate prevention, detection and reporting mechanisms are in place;

- (e) at least on an annual basis, obtain and review a report by the internal auditor describing the strength and quality of internal controls including any issues or recommendations for improvement, raised by the most recent internal control review of the company;
- (f) discuss the annual audited financial statements and half yearly unaudited statements with management and external auditors;
- (g) discuss policies and strategies with respect to risk assessment and management;
- (h) meet separately and periodically with management, internal auditors and external auditors;
- (i) review and ensure that adequate whistle-blowing procedures are in place. A summary of issues reported are highlighted to the chairman;
- (j) review, with the external auditor, any audit scope limitations or problems encountered and management's responses to same;
- (k) review the independence of the external auditors and ensure that where non-audit services are provided by the External Auditors, there is no conflict of interest;
- (l) preserve auditor independence, by setting clear hiring policies for employees or former employees of independent auditors;
- (m) consider any related party transactions that may arise within the company or group;
- (n) invoke its authority to investigate any matter within its terms of reference and the company must make available the resources to the internal auditors with which to carry out this function including access to external advice where necessary; and
- (o) report regularly to the Board.

### **31. Internal Audit Function**

31.1. All companies should have an effective risk-based internal audit function. Where the Board, decides not to establish such a function, sufficient reasons must be disclosed in the company's annual report with an explanation as to how assurance of effective internal processes and systems such as risk management, internal control etc will be obtained.

31.2. The purpose, authority and responsibility of the internal auditing activity should be clearly and formally defined in an audit charter approved by the Board through the audit committee. This should be consistent with the definition of internal auditing by the Institute of Internal Auditors (IIA).

31.3. The internal audit unit should be headed by a senior management staff. The unit should be adequately resourced and have appropriate budget to enable it effectively discharge its responsibilities.

31.4. The internal audit unit should report directly to the audit committee while having a line of communication with the CEO/MD. The audit unit should have unrestricted access to the chairman of the audit committee as well as the Chairman of the Board.

31.5. Internal audit should report at least once every quarter, at audit committee meetings on the adequacy and effectiveness of management's governance, risk and control environment, deficiencies observed and the mitigation plans by management.

31.6. The internal audit function should assist the directors and management to maintain effective controls through periodic evaluation to determine the effectiveness and efficiency of the company's internal control systems and make recommendations for enhancement or improvement.

31.7. The evaluation of controls by the internal audit function should encompass the following:

- (a) the information systems environment;
- (b) the reliability and integrity of financial and operational information;
- (c) the effectiveness and efficiency of operations;
- (d) safeguarding of assets; and
- (e) compliance with laws and regulations.

31.8. The internal audit function should establish a risk-based internal audit methodology that provides a consistent basis for the provision of internal audit services and highlights the key steps and activities to be performed from the planning stage to the reporting phase of the audit.

31.9. The internal audit function should develop an annual risk-based internal audit plan in line with the risk-based internal audit methodology and should be approved by the audit committee.

31.10. The annual risk-based internal audit plan should:-

- (a) address the broad range of risks facing the company linking this to risk management framework;
- (b) identify audit priority areas and areas of greatest threat to the company;
- (c) indicate how assurance will be provided on the company's risk management process; and
- (d) indicate the resources and skills available or required to achieve the plan.

31.11. The internal audit plan should be based on the result of the assessment of the risks faced by the company in line with the risk management framework and should be approved by the Board. The plan should identify audit priority areas and determine the frequency of audits as well as the required resources and skills. The risk assessment process should be of a continuous nature so as to identify not only residual or existing but emerging risks and should be conducted at least annually but more often in companies with complex operations.

31.12. Internal audit should provide independent assurance on the robustness and effectiveness of the company's risk management process.

31.13. The internal audit function should co-ordinate with other internal and external providers of assurance in order to ensure proper coverage and to minimize duplication of effort.

31.14. There should be an external assessment of the effectiveness of the internal audit function at least once every three years by a qualified, independent reviewer as defined by the Institute of Internal Auditors, or by an external review team.

## **32. Whistle-blowing Policy**

32.1. Companies should have a whistle-blowing policy which should be known to employees, stakeholders such as contractors, shareholders, job applicants, and the general public. It is the responsibility of the Board to implement such a policy and to establish a whistle-blowing mechanism for reporting any illegal or substantial unethical behavior.

32.2. The whistle-blowing mechanism should be accorded priority and the Board should also reaffirm continually, its support for and commitment to the company's whistle-blower protection mechanism.

32.3. The whistle-blowing mechanism should include a dedicated **“hot-line”** or e-mail system that could be used anonymously to report unethical practices. A designated senior level officer should review the reported cases and initiate appropriate action, if necessary at the level of the Board or CEO/MD to redress situation.

32.4. The designated senior level officer assigned to review reported cases should provide the Chairman of the audit committee with a summary of reported cases, cases investigated, the process of investigation and the result of the investigation.

## **33. Rotation of External Auditors**

33.1. In order to safeguard the integrity of the external audit process and guarantee the independence of the external auditors, companies should rotate both the audit firms and audit partners;

33.2. Companies should require external audit firms to rotate audit partners assigned to undertake external audit of the company from time to time to guarantee independence. Audit personnel should be regularly changed without compromising continuity of the external audit process;

External audit firms should be retained for no longer than ten (10) years continuously. External Audit firms disengaged after continuous service to company of ten (10) years may be re-appointed after another seven (7) years since their disengagement.

## **PART F – ACCOUNTABILITY AND REPORTING**

### **34. Disclosures**

34.1. In order to foster good corporate governance companies should engage in increased disclosure in Nigeria beyond the statutory requirements in the CAMA.

34.2. The CEO and the Head of Finance Function of every public company should in a written statement to the Board certify that the financial statements present a true and fair view of the affairs of the company.

34.3. The Board of a public company should ensure that the company's annual report contains information on the company's capital structure as follows:-

- (a) details of issuance of share capital during the year;
- (b) borrowings and maturity dates;

(c) details and reasons for share buybacks during the year; and

(d) details of directors' and substantial shareholders' interests in the company and subsidiaries or associated companies.

34.4. The Board of a public company should ensure that the company's annual report includes a corporate governance report that conveys clear information on the strength of the company's governance structures, policies and practices to stakeholders. The report should include the following:

(a) composition of Board of directors as set out in section 4 of this Code stating names of chairman, the CEO/MD, executive and non-executive directors as well as independent directors;

(b) the roles and responsibilities of the board setting out matters which are reserved for the board and those delegated to management;

(c) board appointment process including induction and training of board members;

(d) evaluation process and summary of evaluation results for the board as whole, its committees and each individual director;

(e) directors standing for re-election and their biographical details to enable shareholders make informed decisions about their re-election;

(f) composition of board committees including names of chairmen and members of each committee;

(g) description of the roles and responsibilities of the board committees and how the committees have discharged those responsibilities

(h) the number of meetings of the board and the committees held during the year and the attendance of individual directors at those meetings;

(i) disclosure of the code of business conduct and ethics, if any, for directors and employees;

(j) human resource policies, internal management structure, relations with employees, employee share- ownership schemes and other workplace development initiatives,

(k) company's sustainability policies and programmes covering issues such as corruption, community service, environmental protection, HIV/AIDs and general corporate social responsibility issues;

34.5. In addition to the foregoing, the board of every public company should ensure that the company's annual report make sufficient disclosure on accounting and risk management issues. In particular, the following matters shall disclosed:

(a) a statement of the director's responsibilities in connection with the preparation of the financial statements;

(b) details of accounting policies utilized and reasons for changes in accounting policies;

(c) where the accounting policies applied do not conform to standard practice, the external auditor should express an opinion on whether they agreed with the departure and the reasons for such departure;

(d) a statement from the directors that the business is a going concern, with supporting assumptions or qualifications where necessary;

(e) executive directors' remuneration and share options;

(f) non-executive directors fees and allowances and share options, if any;

(g) risk management as outlined in Part E of the Code indicating the board's responsibility for the total process of risk management as well as its opinion on the effectiveness of the process;

34.6. The Chairman's statement in the annual report should provide a balanced and readable summary of the company's performance for the period under review and future prospects and should reflect the collective view of the Board.

34.7. The annual report should contain a statement from the Board with regards to the company's degree of compliance with the provisions of this Code. In particular it should provide:-

(a) assurances that effective internal audit function exists in the company and that risk management control and compliance system are operating efficiently and effectively in all respects;

(b) justification where the Board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor; explaining the recommendation and the reasons for the Board decision;

(c) statement on sustainability initiatives as set out in part D of the Code;

(d) related party transactions;

(e) the nature of the related party relationships and transactions as well as information about the transactions necessary to understand the potential effect of the relationship on the financial statements.

34.8. All public companies should disclose details of director's interest in contracts either directly or indirectly with the company or its subsidiaries or holding companies. The details should include the name of the director, the nature and details of the contract and the director's interest therein. Provided that the disclosures required here do not include directors' service contracts or contracts between the company and another company where the directors interest is by virtue of being a director of that other company.

34.9. All public companies should disclose any service contracts and other significant contracts with controlling shareholder(s).

34.10. Disclosures on related party transactions relating to directors' current account or loans should include the following:

(a) the amount of the transactions;

(b) the amount of outstanding balances at the beginning and at the end of the financial year including their terms and conditions of the loans and details of any guarantees given or received;

(c) the amount of principal and interest which has fallen due and has not been paid and the amount of provisions for doubtful debts related to the amount of outstanding balances;

(d) the expense recognized during the period in respect of bad or doubtful debts due from related parties; and

(e) A statement whether the transaction was conducted at arm's length.

34.11. The disclosures required to be made for related party transaction shall be made separately for each of the following categories:

(a) the parent;

(b) entities with joint control or significant influence over the entity;

(c) subsidiaries;

(d) associates;

(e) joint ventures in which the entity is a partner;

(f) key management personnel of the entity or its parent; and

(g) other related parties.

34.12. Items of a similar nature may be disclosed in aggregate except where separate disclosure is necessary for an understanding of the effects of related party transactions on the financial statements of the company.

34.13. The Board should use its best judgment to disclose any matter though not specifically required in this code to be disclosed if in the opinion of the Board such matter is capable of affecting in a significant form the financial condition of the company or its status as a going concern.

34.14. All public companies should state in their annual reports how they have applied this Code and the extent of their compliance.

34.15. In evaluating and reporting on the extent of compliance with this Code, the board may engage independent experts. Where such is done, the name of the consultant should be disclosed. A summary of the report and conclusions of the consultant shall be included in the company's annual report.

## **PART G - COMMUNICATION**

### **35. Communication Policy**

35.1. Companies should adopt and implement a communications policy that enables the Board and management to communicate, interact with and disseminate information regarding the operations and management of the company to shareholders, stakeholders and the general public.

35.2. The Board should ensure that company reports and other communication to shareholders and other stakeholders are in plain language, readable and understandable and consistent with previous reports.

35.3. Communication with shareholders, stakeholders and the general public especially by public companies with listed securities should be governed by the principle of timely, accurate and continuous disclosure of information and activities of the company so as to give a balanced and fair view the company including its non-financial matters.

35.4. Companies should ensure that shareholders have equal access to company's information. The Board should endeavor to establish web sites and investor-relations portals where the communication policy as well as the companies' annual reports and other relevant information about the company should be published and made accessible to the public.

## **PART H- CODE OF ETHICS**

### **36. Code of Ethics**

36.1. Companies should have a code of ethics and statement of business practices, which should be implemented as part of the corporate governance practices of the company.

36.2. The Code for Directors should contain at a minimum, the following:-

- (1) In accordance with legal requirements and agreed ethical standards, Directors and key executives of the company will act honestly, in good faith and in the best interests of the whole Company;
- (2) Directors owe a fiduciary duty to the Company as a whole, and have a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office;
- (3) They should undertake diligent analysis of all proposals placed before the Board and act with a level of skill expected from directors and key executives of a company;
- (4) They should not make improper use of information acquired as Directors and key executives and not disclose non-public information except where disclosure is authorized or legally mandated;
- (5) They should keep confidential, information received in the course of the exercise of their duties and such information remains the property of the Company from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorized by the person from whom the information is provided, or is required by law;
- (6) They should not take improper advantage of the position of Director or use the position for personal gain or to compete with the company;
- (7) They should not take advantage of Company property or use such property for personal gain or to compete with the Company;
- (8) They should protect and ensure the efficient use of the Company's assets for legitimate business purposes;



(9) They should not allow personal interests, or the interest of any associated person, to conflict with the interests of the Company;

(10) They should make reasonable enquiries to ensure that the Company is operating efficiently, effectively and legally, towards achieving its goals;

(11) They should not engage in conduct likely to bring discredit upon the company, and should encourage fair dealing by all employees with the Company's customers, suppliers, competitors and other employees;

(12) They should encourage the reporting of unlawful/unethical behavior and actively promote ethical behavior and protection for those who report violations in good faith;

(13) They shall have an obligation, at all times, to comply with the principles of this Code.

36.3. The Board should be responsible for formulating the code of ethics and business practices. All directors, management and employees of the company should be required to abide by the codes. The Board should monitor adherence and ensure that breaches are effectively sanctioned.

36.4. The Code should:-

(a) commit the company, its Board and management to the highest standards of professional behavior, business conduct and sustainable business practices;

(b) be developed in association with management and employees;

(c) receive commitment for its implementation from the Board and the managing director/chief executive officer and individual directors of the company;

(d) be sufficiently detailed as to give clear guidance to users;

(e) be formally communicated to the persons to whom it applies; and

(f) be reviewed regularly and updated when necessary.

## **PART I - INTERPRETATION**

### **37. Interpretation**

In this Code, unless the context otherwise requires:-

**“Companies”** includes all public companies, all corporations established by statute or other law, all privatized companies and private companies or entities whose activities impact significantly on wide-ranging stakeholders.

**“Director”** means a person duly appointed by a company to direct and manage the affairs of the company, and includes alternate Directors.

**“Law”** means the applicable Laws of the Federation of Nigeria

<b>“Regulation”</b>	means the applicable regulation made under the Laws of the Federation of Nigeria.
<b>“Related Party”</b>	means entities, including shareholders that control the company or are under common control of a parent company or significant shareholders including family members and key management personnel.
<b>“Shareholder”</b>	means a person who lawfully acquires shares in the capital of a company.
<b>“Stakeholder”</b>	includes directors, employees, creditors, customers, depositors, distributors, regulatory authorities, and the host community.

*[SECRR(A)2011]*

## **SCHEDULE XI**

### **ANTI-MONEY LAUNDERING/COMBATING FINANCING OF TERRORISM (AML/CFT) REGULATIONS FOR CAPITAL MARKET OPERATORS 2013**

#### **COMMENCEMENT PREAMBLE**

Section 13 (n), (aa) and (dd) of the Investments and Securities Act 2007, empowers the Securities and Exchange Commission (Commission) to protect the integrity of the securities market against all forms of abuse, fraudulent and unfair trade practices. Given the prominence Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) issues have assumed in International financial circle and the risks they pose to the financial market globally and Nigeria in particular, a comprehensive and stringent provision to fight this menace has become imperative.

Pursuant to the above, the Commission has issued these regulations to guide Capital Market Operators (CMOs) in the implementation of the Know Your Customer (KYC) and Customer Due Diligence (CDD) requirements for the Capital market. The regulations have been enriched by the enabling AML/CFT legislation enacted by Nigeria, using the FATF Recommendations, as a benchmark and some international best practices documents.

The regulations would not only minimize the risk faced by the Market on laundering the proceeds of crime but will also provide protection against fraud, reputational and other financial market risks. Consequently, all Capital Market Operators are required to adopt a risk – based approach in the identification and management of their AML/CFT risk in line with the requirements of these regulations.

Nigerian Capital Market Operators should note that these AML/CFT regulations have prescribed sanctions for non-compliance with these regulations and other relevant anti-money laundering laws and regulations. It is, therefore, in their best interest to ensure compliance at all times consistent with the prescriptions contained herein.

## DEFINITION OF TERMS

For the proper understanding of these Regulations, certain terms used are defined as follows:-

**Applicant for Business** means: the person or company seeking to establish a ‘**business relationship**’ or an occasional client undertaking a ‘**one-off**’ transaction whose identity must be verified;

**Accounts** means: a facility or an arrangement by which a financial institution:-

- a) accepts deposits of currency;
- b) allows withdrawals of currency or transfers into or out of the account;
- c) pays cheques or payment orders drawn on a financial institution or cash dealer by a person or collect cheques or payment orders on behalf of a person ; or
- d) Supplies a facility or an arrangement for a safe deposits box;

**Beneficial owner** means: the natural person(s) who ultimately owns or controls a clients and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

**Beneficiary** means: those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the Non Profit Organizations. They include all trusts (other than charitable or statutory permitted non-charitable trusts) must have beneficiaries, who may include the settlor, and a maximum time, known as the perpetuity period, normally of 100 years.

**BOFIA** means: Banks and Other Financial Institutions Act (as amended)

**Business Relationship** means: is any arrangement between the Capital Market Operator and the applicant for business which purpose is to facilitate the carrying out of transactions between the parties on a ‘frequent, habitual or regular’ basis.

**Capital Market Operator (CMO)** means: any person (individual or corporate) duly registered by the Commission to perform specific functions in the Capital Market.

**Cooling off rights** means: the rights of an investor to return products purchased and get a refund if the individual changes his mind.

**Cross-border transaction** means: any transaction where the originator and beneficiary Operators are located in different jurisdictions. This term also refers to any chain of transaction that has at least one cross-border element.

**Designated categories of offences** means:

- i. participation in an organized crime group and
- ii. racketeering;
- iii. terrorism, including terrorist financing;

- iv. trafficking in human beings and migrant smuggling;
- v. sexual exploitation, including sexual exploitation of
- vi. children;
- vii. illicit trafficking in narcotic drugs and psychotropic substances;
- viii. illicit arms trafficking;
- ix. illicit trafficking in stolen and other goods;
- x. corruption and bribery;
- xi. fraud;
- xii. counterfeiting currency;
- xiii. counterfeiting and piracy of products;
- xiv. environmental crime;
- xv. murder, grievous bodily injury;
- xvi. kidnapping, illegal restraint and hostage-taking;
- xvii. robbery or theft;
- xviii. smuggling;
- xix. extortion;
- xx. forgery;
- xxi. piracy; and
- xxii. Insider trading and market manipulation.

**Designated non-financial businesses and professions** means:

- (a) Casinos (which also includes internet casinos).
- (b) Real estate agents.
- (c) Dealers in precious metals.
- (d) Dealers in precious stones.
- (e) Legal practitioners, notary public and accountants – means sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to “**internal**” professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

(f) Trust and Company Service providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

**Domestic transfer** means: any wire transfer where the originator and beneficiary institutions are both located in Nigeria. This term therefore refers to any chain of wire transfers that takes place entirely within Nigeria's borders, even though the system used to effect the wire transfer may be located in another jurisdiction.

**False disclosure** means: a misrepresentation of the value of currency or bearer negotiable instruments being transported, or a misrepresentation of other relevant data which is asked for in the disclosure or otherwise requested by the authorities.

**The FATF Recommendations** means: the Forty recommendations on Terrorist Financing.

**Funds Transfer** means: any transaction carried out on behalf of an originator (both natural and legal) through a Capital Market Operator by electronic means with a view to making an amount of money available to a beneficiary through another Capital Market Operator. The originator and the beneficiary may be the same person.

**ISA** means: the Investments and Securities Act, 2007:

**Legal practitioners, notary public and accountants'** means: sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to "internal" professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering ;

**Legal persons** means: bodies corporate foundations, partnerships, or associations, or any similar bodies that can establish a permanent clients relationship with a Capital Market Operator or otherwise own property. Non-profit Organizations/Non-governmental.

**MLPA** refers: to the Money Laundering Prohibition (Amendment) Act, 2013;

**Nigerian Financial Intelligence Unit (NFIU)** refers to: the central unit responsible for the receiving, requesting, analyzing and disseminating to the competent authorities disclosures of financial information concerning the suspected proceeds of crime and potential financing of terrorism.

**Organizations** means: a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.

**Originator** means: the account holder, or where there is no account, the person (natural or legal) that places the order with the Capital Market Operator to perform the Capital Market Transaction.

**One-off Transaction** means: any transaction carried out other than in the course of an established business relationship. It is important to determine whether an applicant for business is undertaking a one-off transaction or whether the transaction is or will be a part of a business relationship as this can affect the identification requirements.

**Payable through account** means: correspondent accounts that are used directly by third parties to transact business on their own behalf.

**Physical presence** means: meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.

**Politically exposed persons (PEPs)** are individuals who are or have been entrusted with prominent public functions both in foreign countries as well as in Nigeria.

**Proceeds** means: any property derived from or obtained, directly or indirectly, through the commission of an offence.

**Property** means: assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

**Relevant authority** means: any persons or organization which has mandate over your activity as an individual.

**Regulators** means: competent regulatory authorities responsible for ensuring compliance of Financial Institutions and Designated Non-Financial Institutions with requirements to combat money laundering and terrorist financing.

**Risk** means: all references to risk in these regulations refer to the risk of money laundering and/or terrorist financing.

**Settlor** means: persons or companies who transfer ownership of their assets to trustees by means of a trust deed. Where the trustees have some discretion as to the investment and distribution of the trust's assets, the deed may be accompanied by a non-legally binding letter setting out what the settlor wishes to be done with the assets.

**Shell bank** means: a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision; and **“physical presence” in relation to shell banks** means: having structure and management located within a country and not merely the existence of a local agent or low level staff;

**Suspicious Transaction** (For the purpose of these regulations) means: a suspicious transaction may be defined as one which is unusual because of its size, volume, type or pattern or otherwise suggestive of known money laundering methods. It includes such a transaction that is inconsistent with a client's known, legitimate business or personal activities or normal business for that type of account or that lacks an obvious economic rationale.

**TPA** refers to: the Terrorism Prevention (Amendment) Act, 2013;

**Terrorist** mean any natural person who:

1. commits, or attempts to commit, terrorist acts by any means, directly or indirectly;
2. participates as an accomplice in terrorist acts;
3. organises or directs others to commit terrorist acts; or
4. contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

**Terrorist act:** A terrorist act includes but are not limited to:-

(1) An act which constitutes an offence within the scope of, and as defined in one of the following treaties:

- a) Convention for the Suppression of Unlawful Seizure of Aircraft (1970),
- b) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971),
- c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973),
- d) International Convention against the Taking of Hostages (1979),
- e) Convention on the Physical Protection of Nuclear Material (1980),
- f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988),
- g) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988),
- h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988),
- i) The International Convention for the Suppression of Terrorist Bombings (1997),
- j) International convention for the suppression of the Financing of Terrorism (1999) ,
- k) Convention on offences and certain other Acts committed on Board Aircraft, Convention on the Making of plastic Explosives for the purpose of Detection (1991);

(2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.

**Terrorist financing(FT)** includes the financing of terrorist acts, and of terrorists and terrorist organisations.

**Terrorist financing offence** refers not only to the primary offence or offences, but also to ancillary offences.

**Terrorist organization** means: any group of terrorists that:

1. commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
2. participates as an accomplice in terrorist acts;
3. organises or directs others to commit terrorist acts; or
4. contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

**Those who finance Terrorism** means; any person, group, undertaking or other entity that provides or collects, by any means, directly or indirectly, funds or other assets that may be used, in full or in part, to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of such persons, groups, undertakings or other entities. This includes those who provide or collect funds or other assets with the intention that they shall be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts.

**Trustee** include: paid professionals or companies or unpaid persons who hold the assets in a trust fund separate from their own assets. They invest and dispose of them in accordance with the settlor's trust deed, taking account of any letter of wishes. There may also be a protector who may have power to veto the trustees' proposals or remove them, and/or a custodian trustee, who holds the assets to the order of the managing trustees.

**Trust and Company Service providers** refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties ;

- (a) acting as a formation agent of legal persons;
- (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons ;
- (c) providing a registered office ;
- (d) business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement ;
- (e) acting as (or arranging for another person to act as) a trustee of an express trust ;
- (f) acting as (or arranging for another person to act as) a nominee shareholder for another person.

**Unique identifier** means: any unique combination of letters, numbers or symbols that refer to a specific originator.

## **PART A**

### **1. AML/CFT INSTITUTIONAL POLICY FRAMEWORK**



### **A. General Guidelines on Institutional Policy**

- i. Every Capital Market Operator shall adopt policies stating its commitment to comply with AML/CFT obligations under the law and regulatory directives and to actively prevent any transaction that otherwise facilitates criminal activity or terrorism.
- ii. Every Capital Market Operator shall formulate and implement internal controls and other procedures that will deter criminals from using its facilities for money laundering and terrorist financing and to ensure that its obligations are always met.

### **B. AML/CFT Compliance Officer Designation and Duties**

Each Capital Market Operator shall designate its AML/CFT Compliance Officer with the relevant competence, authority and independence to implement the institution's AML/CFT compliance programme.

The duties of the AML/CFT Compliance Officer, among others, include:-

- i. Developing an AML/CFT Compliance Programme;
- ii. Rendering returns on Mandatory Disclosure and Suspicious Transactions Reports to the NFIU;
- iii. Rendering returns on Foreign Exchange Transactions Reports to the SEC;
- iv. Receiving and vetting suspicious transaction reports from staff;
- v. Filing suspicious transaction reports with the NFIU;
- vi. Rendering “**nil**” reports with the NFIU and the SEC, where necessary to ensure compliance;
- vii. Ensuring that the Capital Market Operators compliance programme is implemented;
- viii. Coordinating the training of staff in AML/CFT awareness, detection methods and reporting requirements; and
- ix. Serving both as liaison officer with the SEC and NFIU and a point-of contact for all employees on issues relating to money laundering and terrorist financing.

### **C. Cooperation with Relevant Authorities**

Each Capital Market Operator is required to state that it will comply promptly with all the requests made in pursuant with the law and provide information to the SEC, NFIU and other relevant government agencies on AML and CFT matters. Where there is a request for Information on money laundering and terrorist financing each Capital Market Operator shall do the following:

- i. Search immediately the institution's records to determine whether it maintains or has maintained any account for or has engaged in any transaction with each individual, entity or organisation named in the request;
- ii. Report promptly to the requesting authority the outcome of the search; and

iii. Protect the security and confidentiality of such requests.

#### **D. SCOPE OF OFFENSIVE PROCEEDS**

A. Capital Market Operators shall identify and report to the NFIU, the proceeds of crime derived from the following:-

- i. Participation in an organized crime groups and racketeering;
- ii. Terrorism, including terrorist financing;
- iii. Trafficking in human beings and migrant smuggling;
- iv. Sexual exploitation, including sexual exploitation of children;
- v. Illicit trafficking in narcotic drugs and psychotropic substances;
- vi. Illicit arms trafficking;
- vii. Illicit trafficking in stolen and other goods;
- viii. Corruption and Bribery;
- ix. Fraud;
- x. Counterfeiting currency;
- xi. Counterfeiting and piracy of products;
- xii. Environmental crime;
- xiii. Murder, grievous bodily injury;
- xiv. Kidnapping, illegal restraint and hostage taking;
- xv. Robbery or theft;
- xvi. Smuggling;
- xvii. Extortion;
- xviii. Forgery;
- xix. Piracy; and
- xx. Insider trading and market manipulation.
- xxi. Any other criminal act specified in MLPA Act, 2013 and PTA Act, 2013 .

B. *Measures to Be Taken Against ML/TF*

Capital Market Operators secrecy and confidentiality laws shall not in anyway, inhibit the implementation of the requirements in these regulations in view of the provisions in the EFCC Act; MLP Act and ISA, giving the relevant authorities the power to access information to properly perform their functions in combating money laundering and financing of terrorism; the sharing of information between relevant authorities, either domestically or internationally; and the sharing of information between Capital Market Operators, where this is required or necessary.

## **PART B**

### **2. CUSTOMER DUE DILIGENCE (CDD)**

#### ***A. General***

- i. Capital Market Operators shall not be permitted to keep anonymous accounts or accounts in fictitious names, provided that where nominee accounts are maintained, details of the beneficial owners shall be provided on request;
- ii. Capital Market Operators shall undertake clients due diligence (CDD) measures when:
  - a. business relationship is established;
  - b. carrying out occasional transactions above the threshold of N250,000 or as may be determined by SEC from time to time, including where the transaction is carried out in a single operation or several operations that appear to be linked; and
  - c. carrying out occasional transactions that are wire transfers, including those applicable to cross-border and domestic transfers between Capital Market Operators and when credit or debit cards are used as a payment system to effect money transfer. It does not, however, include the following types of payment:
    - i. any transfer flowing from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanying such transfers does flow from the transactions such as withdrawals from a bank account through an Automated Teller Machine (ATM), machine, cash advances from a credit card or payment for goods.
    - ii. Capital Market Operator-to- Capital Market Operator transfers and settlements where both the originator and the beneficiary are Capital Market Operators acting on their own behalf.
  - d. there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or any other thresholds referred to in these Regulations; or
  - e. there are doubts about the veracity or adequacy of previously obtained clients identification data;
  - f. Shell banks are prohibited from operating in Nigeria as provided in BOFIA (as amended). Capital Market Operators are not allowed to establish correspondent relationships with high risk foreign banks (e.g. shell banks) with no physical presence in any country or with correspondent banks that permit their accounts to be used by such banks.

- g. Capital Market Operators shall take all necessary measures to satisfy themselves that correspondent Capital Market Operators in a foreign country do not permit their accounts to be used by shell banks.

Provided that, a Capital Market Operator shall not be required (after obtaining all the necessary documents and being so satisfied) to repeatedly perform identification and verification exercise every time a client conducts a transaction.

## ***B. CUSTOMER DUE DILIGENCE (CDD) MEASURES***

- i. Capital Market Operators shall:-
  - a. carry out the full range of the CDD measures in these regulations;
  - b. Identify all their clients and verify their identities using reliable, independently sourced documents, data or information;
- ii. The type of clients' information to be obtained and identification data to be used to verify the information shall include the following:-

In respect of clients that are legal persons, Capital Market Operator Shall:

  - a. verify any person purporting to have been authorized to act on behalf of such a clients by obtaining evidence of his/her identity and verifying the identity of such a person; and
  - b. verify the status of the legal person by obtaining proof of incorporation from the Corporate Affairs Commission (CAC) or similar evidence of establishment or existence and any other relevant information.
- iii. Capital Market Operators shall identify a beneficial-owner and take reasonable measures to verify his/her identity using relevant information or data obtained from a reliable source to satisfy themselves that they know who the beneficial-owner is.
- iv. Capital Market Operators shall in respect of all clients determine whether a client is acting on behalf of another person. Where the client is acting on behalf of another person, the Capital Market Operator is required to take reasonable steps to obtain sufficient identification-data and to verify the identity of that other person.
- v. Capital Market Operators shall take reasonable measures in respect of clients that are legal persons to:
  - a. understand the ownership and control structure of such a client; and;
  - b. determine the natural persons that ultimately own or control the client.
- vi. The natural persons include those persons who exercise ultimate and effective control over the legal person. Examples of types of measures needed to satisfactorily perform this function include:

- a. For companies -The natural persons are those who own the controlling interests and those who comprise the mind and management of the company;
- b. For trusts – The natural persons are the settlor, the trustee and person exercising effective control over the trust and the beneficiaries.
- vii. Where the client or the owner of the controlling interest is a public company subject to regulatory disclosure requirements (i.e. a public company listed on a recognized securities exchange) it is not necessary to identify and verify the identity of the shareholders of such a public company.
- viii. Capital Market Operators shall obtain information on the purpose and intended nature of the business relationship of their potential clients.
- ix. Capital Market Operators shall conduct ongoing due diligence on the business relationship as stated by the clients.
- x. The ongoing due diligence includes scrutinizing the transactions undertaken by the client throughout the course of the Capital Market Operator/ client relationship to ensure that the transactions being conducted are consistent with the Capital Market Operator's knowledge of the client, its business and risk profiles, and the source of funds (where necessary).
- xi. Capital Market Operators shall ensure that documents, data or information collected under the CDD-process are kept up-to-date and relevant by undertaking reviews of existing records, particularly the records in respect of higher-risk business-relationships or clients' categories.
- xii. For clients that may require additional caution to be exercised when transacting with them, activities in the client's accounts shall be monitored on a regular basis for suspicious transactions.
- xiii. While extra care shall be exercised in such cases, the Capital Market Operator shall refuse to do business with such clients or automatically classify them as high risk and subject them to an enhanced customer process. In this regard, Capital Market Operators shall weigh all the circumstances of the particular situation and assess whether there is a higher than normal risk of money laundering or financial terrorism.
- xiv. A Capital Market Operator shall consider reclassifying a client as higher risk if following initial acceptance of the clients, the pattern of account activity of the clients does not fit in with the Capital Market Operator's knowledge of the clients. A suspicious transaction report shall also be considered.
- xv. A Capital Market Operator shall not commence business relation or perform any transaction, or in the case of existing business relation, shall terminate such business relation if the clients fails to comply with the clients due diligence requirements. A Capital Market Operator shall also consider lodging a suspicious transaction report with the NFIU.

### **C. HIGHER RISK CATEGORIES OF CLIENTS**

- i. The basic principle of a risk based approach is that reporting institutions adopt an enhanced CDD process for higher risk categories of clients, business relationships or transactions. Similarly, simplified CDD process is adopted for lower risk categories of clients, business relationships or transactions.

- ii. for determining a client's risk profile, the following are examples of high risk clients that a reporting institution shall consider exercising greater caution when approving the opening of account or when conducting transactions:
  - a. Non-resident clients;
  - b. Clients from locations known for its high crime rate (e.g. drug production, trafficking, smuggling);
  - c. Clients from or in countries or jurisdictions which do not or insufficiently apply the FATF Recommendations (such as jurisdictions designated as Non Cooperative Countries and Territories (NCCT) by the FATF or those known to the reporting institution to have inadequate AML/CFT laws and regulations);
  - d. Politically Exposed Persons (PEPs) and persons/ companies related to them;
  - e. Complex legal arrangements such as unregulated investment vehicles/special purpose vehicles (SPV); or
  - f. Companies that have nominee-shareholders;
- iii. Upon determining clients as **“high-risk”**, the reporting Capital Market Operator shall undertake enhanced CDD process on the clients which shall include enquiries on:
  - a. the purpose for opening an account;
  - b. the level and nature of trading activities intended;
  - c. the ultimate beneficial owners;
  - d. the source of funds;
  - e. senior management's approval for opening the account;
- iv. The Capital Market Operator shall continue to undertake enhanced monitoring of the business relationship.

#### **D. Lower Risk Clients, Transactions or Products**

- i. Where there are low risks, Capital Market Operators shall apply reduced or simplified CDD measures when identifying and verifying the identity of their clients and the beneficial-owners.
- ii. There are low risks in circumstances where;
  - a. the risk of money laundering or terrorist financing is lower.
  - b. information on the identity of the clients and the beneficial owner of a client is publicly available.
  - c. adequate checks and controls exist elsewhere in national systems.

iii. The following may be considered to be low risk clients:

- a. Capital Market Operators provided they are subject to requirements for the combat of money laundering and terrorist financing which are consistent with the provisions of these regulations and are supervised for compliance with them;
- b. Public companies (listed on a securities exchange or similar situations) that are subject to regulatory disclosure requirements;
- c. Government ministries and parastatals/enterprises;
- d. Life insurance policies where the annual premium and single monthly premium are within the threshold determined by NAICOM;
- e. Insurance policies for pension schemes if there is no surrender-value clause and the policy cannot be used as collateral;
- f. A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme; and
- g. Beneficial-owners of pooled-accounts held by Designated Non-Financial Businesses and Professions (DNFBPs) provided that they are subject to requirements to combat money laundering and terrorist financing consistent with the provisions of Money Laundering (Prohibition) Act and the Terrorism (Prevention) Act.

iv. Capital Market Operators that apply simplified or reduced CDD measures to clients' resident abroad are required to limit such to clients in countries that have effectively implemented the FATF Recommendations.

v. Capital Market Operators shall adopt CDD measures on a risk sensitive-basis as provided for in these regulations. Capital Market Operators shall determine in each case whether the risks are lower or not, having regard to the type of clients, product, transaction or the location of the clients.

## **E. TIMING OF VERIFICATION**

- i. Capital Market Operators shall verify the identity of the clients, beneficial-owner and occasional clients before or during the course of establishing a business relationship or conducting transactions for them;
- ii. Capital Market Operators shall complete the verification of the identity of the clients and beneficial owner following the establishment of the business relationship, only when:-
  - a. This can take place as soon as reasonably practicable;
  - b. It is essential not to interrupt the normal business conduct of the clients; and
  - c. The money laundering/ terrorism financing risks can be effectively managed.

- iii. Examples of situations where it may be essential not to interrupt the normal conduct of business are:-
  - a. **Securities transactions:** In the securities industry, companies and intermediaries may be required to perform transactions very rapidly, according to the market conditions at the time the clients is contacting them and the performance of the transaction may be required before verification of identity is completed;
  - b. Non face-to-face business;
  - c. Life insurance business in relation to identification and verification of the beneficiary under the policy. This may take place after the business relationship with the policy holder is established.

In all such cases, identification and verification shall occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy.

- (iv) Where a client is permitted to utilize the business relationship prior to verification, Capital Market Operators shall adopt risk management procedures concerning the conditions under which this may occur. These procedures include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside the expected norms for that type of relationship.

#### **F. FAILURE TO COMPLETE CDD**

- i. Every Capital Market Operator that does not comply with the foregoing provisions shall:
  - a. not be permitted to open the account, commence business relations or perform the transaction; and
  - b. Be required to render a suspicious transaction report to the NFIU.
- ii. The Capital Market Operators that has already commenced the business relationship shall terminate the business relationship and render suspicious transaction reports to the NFIU.

#### **G. EXISTING CLIENTS**

- i. Capital Market Operators shall apply CDD requirements to existing clients on the basis of materiality and risk and to continue to conduct due diligence on such existing relationships at appropriate times.
- ii. The appropriate time to conduct CDD by Capital Market Operators Shall include when:
  - a. a transaction of significant value takes place,
  - b. clients documentation standards change substantially,
  - c. there is a material change in the way that the account is operated,



- d. the institution becomes aware that it lacks sufficient information about an existing client.
- iii. The Capital Market Operators shall properly identify the clients in accordance with these criteria. The clients' identification records shall be made available to the AML/CFT compliance officer, other appropriate staff and relevant authorities.

### **3. DEFINITION OF POLITICALLY EXPOSED PERSON (PEP)**

- a. Politically Exposed Persons (PEPs) are individuals who are or have been entrusted with prominent public functions both in foreign countries as well as in Nigeria. Examples of PEPs include, but are not limited to;
  - (i) Heads of State or government;
  - (ii) Governors;
  - (iii) Local government chairmen;
  - (iv) Senior politicians;
  - (v) Senior government officials;
  - (vi) Judicial or military officials;
  - (vii) Senior executives of state owned corporations;
  - (viii) Important political party officials;
  - (ix) Family members or close associates of PEPs; and
  - (x) Members of Royal Families.
- b. Capital Market Operators shall in addition to performing CDD measures, put in place appropriate risk management systems to determine whether a potential client or existing clients or the beneficial-owner is a politically exposed person.
- c. Capital Market Operators shall obtain senior management approval before they establish business relationships with PEPs and to render monthly returns on their transactions with PEPs to the NFIU.
- d. Where a client has been accepted or has an ongoing relationship with the Capital Market Operator and the client or beneficial-owner is subsequently found to be or becomes a PEP, the Capital Market Operator is required to obtain senior management approval in order to continue the business relationship.
- e. Capital Market Operators shall take reasonable measures to establish the source of wealth and the sources of funds of clients and beneficial-owners identified as PEPs and report all anomalies immediately to the SEC and NFIU.

- f. Capital Market Operators in a business relationship with PEPs shall conduct enhanced ongoing monitoring of that relationship. In the event of any transaction that is abnormal, Capital Market Operators shall flag the account and report immediately to the NFIU.

#### **4. NEW TECHNOLOGIES AND NON-FACE-TO-FACE TRANSACTIONS**

Capital Market Operators shall put in place:-

- a. policies or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes such as internationally accepted Credit or Debit Cards.
- b. policies and procedures to address any specific risks associated with non -face to face business relationships or transactions. These policies and procedures shall be applied automatically when establishing clients relationships and conducting ongoing due diligence.
- c. A Capital Market Operator that relies upon a third party shall immediately obtain the necessary information concerning property which has been laundered or which constitutes proceeds from, instrumentalities used in and intended for use in the commission of money laundering and financing of terrorism or other predicate offences. Such capital market operator shall satisfy itself that copies of identification data and other relevant documentation relating to the CDD requirements are made available by the third party upon request without delay.
- d. The Capital Market Operator shall be satisfied that the third party is a regulated institution with measures in place to comply with requirements of CDD.

#### **5. RELIANCE ON INTERMEDIARIES AND THIRD PARTIES ON CDD FUNCTIONS**

- a. Capital Market Operators relying on intermediaries or other third parties which have no outsourcing or agency relationships, business relationships, accounts or transactions between Capital Market Operators for their clients shall perform some of the elements of the CDD process on the introduced business. The following criteria shall be met:-
  - i. Immediately obtain from the third party the necessary information concerning certain elements of the CDD process;
  - ii. Take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available by the third party upon request without delay;
  - iii. Satisfy themselves that the third party is regulated in accordance with Core Principles of AML/CFT and has measures in place to comply with the CDD requirements set out in these regulations; and
  - iv. Make sure that adequate KYC provisions are applied to the third party in order to get account information for competent authorities.
- b. The ultimate responsibility for clients' identification and verification remains with the Capital Market Operators relying on the third party.

## **6. MAINTENANCE OF RECORDS ON TRANSACTIONS**

Capital Market Operators shall;

- a. maintain all necessary records of transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by the SEC and NFIU in specific cases). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.
- b. maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by the SEC and NFIU in specific cases).
- c. ensure that all clients-transaction records and information are available on a timely basis to the SEC and NFIU.
- d. Some of the necessary components of transaction-records to be kept include clients' and beneficiary's names, addresses (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, the type and identifying number of any account involved in the transaction.

## **7. ATTENTION ON COMPLEX AND UNUSUAL LARGE TRANSACTIONS**

- a. Capital Market Operators shall pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Such transactions or patterns of transactions include:
  - i) significant transactions relative to a relationship,
  - ii) transactions that exceed certain limits,
  - iii) very high account turnover inconsistent with the size of the account balance or
  - iv) Transactions which fall out of the regular pattern of the account's activity.
- b. Capital Market Operators shall examine as far as possible the background and purpose for such transactions and set forth their findings in writing to the NFIU; such finding shall be kept available for SEC, NFIU, other relevant authorities and auditors for at least five years.

## **8. COMPLIANCE, MONITORING AND RESPONSE TO SUSPICIOUS TRANSACTIONS**

### **1. Institutional Policy**

Every Capital Market Operator shall:-

- i. have a written policy framework that would guide and enable its staff to monitor, recognize and respond appropriately to suspicious transactions;
- ii. designate an officer appropriately as the AML/CFT Compliance Officer to supervise the monitoring and reporting of suspicious transactions;

- iii. be alert to the various patterns of conduct that have been known to be suggestive of money laundering and maintain a checklist of such transactions which shall be disseminated to the relevant staff;
- iv. When any staff of a Capital Market Operator detects any **“red flag”** or suspicious money laundering activity, the operator is required to promptly institute a **“Review Panel”** under the supervision of the AML/CFT Compliance Officer. Every action taken must be recorded. The operator and its staff shall maintain confidentiality in respect of such investigation and any suspicious transaction report that may be filed with the relevant authority;

This action is, however, in compliance with the provisions of the money laundering law that criminalize **“tipping off”** (i.e. doing or saying anything that might tip off someone else that he is under suspicion of money laundering);

- v. A Capital Market Operator that suspects or has reason to suspect that funds are the Proceeds of a criminal activity or are related to terrorist financing shall report within 72 hours its suspicions to the NFIU. All suspicious transactions, including attempted transactions are to be reported regardless of the amount involved. This requirement applies regardless of whether the transactions involve tax matters or other things;
- vi. Capital Market Operators, their directors, officers and employees (permanent and temporary) are prohibited from disclosing the fact that a report is required to be filed with the relevant authorities.

## 2. Internal controls, compliance and audit

- i. Capital Market Operators shall establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism and to communicate these to their employees.

These procedures, policies and controls shall cover the CDD, record retention, the detection of unusual and suspicious transactions, the reporting obligation, among other things.

- ii. The AML/CFT compliance officer and appropriate staff shall have timely access to clients' identification data, CDD information, transaction records and other relevant information.
- iii. Capital Market Operators shall develop programs against money laundering and terrorist financing which shall include:
  - a. The development of internal policies, procedures and controls, including appropriate compliance management arrangement and adequate screening procedures to ensure high standards when hiring employees;
  - b. An ongoing employee training program to ensure that employees are kept informed of new developments, including information on current ML and CFT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting; and

- c. Adequately resourced and independent audit function to test compliance with the procedures, policies and controls.
- iv. A Capital Market Operator shall also put in place a structure that ensures the operational independence of the Chief Compliance Officer (CCO).

### **3. Employee Education and Training Programme**

- (a) Capital Market Operators shall design a comprehensive employee education and training programs not only to make employees fully aware of their obligations but also to equip them with relevant skills required for the effective discharge of their AML/CFT tasks.
- (b) The timing, coverage and content of the employee training program shall be tailored to meet the perceived needs of the Capital Market Operators. Capital Market Operators shall render quarterly returns on their level of compliance to the SEC and NFIU.
- (c) The employee training programs are required to be developed under the guidance of the AML/CFT Compliance Officer in collaboration with the top Management. The basic elements of the employee training program are expected to include:
  - (i) AML/CFT regulations and offences;
  - (ii) The nature of money laundering;
  - (iii) Money laundering ‘red flags’ and suspicious transactions, including trade-based money laundering typologies;
  - (iv) Reporting requirements;
  - (v) Clients due diligence;
  - (vi) Risk-based approach to AML/CFT;
  - (vii) Record keeping and retention policy.
- (d) Capital Market Operators shall submit their Annual AML/CFT Employee training program to the SEC and NFIU not later than the 31st of December every financial year against the next year.

## **9. SANCTIONS**

- a. The sanctions provided hereunder are not only proportionate and dissuasive but also designed to affect legal persons/ Capital Market Operators and their directors/senior management staff, depending on the requirements breached. Every Capital Market Operator who fails to comply or contravenes the provisions contained in these regulations shall be subject to sanctions by the SEC and any other relevant authority.
- b. Any individual, being an official of a Capital Market Operator, who fails to take reasonable steps to ensure compliance with the provisions of these regulations, shall be sanctioned accordingly. For purpose of emphasis, incidence of false declaration or false disclosure by the Capital Market Operator or its officers shall be subject to administrative review and sanction as stipulated in these regulations.

- c. Any Capital Market Operator or its officer that contravenes the provisions of these regulations shall be subject to applicable sanctions by the SEC as follows:

***1. Against the Operator***

- (a) Imposition of a penalty of not less than ₦1, 000,000.00 from the first to the fifth instances on each offence; and
- (b) in addition, suspend any license issued to the CMOs for failure to comply with these Regulations.

For avoidance of doubt, the penalty prescribed above shall be applicable to each case where there are serial/repeated violations.

***2. Against the Officers***

Any person being a director, senior management, manager or employee of a Capital Market Operator, either acting alone or in partnership with others, contravenes the provisions of this Regulations under any circumstances shall be subject to any or all of the following sanctions:

- i. On the first two infraction, be warned in writing by the operator and report to the Commission;
  - ii. On the third infraction, the operator shall terminate the employee's appointment; after recovering all the benefits/gains made by such officer.
  - iii. In each instance, the names of the officers penalized the nature of the offence and the sanction imposed shall be reported to SEC.
- d.
- (i) the above prescribed penalty shall be without prejudice to the powers of the Commission to pursue and recover all benefits/gains resulting from the violation of these regulations.
  - (ii) For the purposes of (i) above, benefits and gains mean but not limited to the fees paid to the operator as well as accrued interests where applicable.

**10. SHELL BANKS**

- (a) These are banks which have no physical presence in any Country. Shell banks are prohibited from operating in Nigeria as provided in BOFIA (as amended). Capital Market Operators are not allowed to establish correspondent relationships with high risk foreign banks (e.g. shell banks) with no physical presence in any country or with correspondent banks that permit their accounts to be used by such banks.
- (b) Capital Market Operators shall take all necessary measures to satisfy themselves that correspondent Capital Market Operators in a foreign country do not permit their accounts to be used by shell banks.

## 11. SUSPICIOUS TRANSACTIONS “RED FLAGS”

### *(a) Potential Transactions Perceived or Identified as Suspicious*

- i. Transactions involving high-risk countries vulnerable to money laundering, subject to this being confirmed.
- ii. Transactions involving shell companies.
- iii. Transactions with correspondents that have been identified as higher risk.
- iv. Large transaction activity involving monetary instruments such as traveler’s cheques, bank drafts, money order, particularly those that are serially numbered.
- v. Transaction activity involving amounts that are just below the stipulated reporting threshold or enquiries that appear to test an institution’s own internal monitoring threshold or controls.

### *(b) Terrorist Financing “Red flags”*

- i. Persons involved in a transaction share an address or phone number, particularly when the address is also a business location or does not seem to correspond to the stated occupation (e.g., student, unemployed, or self-employed);
- ii. Securities transaction by a nonprofit or charitable organization, for which there appears to be no logical economic purpose or for which there appears to be no link between the stated activity of the organisation and other parties in the transaction;
- iii. Large volume of securities transactions through a business account, where there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves designated high-risk locations;
- iv. The stated occupation of the clients is inconsistent with the type and level of account activity;
- v. Multiple personal and business accounts or the accounts of nonprofit organizations or charities that are used to collect and channel securities to a small number of foreign beneficiaries.

### *(c) Other Unusual or Suspicious Activities*

- i. Employee exhibits a lavish lifestyle that cannot be justified by his/her salary.
- ii. Employee failure to comply with approved operating guidelines.
- iii. Employee is reluctant to take a vacation.

### *(d) Other forms of reporting*

Capital Market Operators shall report all securities transactions in any currency above a threshold of N5, 000,000 for individual and N10, 000,000 for corporate person to the NFIU.

## **12. ATTENTION FOR HIGHER RISK COUNTRIES**

- a. Capital Market Operators shall give special attention to business relationships and transactions with persons (including legal persons and other Capital Market Operators) from or in countries which do not or insufficiently apply the FATF recommendations.
- b. Capital Market Operators shall report, as stated below, transactions that have no apparent economic or visible lawful purpose. The background and purpose of such transactions shall, as far as possible, be examined and written findings made available to assist competent authorities such as SEC, NFIU, auditors and law enforcement agencies (LEAs) to carry out their duties.
- c. Capital Market Operators that conduct business with foreign institutions which, do not continue to apply or insufficiently apply the provisions of FATF Recommendations, are required to take measures such as the following:
  - i. Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories to Capital Market Operators for identification of the beneficial owners before business relationships are established with individuals or companies from that jurisdiction;
  - ii. Enhanced relevant reporting mechanisms or systematic reporting of cross border securities transactions on the basis that financial transactions with such countries are more likely to be suspicious;
  - iii. In considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking into account the fact that the relevant Capital Market Operator is from a country that does not have adequate AML/CFT systems;
  - iv. Warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering; limiting business relationships or financial transactions with the identified country or persons in that country.

## **13. AML/CFT EMPLOYEE-EDUCATION AND TRAINING PROGRAMME**

### ***Institutional Policy***

- a) Capital Market Operators shall design a comprehensive employee education and training programs not only to make employees fully aware of their obligations but also to equip them with relevant skills required for the effective discharge of their AML/CFT tasks.
- (b) The timing, coverage and content of the employee training program shall be tailored to meet the perceived needs of the Capital Market Operators. Capital Market Operators shall render quarterly returns on their level of compliance to the SEC and NFIU.
- (c) The employee training programs are required to be developed under the guidance of the AML/CFT Compliance Officer in collaboration with the top Management. The basic elements of the employee training program are expected to include:
  - (i) AML regulations and offences;
  - (ii) The nature of money laundering;



- (iii) Money laundering ‘**red flags**’ and suspicious transactions, including trade- based money laundering typologies ;
  - (iv) Reporting requirements;
  - (v) Clients due diligence;
  - (vi) Risk-based approach to AML/CFT;
  - (vii) Record keeping and retention policy.
- (d) Capital Market Operators shall submit their Annual AML/CFT Employee training program to the SEC and NFIU not later than the 31st of December every financial year against the next year.

#### **14. MONITORING OF EMPLOYEE CONDUCT**

Capital Market Operators shall monitor their employees’ accounts for potential signs of money laundering. They are also required to subject employees’ accounts to the same AML/CFT procedures as applicable to other clients’ accounts. This is required to be performed under the supervision of the AML/CFT Compliance Officer. The latter’s own account is to be reviewed by the Internal Auditor or a person of adequate/similar seniority. Compliance reports including findings are to be rendered to the SEC /NFIU.

#### **15. PROTECTION OF STAFF WHO REPORT VIOLATIONS**

- a. Capital Market Operators shall direct their employees in writing to always co-operate fully with the Regulators and law enforcement agents and to promptly report suspicious transactions to them. They are also required to make it possible for employees to report any violations of the institution’s AML/CFT compliance program to the AML/CFT Compliance Officer. Where the violations involve the Compliance Officer, employees are required to report such to a designated higher authority such as the Internal Auditor.
- b. Capital Market Operators shall inform their employees in writing to make such reports confidential and that they will be protected from victimization for making them.

#### **16. ADDITIONAL AREAS OF AML/CFT RISKS**

- a. Capital Market Operators shall review, identify and record other areas of potential money laundering risks not covered by this Compliance Regulations and report same quarterly to the NFIU.
- b. Capital Market Operators shall review their AML/CFT frameworks from time to time with a view to determining their adequacy and identifying other areas of potential risks not covered by the AML/CFT Compliance Regulations.

#### **17. ADDITIONAL PROCEDURES AND MITIGANTS**

Having reviewed the AML/CFT framework and identified new areas of potential money laundering vulnerabilities and risks, Capital Market Operators shall design additional procedures and mitigants as contingency plan in their AML/CFT Operational Regulations. These will provide how such potential risks will be appropriately managed if they crystallize. Details of the contingency plan are to be rendered to SEC and NFIU as at 31st December every financial year.

## **18. TESTING FOR THE ADEQUACY OF THE AML/CFT COMPLIANCE**

Every Capital Market Operator shall make a policy commitment and to subject its AML/CFT Compliance Program to independent-testing or require its internal audit function to determine its adequacy, completeness and effectiveness. Report of compliance is required to be rendered to SEC and NFIU as 31st December every financial year. Any identified weaknesses or inadequacies shall be promptly addressed by the Capital Market Operator.

## **19. FORMAL BOARD APPROVAL OF THE AML/CFT COMPLIANCE**

The ultimate responsibility for AML/CFT compliance is placed on the Board/Top Management of every Capital Market Operator in Nigeria. It is, therefore, required that the Board ensures that a comprehensive operational AML/CFT Compliance regulations is formulated by Management and presented to the Board for consideration and formal approval. The Regulations shall be forwarded to SEC and NFIU within six(6) months of it release. Quarterly reports on the AML/CFT-compliance status of the Capital Market Operator are to be presented to the Board for its information and necessary action.

## **20. TERRORIST FINANCING OFFENCES**

1. Any person or entity who, in or outside Nigeria –

- (a) solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to –
  - (i) terrorists, or
  - (ii) terrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit an offence under these regulations or in breach of the provisions of these regulations,
- (b) possesses funds intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorist or terrorist groups, commits an offence under these regulations and is liable on conviction to imprisonment for life imprisonment.

2. Any person who knowingly -

- (a) which facilitates the acquisition, retention or control by or on behalf of another person of terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way, or
- (b) as a result of which funds or other property are to be made available for the purpose of terrorism or for the benefit of a specified entity or proscribed organization, commits an offence under these regulations and is liable on conviction for life imprisonment.

3. For an act to constitute an offence under this section, it is not necessary that the funds or property were actually used to commit any offence of terrorism.

## **21. CULTURE OF COMPLIANCE**

Every Capital Market Operator shall have a comprehensive AML/CFT compliance program to guide its compliance efforts and to ensure the diligent implementation of its regulations.

## **PART C**

### **22. GUIDANCE ON KYC (Know Your Customer)**

Capital Market Operators shall not establish a business relationship until all relevant parties to the relationship have been identified and the nature of the business they intend to conduct ascertained. Once an on-going business relationship is established, any inconsistent activity can then be examined to determine whether or not there is an element of money laundering for suspicion.

#### **A. Duty to Obtain Identification Evidence**

- i. Capital Market Operators shall be satisfied that a prospective client is who he/she claims to be.
- ii. If the client is acting on behalf of another (the funds are supplied by someone else or the investment is to be held in the name of someone else's name) then the Capital Market Operator shall verify the identity of both the clients and the agent/trustee unless the client is itself a Nigerian regulated Capital Market Operator.
- iii. Capital Market Operators shall obtain evidence in respect of their clients, unless it is otherwise stated in these regulations.
- iv. Capital Market Operators shall identify all relevant parties to the relationship from the outset by obtaining satisfactory identification evidence as provided in these regulations.

#### **B. Nature and Level of the Business**

- i. Capital Market Operators shall obtain sufficient information on the nature of the business that their client intends to undertake, including the expected or predictable pattern of transactions.  
  
The information collected at the outset for this purpose shall include:-
  - a. purpose and reason for opening the account or establishing the relationship;
  - b. nature of the activity that is to be undertaken;
  - c. expected origin of the funds to be used during the relationship; and
  - d. details of occupation/employment/business activities and sources of wealth or income.
- ii. Capital Market Operators shall take reasonable steps to keep the information up to date as the opportunities arise, such as when an existing client opens a new account. Information obtained during any meeting, discussion or other communication with the clients shall be recorded and kept in the client's file to ensure, as far as practicable, that current clients' information is readily accessible to the Money Laundering Compliance Officers (MLCO) or relevant regulatory bodies.

### iii. **Apply Commercial Judgment**

- a. Capital Market Operators shall take a risk-based approach to the ‘**Know Your Customer**’ requirement and decide the number of times to verify the clients’ records during the relationship, the identification evidence required and when additional checks are necessary;
- b. For personal account relationships, all joint-account holders need to be verified. In respect of private company or partnership, focus shall be on the principal owners/controllers and their identities shall also be verified;
- c. The identification evidence collected at the outset shall be viewed against the inherent risks in the business or service.

## 23. **ESTABLISHING IDENTITY**

### *A. Identification Evidence*

- i. The client’s identification process shall not start and end at the point of establishing the relationship but continue as far as the business relationship subsists. The process of confirming and updating identity and address, and the extent of obtaining additional KYC information collected will however differ from one type of Capital Market Operator to another.
- ii. The general principles for establishing the identity of both legal and natural persons and obtaining satisfactory identification evidence set out in these regulations are by no means exhaustive.

### *B. What is Identity?*

- i. Identity generally means a set of attributes such as names used, date of birth and the residential address at which the clients can be located. These are features which can uniquely identify a natural or legal person.
- ii. In the case of a natural person, the date of birth is required to be obtained as an important identifier in support of the name. It is, however, not mandatory to verify the date of birth provided by the clients.
- iii. Where an international passport/national identity card is taken as evidence of identity, the number, date and place/country of issue (as well as expiring date in the case of international passport) are required to be recorded.

### *C. When Must Identity be verified?*

- i. Identity shall be verified whenever a business relationship is to be established, on account opening or during one-off transaction or when series of linked transactions take place. “**Transaction**” in these regulations is defined to include the giving of advice.
- ii. Once identification procedures have been satisfactorily completed and the business relationship established, as long as contact or activity is maintained and records

concerning that clients are complete and kept, no further evidence of identity is needed when another transaction or activity is subsequently undertaken.

***D. Whose Identity Must Be Verified?***

- a. Clients - sufficient evidence of the identity must be obtained to ascertain that the client is the very person he/she claims to be.
- b.. a person acting on behalf of another - The obligation is to obtain sufficient evidence of identities of the two persons involved.
- c. . There is no obligation to look beyond the client where:
  - i. the latter is acting on its own account (rather than for a specific client or group of clients);
  - ii. a client is a bank, broker, fund manager or other regulated Capital Market Operator, financial institutions; and
  - iii. all the businesses are to be undertaken in the name of a regulated Capital Market Operator or financial institution.
  - iv. In other circumstances, unless the client is a regulated Capital Market Operator or financial institution acting as agent on behalf of one or more underlying client within Nigeria, and has given written assurance that it has obtained the recorded-evidence of identity to the required standards, identification evidence shall be verified for:
    - a. the named account holder/person in whose name an investment is registered;
    - b. any principal beneficial owner of funds being invested who is not the account holder or named investor;
    - c. the principal controller(s) of an account or business relationship (i.e. those who regularly provide instructions); and
    - d. any intermediate parties (e.g. where an account is managed or owned by an intermediary).
  - v. Capital Market Operators shall take appropriate steps to identify directors and all the signatories to an account.
  - vi. Joint applicants/account holders - identification evidence shall be obtained for all the account holders.
  - vii. For higher risk business undertaken for private companies (i.e. those not listed on the stock exchange) sufficient evidence of identity and address shall be verified in respect of:
    - a. the principal underlying beneficial owner(s) of the company with 5% interest and above; and

- b. Those with principal control over the company's assets (e.g. principal controllers/directors).
- viii. Capital Market Operators shall be alert to circumstances that might indicate any significant changes in the nature of the business or its ownership and make enquiries accordingly and to observe the additional provisions for Higher Risk Categories of Clients under AML/CFT Directive in these regulations.
- ix. **Trusts** – Capital Market Operators shall obtain and verify the identity of those providing funds for the Trust. They include the settlor and those who are authorized to invest, transfer funds or make decisions on behalf of the Trust such as the principal trustees and controllers who have power to remove the Trustees.
- x. **Savings Schemes and Investments in Third Parties' Names** When an investor sets up a savings accounts or a regular savings scheme whereby the funds are supplied by one person for investment in the name of another (such as a spouse or a child), the person who funds the subscription or makes deposits into the savings scheme shall be regarded as the applicant for business for whom identification evidence must be obtained in addition to the legal owner.
- xi. **Personal Pension Schemes**
  - a. Identification evidence must be obtained at the outset for all investors, except personal pensions connected to a policy of insurance taken out by virtue of a contract of employment or pension scheme.
  - b. Personal pension advisers are charged with the responsibility of obtaining the identification evidence on behalf of the pension fund provider. Confirmation that identification evidence has been taken shall be given on the transfer of a pension to another provider.

#### **E. Timing of Identification Requirements:-**

- i. An acceptable time-span for obtaining satisfactory evidence of identity will be determined by the nature of the business, the geographical location of the parties and whether it is possible to obtain the evidence before commitments are entered into or money changes hands. However, any occasion when business is conducted before satisfactory evidence of identity has been obtained must be exceptional and can only be those circumstances justified with regard to the risk.
- ii. To this end, Capital Market Operators shall:-
  - (a) obtain identification evidence as soon as reasonably practicable after it has contact with a client with a view to agreeing with the client to carry out an initial transaction; or reaching an understanding (whether binding or not) with the client that it may carry out future transactions; and;
  - (b) Where the client does not supply the required information as stipulated in (a) above, the Capital Market Operator shall discontinue any activity it is conducting for the client; and bring to an end any understanding reached with the client.

- iii. Capital Market Operators shall observe the provision in the timing of verification under the AML/CFT Directive of these regulations.
- iv. A Capital Market Operator may however start processing the transaction or application immediately, provided that it:
  - a. promptly takes appropriate steps to obtain identification evidence;
  - b. Does not transfer or pay any money out to a third party until the identification requirements have been satisfied.
- v. The failure or refusal by an applicant to provide satisfactory identification evidence within a reasonable time-frame without adequate explanation may lead to a suspicion that the depositor or investor is engaged in money laundering. The Capital Market Operator shall therefore make Suspicious transaction reports to NFIU based on the information in its possession before the funds involved are returned to the potential client or where they came from.
- vi. Capital Market Operators shall put in place written and consistent policies of closing an account or unwinding a transaction where satisfactory evidence of identity cannot be obtained.
- vii. Capital Market Operators shall respond promptly to inquiries made by other persons relating to the identity of their clients.

## **F. Cancellation & Cooling-Off Rights**

Where an investor exercises cancellation rights or cooling-off rights, the sum invested must be repaid subject to some deductions, where applicable. Since cancellation/cooling-off rights could offer a readily available route for laundering money, Capital Market Operators shall be alert to any abnormal exercise of these rights by an investor or in respect of business introduced through an intermediary. In the event where abnormal exercise of these rights becomes apparent, the matter shall be treated as suspicious and reported to NFIU.

## **G. Redemptions/Surrenders**

- i. When an investor finally realizes his investment (wholly or partially), if the amount payable is US\$10,000 or above or its equivalent thereof; or N250, 000 for an individual or N500,000 for a body corporate, or such other monetary amounts as may, from time to time, be stipulated by any applicable money laundering legislation or regulation, the identity of the investor must be verified and recorded if it had not been done previously.
- ii. In the case of redemption or surrender of an investment (wholly or partially), a Capital Market Operator shall take reasonable measures to establish the identity of the investor where payment is made to:
  - a. the legal owner of the investment by means of a cheque crossed “**account payee**”; or
  - b. a bank account held (solely or jointly) in the name of the legal owner of the investment by any electronic means effective for transfer funds.

## **24. IDENTIFICATION PROCEDURES**

### ***A. General Principles***

- i. A Capital Market Operator shall ensure that it is dealing with a real person or organization (natural, corporate or legal) by obtaining sufficient identification evidence. When reliance is being placed on a third party to identify or confirm the identity of an applicant, the overall responsibility for obtaining satisfactory identification evidence rests with the account holding Capital Market Operator.
- ii. The requirement in all cases is to obtain satisfactory evidence that a person of that name lives at the address given and that the applicant is that person or that the company has identifiable owners and that its representatives can be located at the address provided.
- iii. Because no single form of identification can be fully guaranteed as genuine or representing correct identity, the identification processes shall be cumulative.
- iv. The procedures adopted to verify the identity of private individuals and whether or not identification was done face to face or remotely and are required to be stated in the client's file. The reasonable steps taken to avoid single, multiple fictitious applications or substitution (impersonation) fraud shall be stated by the Capital Market Operator in the client's file.
- v. An introduction from a respected client, a person personally known to a Director or Manager or a member of staff often provides comfort but must not replace the need for identification evidence requirements to be complied with as set out in these regulations.

Details of the person who initiated and authorized the introduction shall be kept in the client's mandate file along with other records. It is therefore mandatory that Directors/Senior Managers shall insist on following the prescribed identification procedures for every applicant.

### ***B. New Business for Existing Clients***

- i. When an existing client closes one account and opens another or enters into a new agreement to purchase products or services, there is no need to verify the identity or address of such a client unless the name or the address provided does not tally with the information in the Capital Market Operator's file. However, procedures shall be put in place to guard against impersonation and fraud. The opportunity of opening the new account shall also be taken to ask the client to confirm the relevant details and to provide any missing KYC information. This is particularly important:
  - a. if there was an existing business relationship with the client and identification evidence had not previously been obtained; or
  - b. if there had been no recent contact or correspondence with the client within the past three (3) months; or
  - c. when a previously dormant account is re-activated.



- ii. In the circumstances above, details of the previous account(s) and any identification evidence previously obtained or any introduction records shall be linked to the new account-records and retained for the prescribed period in accordance with the provision of this Regulations.

### ***C. Certification of Identification Documents***

- i. In order to guard against the dangers of postal-interception and fraud, prospective client shall not be asked to send by post originals of their valuable personal identity documents such as international passport, identity card, driving license, etc.
- ii. Where there is no face to face contact with the client and documentary evidence is required, copies certified by a notary public/court of competent jurisdiction, senior public servant or their equivalent in the private sector shall be obtained. The person undertaking the certification must be known and capable of being contacted if necessary.
- iii. In the case of foreign nationals, the copy of international passport, national identity card or documentary evidence of his/her address is required to be certified by:
  - a. the embassy, consulate or high commission of the country of issue;
  - b. a senior official within the account opening institution;
  - c. Notary public/court of competent jurisdiction
- iv. Certified copies of identification evidence are to be stamped, dated and signed “**original sighted by me**” by a senior officer of the Capital Market Operator. Capital Market Operators shall always ensure that a good production of the photographic evidence of identity is obtained. Where this is not possible, a copy of evidence certified as providing a good likeness of the applicant could only be acceptable in the interim.

### ***D. Recording Identification Evidence***

- i. Records of the supporting evidence and methods used to verify identity are required to be retained for a minimum period of five years after the account is closed or the business relationship ended.
- ii. Where the supporting evidence could not be copied at the time it was presented, the reference numbers and other relevant details of the identification evidence are required to be recorded to enable the documents to be obtained later. Confirmation is required to be provided that the original documents were seen by certifying either on the photocopies or on the record that the details were taken down as evidence.
- ii. Where checks are made electronically, a record of the actual information obtained or of where it can be re-obtained must be retained as part of the identification evidence. Such records will make the reproduction of the actual information that would have been obtained before, less cumbersome.

***E. Concession in respect of Payment Made by Post.***

- i. Concession may be granted for product or services (where the money laundering risk is considered to be low) in respect of long-term life insurance business or purchase of personal investment products. If payment is to be made from an account held in the clients' name (or jointly with one or more other persons) at a regulated Capital Market Operator, no further evidence of identity is necessary.
- ii. Waiver of additional verification requirements for postal or electronic transactions does not apply to the following:-
  - a. products or accounts where funds can be transferred to other types of products or accounts which provide cheque or money transfer facilities;
  - b. situations where funds can be repaid or transferred to a person other than the original clients;
  - c. Investments where the characteristics of the product or account may change subsequently to enable payments to be made to third parties.
- iii. Postal concession is not an exemption from the requirement to obtain satisfactory evidence of a client's identity. Payment debited from an account in the client's name shall be capable of constituting the required identification evidence in its own right.
- iv. Records are required to be maintained indicating how a transaction arose, including details of the Capital Market Operator's branch and account number from which the cheque or payment is drawn.
- iv. The concession can apply both where an application is made directly to the Capital Market Operator and where a payment is passed through a regulated intermediary.

***vi. Investment Funds:***

In circumstances where the balance in an investment funds account is transferred from one Funds Manager to another and the value at that time is above US\$10,000 or N250,000 for an individual and N1 million for a body corporate and identification evidence has neither been taken nor confirmation obtained from the original Fund Manager, then such evidence shall be obtained at the time of the transfer.

**25. ESTABLISHING IDENTITY**

Establishing identity under these regulations is divided into three broad categories:

- a. Private individual clients;
- b. Quasi corporate clients;
- c. Pure corporate clients

## ***A. Private Individual Clients***

### ***General Information:-***

- i. The following information are to be established and independently validated for all private individuals whose identities need to be verified:
  - a. The true full name(s) used; and
  - b. the permanent home address, including landmarks and postcode, where available.
- ii. The information obtained shall provide satisfaction that a person of that name exists at the address given and that the applicant is that person. Where an applicant has recently moved from a house, the previous address shall be validated.
- iii. It is important to obtain the date of birth as it is required by the law enforcement agencies. However, the information need not be verified. It is also important for the residence/nationality of a client to be ascertained to assist risk assessment procedures.
- iv. A risk-based approach shall be adopted when obtaining satisfactory evidence of identity. The extent and number of checks can vary depending on the perceived risk of the service or business sought and whether the application is made in person or through a remote medium such as telephone, post or the internet. The source of funds, how the payment was made, from where, and by whom must always be recorded, to provide an audit trail. However, for higher risk products, accounts or clients, additional steps shall be taken to ascertain the source of wealth/funds.
- v. For lower-risk transactions or simple investment products, there is an overriding requirement for the Capital Market Operator to satisfy itself as to the identity and address of the client.

### ***1. Private Individuals Resident in Nigeria***

The confirmation of name and address is to be established by reference to a number of sources. The checks shall be undertaken by cross-validation that the applicant exists at the stated address either through the sighting of actual documentary evidence or by undertaking electronic checks of suitable databases, or by a combination of the two. The overriding requirement to ensure that the identification evidence is satisfactory rests with the Capital Market Operator.

#### **a. Documenting Evidence of Identity**

- i. In order to guard against forged or counterfeit-documents, care shall be taken to ensure that documents offered are originals. Copies that are dated and signed 'original seen' by a senior public servant or equivalent in a reputable private organization could be accepted in the interim, pending presentation of the original documents. Hereunder are examples of suitable documentary evidence for Nigerian resident private individuals:

##### **(a) Personal Identity Documents**

- i. Current International Passport
- ii. Residence Permit issued by the Immigration Authorities

- iii. Current Driving Licence issued by the Federal Road Safety Commission (FRSC)
- iv. Inland Revenue Tax Clearance Certificate
- v. Birth Certificate/Sworn Declaration of Age
- vi. National Identity card

**(b) Documentary Evidence of Address**

- i. Record of home visit in respect of non-Nigerians
  - ii. Confirmation from the electoral register that a person of that name lives at that address
  - iii. Recent utility bill (e.g. PHCN, NITEL, etc.)
  - iv. Current driving licence issued by FRSC
  - v. Bank statement or passbook containing current address
  - vi. Solicitor's letter confirming recent house purchase or search report from the Land Registry
  - vii. Tenancy Agreement
  - ix. Search reports on prospective client's place of employment and residence signed by a senior officer of the Capital Market Operator.
- ii. Checking of a local or national telephone directory can be used as additional corroborative evidence but not as a primary check.

**b. Physical Checks on Private Individuals Resident in Nigeria**

- i. It shall be mandatory for a Capital Market Operator to establish the true identities and addresses of its clients and for effective checks to be carried out to guard against substitution of identities by client.
- ii. Additional confirmation of the clients' identity and the fact that the application was made by the person identified shall be obtained through one or more of the following procedures:
  - a. a direct mailing of account opening documentation to a named individual at an independently verified address;
  - b. an initial deposit cheque drawn on a personal account in the clients name by another Capital Market Operator in Nigeria;
  - c. telephone contact with the client prior to opening the account on an independently verified home or business number or a "welcome call" to the clients before transactions are permitted, utilizing a minimum of two pieces

of personal identity information that had been previously provided during the setting up of the account;

- d. internet sign-on following verification procedures where the clients uses security codes, tokens, and/or other passwords which had been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address;
  - e. card or account activation procedures.
- iii. Capital Market Operators shall ensure that additional information concerning the nature and level of the business to be conducted and the origin of the funds to be used within the relationship are also obtained from the clients.

**c. Electronic Checks**

- i. As an alternative or supplementary to documentary evidence of identity and address, the clients identity, address and other available information may be checked electronically by accessing other data-bases or sources. Each source may be used separately as an alternative to one or more documentary checks;
- ii. Capital Market Operators shall use a combination of electronic and documentary checks to confirm different sources of the same information provided by the clients;
- iii. In respect of electronic checks, confidence as to the reliability of information supplied will be established by the cumulative nature of checking across a range of sources, preferably covering a period of time or through qualitative checks that assess the validity of the information supplied. The number or quality of checks to be undertaken will vary depending on the diversity as well as the breadth and depth of information available from each source. Verification that the client is the data-subject also needs to be conducted within the checking process.
- iv. Some examples of suitable electronic sources of information are as follows:-
  - a. An electronic search of the Electoral Register (is not to be used as a sole identity and address check);
  - b. Access to internal or external account database; and
  - c. An electronic search of public records, where available.
- v. Capital Market Operator shall put in place internal procedures for the identification of socially but financially disadvantage persons.
- vi. Where a Capital Market Operator has reasonable grounds to conclude that an individual client is not able to produce the detailed evidence of his identity and cannot reasonably be expected to do so, the Operator may accept as identification evidence a letter or statement from a person in a position of responsibility such as solicitors, doctors, ministers of religion and teachers who know the client, confirming that the client is who he says he is, and his permanent address.

- vii. When a Capital Market Operator has decided to treat a client as “**financially excluded**”, it is required to record the reasons for doing so along with the account opening documents and returns rendered to the SEC and NFIU quarterly.
- viii. where a letter/statement is accepted from a professional person, it shall include a telephone number where the person can be contacted for verification. The Capital Market Operator shall verify from an independent source the information provided by the professional person.
- ix. In order to guard against “**financial exclusion**” and to minimize the use of the exception procedure, Capital Market Operators shall include in their internal procedures the “**alternative documentary evidence of personal identity and address**” that can be accepted.
- x. Capital Market Operators shall put in place additional monitoring for accounts opened under the financial exclusion exception procedures to ensure that such accounts are not misused.

## ***2. A. Private Individuals not resident in Nigeria***

- i. For those prospective clients who are not resident in Nigeria but who make face -to-face contact, international passports or national identity cards shall generally be available as evidence of the name of the clients.  
  
Reference numbers, date and country of issue shall be obtained and the information recorded in the clients’ file as part of the identification evidence.
- ii. Capital Market Operators shall obtain separate evidence of the applicant’s permanent residential address from the best available evidence, preferably from an official source. A “P.O. Box number” alone is not accepted as evidence of address. The applicant’s residential address shall be such that it can be physically located.
- iii. Relevant evidence shall be obtained by the Capital Market Operator directly from the clients or through a reputable credit or Capital Market Operator in the applicant’s home country or country of residence. However, particular care shall be taken when relying on identification evidence provided from other countries. Capital Market Operators shall ensure that the client’s true identity and current permanent address are actually confirmed. In such cases, copies of relevant identity documents shall be sought and retained.
- iv. Where a foreign national has recently arrived in Nigeria, reference might be made to his/her employer, university, evidence of traveling documents, etc. to verify the applicant’s identity and residential address.

## ***B. Private Individuals not Resident in Nigeria: Supply of Information***

- i. For a private individual not resident in Nigeria, who wishes to supply documentary information by post, telephone or electronic means, a risk-based approach shall be taken. The Capital Market Operator shall obtain one separate item of evidence of identity in respect of the name of the clients and one separate item for the address.

- ii. Documentary evidence of name and address can be obtained:-
  - a. by way of original documentary evidence supplied by the clients;
  - b. by way of a certified copy of the client's passport or national identity card and a separate certified document verifying address e.g. a driving licence, utility bill, etc; or
  - c. through a branch, subsidiary, head office of a correspondent bank.
- iii. Where the client does not already have a business relationship with the foreign Capital Market Operator that is supplying the information, certified copies of relevant underlying documentary evidence must be sought, obtained and retained by the institutions.
- iv. Where necessary, an additional comfort must be obtained by confirming the clients' true name, address and date of birth from a reputable institution in the clients' home country.

### ***3. Information to establish identity***

#### **a. Natural Persons**

For natural persons the following information shall be obtained, where applicable:

- i. Legal name and any other names used (such as maiden name);
- ii. Correct permanent address (full address shall be obtained and a Post Office box number is not sufficient);
- iii. Telephone number, fax number, and e-mail address;
- iv. Date and place of birth;
- v. Nationality;
- vi. Occupation, public position held and name of employer;
- vii. An official personal identification number or other unique identifier contained in an unexpired official document such as passport, identification card, residence permit, social security records or driving licence that bears a photograph of the clients;
- ix. Signature.

A Capital Market Operator shall verify this information by at least one of the following methods:-

- (a) Confirming the date of birth from an official document (e.g. birth certificate, passport, identity card, social security records);
- (b) Confirming the permanent address (e.g. utility bill, tax assessment, bank statement, a letter from a public authority);

- (c) Contacting the clients by telephone, by letter or e-mail to confirm the information supplied after an account has been opened (e.g. a disconnected phone, returned mail, or incorrect e-mail address shall warrant further investigation);
- (d) Confirming the validity of the official documentation provided through certification by an authorized person (e.g. embassy official, notary public);
- (e) Such other documents of an equivalent nature may be produced as satisfactory evidence of clients' identity;
- (f) The Capital Market Operators shall apply effective client identification procedures for non-face-to-face client as for those available physically;

From the information provided, Capital Market Operators shall be able to make an initial assessment of a client's risk profile. Particular attention needs to be focused on those clients identified as having a higher risk profile. Additional inquiries made or information obtained in respect of those clients shall include the following:

- (i) Evidence of an individual's permanent address sought through a credit reference agency search, or through independent verification by home visits;
- (ii) Personal reference (i.e. by an existing client of the same institution);
- (iii) prior client bank reference and contact with the bank regarding the client;
- (iv) Source of wealth;
- (v) Verification of employment, public position held (where appropriate).

The client acceptance policy shall not be so restrictive to amount to a denial of access by the general public to Securities transactions, especially for people who are financially or socially disadvantaged.

#### **d. Institutions**

The term institution includes any entity that is not a natural person. In considering the clients identification guidance for the different types of institutions, particular attention shall be given to the different levels of risk involved.

##### ***i. Corporate Entities***

For corporate entities (i.e. corporations and partnerships), the following information shall be obtained:

- (a) Name of institution;
- (b) Principal place of institution's business operations;
- (c) Mailing address of institution;
- (d) Contact telephone and fax numbers;



- (e) Some form of official identification number, if available (e.g. Tax identification number);
  - (f) The original or certified copy of the Certificate of Incorporation and Memorandum and Articles of Association;
  - (g) The resolution of the Board of Directors to open an account and identification of those who have authority to operate the account;
  - (h) Nature and purpose of business and its legitimacy.
- ii. A Capital Market Operator shall verify this information by at least one of the following methods:
- a. For established corporate entities -reviewing a copy of the latest report and accounts (audited, if available);
  - b. Conducting an enquiry by a business information service or an undertaking from a reputable and known firm of lawyers or accountants confirming the documents submitted;
  - c. Undertaking a company search and/or other commercial enquiries to see that the institution has not been, or is not in the process of being dissolved, struck off, wound up or terminated;
  - d. Utilizing an independent information verification process, such as accessing public and private databases;
  - e. Obtaining prior bank references;
  - f. Visiting the corporate entity,; and
  - g. Contacting the corporate entity by telephone, mail or e-mail.

The Capital Market Operators shall also take reasonable steps to verify the identity and reputation of any agent that opens an account on behalf of corporate clients, if that agent is not an officer of the corporate client.

### **iii. Corporations/Partnerships**

- a. For corporations/partnerships, the principal guidance is to look behind the Operator to identify those who have control over the business and the company's/partnership's assets, including those who have ultimate control.
- b. For corporations, particular attention shall be paid to shareholders, signatories, or others who inject a significant proportion of capital or financial support or otherwise exercise control. Where the owner is another Capital Market Operator or trust, the objective is to undertake reasonable measures to look behind that company or entity and to verify the identity of the principals.
- c. What constitutes control for this purpose will depend on the nature of a company, and may rest in those who are mandated to manage the funds, accounts or

- investments without requiring further authorization, and who would be in a position to override internal procedures and control mechanisms.
- d. For partnerships, each partner shall be identified and it is also important to identify immediate family members that have ownership control.
  - e. Where a company is listed on a recognised securities exchange or is a subsidiary of such a company then the company itself may be considered to be the principal to be identified. However, consideration shall be given to whether there is effective control of a listed company by an individual, small group of individuals or another corporate entity or trust. If this is the case then those controllers shall also be considered to be principals and identified accordingly.

### **C. Other Types of Operators**

- i. The following information shall be obtained in addition to that required to verify the identity of the principals in respect of Retirement Benefit Programmes, Mutuals/Friendly Societies, Cooperatives and Provident Societies, Charities, Clubs and Associations, Trusts and Foundations and Professional Intermediaries:
  - (a) Name of account;
  - (b) Mailing address;
  - (c) Contact telephone and fax numbers;
  - (d) Some form of official identification number, such as tax identification number;
  - (e) Description of the purpose/activities of the account holder as stated in a formal constitution; and
  - (f) Copy of documentation confirming the legal existence of the account holder such as register of charities.
- ii. A Capital Market Operator shall verify this information by at least one of the following:
  - (a) Obtaining an independent undertaking from a legal practitioner or chartered Accountant confirming the documents submitted;
  - (b) Obtaining prior bank references; and
  - (c) Accessing public and private databases or official sources.

### **iii Retirement Benefit Programmes**

Where an occupational pension programme, employee benefit trust or share option plan is an applicant for an account the trustee and any other person who has control over the relationship such as the administrator, programme manager, and account signatories shall be considered as principals and the Capital Market Operator shall take steps to verify their identities.

#### **iv Mutual/Friendly, Cooperative and Provident Societies**

Where these entities are client the principals to be identified shall be considered to be those persons exercising control or significant influence over the organisation's assets. This often includes Board members, executives and account signatories.

#### **v Charities, Clubs and Associations**

In the case of accounts to be opened for charities, clubs, and societies, the Capital Market Operators shall take reasonable steps to identify and verify at least two signatories along with the operator itself. The principals who shall be identified shall be considered to be those persons exercising control or significant influence over the organization's assets.

This includes members of the governing body or committee, the President, Board members, the Treasurer, and all signatories.

In all cases, independent verification shall be obtained that the persons involved are true representatives of the operators.

#### **vi. Trusts and Foundations**

When opening an account for a Trust, the Capital Market Operator shall take reasonable steps to verify the trustees, the settlor (including any persons settling assets into the trust) any protector, beneficiary and signatories. Beneficiaries shall be identified when they are defined. In the case of a foundation, steps shall be taken to verify the founder, the managers/directors and the beneficiaries.

#### **vii. Professional Intermediaries**

When a professional intermediary opens a client account on behalf of a single client, that client must be identified. Professional intermediaries will often open "pooled" accounts on behalf of a number of entities. Where funds held by the intermediary are not co-mingled but where there are "sub-accounts" which can be attributable to each beneficial owner, all beneficial owners of the account held by the intermediary shall be identified. Where the funds are co-mingled, the Capital Market Operator shall look through to the beneficial-owners. However, there may be circumstances that Capital Market Operator may not look beyond the intermediary (e.g. when the intermediary is subject to the same due diligence standards in respect of its client base as the Capital Market Operator).

viii. Where such circumstances apply and an account is opened for an open or closed ended investment company (unit trust or limited partnership) also subject to the same due diligence standards in respect of its client base as the Capital Market Operator, the following shall be considered as principals and the Capital Market Operator shall take steps to identify them:-

- (a) The fund itself;
- (b) Its directors or any controlling board (where it is a company)
- (c) Its Trustee (where it is a Unit Trust)
- (d) Its managing (general) partner (where it is a limited partnership)
- (e) Account signatories;

- (f) Any other person who has control over the relationship such as fund administrator or manager.

(ix) Where other investment vehicles are involved, the same steps shall be taken as in above (where it is appropriate to do so). In addition, all reasonable steps shall be taken to verify the identity of the beneficial owners of the funds and of those who have control over the funds.

(x) Intermediaries shall be treated as individual clients of the Capital Market Operator and the standing of the intermediary shall be separately verified by obtaining the appropriate information itemized above.

#### **4. Non Face-to-Face Identification**

- i. In view of possible false identities and impersonations that may arise with non-face-to-face clients, additional measures/checks shall be undertaken to supplement the documentary or electronic evidence.

These additional measures/checks will apply whether the applicant is resident in Nigeria or elsewhere and shall be particularly robust where the applicant is requiring a margin facility or other product/service that offers money transmission or third party payments.

- ii. Procedures to identify and authenticate the client shall be put in place to ensure that there is sufficient evidence either documentary or electronic to confirm his address and personal identity and to undertake at least one additional check to guard against impersonation and fraud.
- iii. The extent of the identification evidence required will depend on the nature and characteristics of the product or service and the assessed risk.
  - 1. If reliance is being placed on intermediaries to undertake the processing of applications on the client behalf, checks shall be undertaken to ensure that the intermediary are regulated for money laundering prevention and that the relevant identification procedures are applied. In all cases, evidence as to how identity has been verified shall be obtained and retained with the account opening records.
  - 2. Capital Market Operators shall conduct regular monitoring of internet-based business/clients. If a significant proportion of the business is operated electronically, computerized monitoring systems /solutions that are designed to recognize unusual transactions and related patterns of transactions shall be put in place to recognize suspicious transactions. AML/CFT compliance officers are required to review these solutions, record exemptions and report same quarterly to the SEC and NFIU.

#### **5. Establishing Identity for Refugees and Asylum Seekers**

- i. A refugee and asylum seeker may require a basic account without being able to provide evidence of identity. In such circumstances, authentic references from Ministry of Internal Affairs or an appropriate government agency shall be used in conjunction with other readily available evidence.

- ii. Additional monitoring procedures shall however be undertaken to ensure that the use of the account is consistent with the client circumstances and returns rendered quarterly to NFIU.

## **6. Establishing Identity for Students and Minors**

- i. When opening accounts for students or other young persons, the normal identification procedures set out in these regulations shall be followed as far as possible. Where such procedures would not be relevant or do not provide satisfactory identification evidence, verification could be obtained:
  - a. via the home address of the parent(s); or
  - b. by obtaining confirmation of the applicant's address from his/her institution of learning; or
  - c. by seeking evidence of a tenancy agreement or student accommodation contract.
- ii. Often, an account for a minor will be opened by a family member or guardian. In cases where the adult opening the account does not already have an account with the Capital Market Operator, the identification evidence for that adult, or of any other person who will operate the account shall be obtained in addition to obtaining the birth certificate or passport of the child. It shall be noted that this type of account could be open to abuse and therefore strict monitoring shall be undertaken, and reports made and rendered quarterly to NFIU.
- iii. For accounts opened through a school-related scheme, the school shall be asked to provide the date of birth and permanent address of the pupil and to complete the standard account opening documentation on behalf of the pupil.

## **B. Quasi Corporate Clients**

### **1. Establishing Identity - Trust, Nominees and Fiduciaries**

- a. Trusts, nominee companies and fiduciaries are popular vehicles for criminals wishing to avoid the identification procedures and mask the origin of the criminal money they wish to launder. The particular characteristics of Trust that attract the genuine clients, the anonymity and complexity of structures that they can provide are also highly attractive to money launderers;
- b. Identification and “**Know Your Business**” procedures shall be set and managed according to the perceived risk, in trust, nominees and fiduciaries accounts;
- c. The principal objective for money laundering prevention via trusts, nominees and fiduciaries is to verify the identity of the provider of funds such as the settlor, those who have control over the funds (the trustees and any controller who have the power to remove the trustees). For discretionary or offshore Trust, the nature and purpose of the Trust and the original source of funding must be ascertained;
- d. Whilst reliance can often be placed on other Capital Market Operators that are to undertake the checks or confirm identity, the responsibility to ensure that this is undertaken rests with the Capital Market Operator. The underlying evidence of identity must be made available to law enforcement agencies in the event of an investigation;

- e. Identification requirements must be obtained and not waived for any trustee who does not have authority to operate an account and cannot give relevant instructions concerning the use or transfer of funds.

## **2. Offshore Trusts**

- a. Offshore Trusts present a higher money laundering risk and therefore additional measures are needed for Special Purpose Vehicles (SPVs) or International Business Companies connected to Trusts, particularly when Trusts are set up in offshore locations with strict bank secrecy or confidentiality rules. Those created in jurisdictions without equivalent money laundering procedures in place shall warrant additional enquiries;
- b. Unless the client for business is itself a regulated Capital Market Operator, measures shall be taken to identify the Trust company or the corporate service provider in line with the requirements for professional intermediaries or companies generally;
- c. Certified copies of the documentary evidence of identity for the underlying principals such as settlors, controllers, etc. on whose behalf the client for business is acting, shall also be obtained;
- d. For overseas Trusts, nominee and fiduciary accounts, where the client is itself a Capital Market Operator that is regulated for money laundering purposes:
  - i. reliance can be placed on an introduction or intermediary certificate letter stating that evidence of identity exists for all underlying principals and confirming that there are no anonymous principals;
  - ii. the trustees/nominees shall be asked to state from the outset the capacity in which they are operating or making the application;
  - iii. documentary evidence of the appointment of the current Trustees shall also be obtained.
- e. Where the underlying evidence is not retained within Nigeria, enquiries shall be made to determine, as far as practicable, that there are no overriding bank secrecy or confidentiality constraints that will restrict access to the documentary evidence of identity, shall it be needed in Nigeria;
- f. Any application to open an account or undertake a transaction on behalf of another without the client identifying their Trust or Nominee capacity shall be regarded as suspicious and shall lead to further enquiries and rendition of reports to SEC and NFIU;
- g. Where a Capital Market Operator in Nigeria is itself the client to an offshore Trust on behalf of its clients, if the corporate Trustees are not regulated, then the Nigerian Capital Market Operator shall undertake the due diligence on the Trust itself;
- h. If the funds have been drawn upon an account that is not under the control of the Trustees, the identity of two of the authorized signatories and their authority to operate the account shall also be verified. When the identities of beneficiaries have

not previously been verified, verification shall be undertaken when payments are made to them.

### **3. Conventional Family and Absolute Nigerian Trusts**

- a. In the case of conventional Nigerian Trusts, identification evidence shall be obtained for:
  - i. those who have control over the funds (the principal trustees who may include the settlor);
  - ii. the providers of the funds (the settlors, except where they are deceased);
  - iii. Where the settlor is deceased, written confirmation shall be obtained for the source of funds (grant of probate or copy of the Will or other document creating the Trust).
- b. Where a corporate Trustee such as a bank acts jointly with a co-Trustee, any non-regulated co -Trustees shall be verified even if the corporate Trustee is covered by an exemption. The relevant guidance contained in these regulations for verifying the identity of persons, institutions or companies shall be followed;
- c. Although a Capital Market Operator may not review any existing Trust, confirmation of the settlor and the appointment of any additional Trustees shall be obtained;
- d. Copies of any underlying documentary evidence shall be certified as true copies. In addition, a check shall be carried out to ensure that any bank account on which the Trustees have drawn funds is in their names. Taking a risk based approach, consideration shall be given as to whether the identity of any additional authorized signatories to the account shall also be verified;
- e. It is a normal practice for payment of any trust property to be made to all the Trustees. As a matter of practice, some life assurance companies make payments directly to beneficiaries on receiving a request from the Trustees. In such circumstances, the payment shall be made to the named beneficiary by way of a crossed cheque marked “**account payee only**” or a bank transfer direct to an account in the name of the beneficiary.

### **4. Receipt and Payment of Funds**

- a. Where money is received on behalf of a Trust, reasonable steps shall be taken to ensure that:
  - i. the source of the funds is properly identified; and
  - ii. the nature of the transaction or instruction is understood;
- b. It is also important to ensure that payments are properly authorized in writing by the Trustees.

### **5. Identification of New Trustees**

Where a Trustee who has been verified is replaced, the identity of the new Trustee shall be verified before he/she is allowed to exercise control over the funds.

## **6. Life Policies Placed in Trust**

Where a life policy is placed in Trust, the client for the policy is also a Trustee and where the Trustees have no beneficial interest in the funds, it shall only be necessary to verify the identity of the person applying for the policy. The remainder of the Trustees would however need to be identified in a situation where policy proceeds were being paid to a third party not identified in the trust deed.

## **7. Powers of Attorney and Third Party Mandates**

- i. The authority to deal with assets under a Power of Attorney and Third Party Mandates constitutes a business relationship. Consequently, at the start of the relationship, identification evidence shall be obtained from the holders of powers of attorney and third party mandates in addition to the clients or subsequently on a later appointment of a new attorney, if advised, particularly within one year of the start of the business relationship. New attorney for corporate or Trust business shall always be verified. The most important requirement is for Capital Market Operator to ascertain the reason for the grant of the power of attorney.
- ii. Records of all transactions undertaken in accordance with the Power of Attorney shall be maintained as part of the client's record.

## **8. Executorship accounts**

- a. When an account is opened for the purpose of winding up the estate of a deceased person, the identity of the executor /administrator of the estate shall be verified.
- b. However, identification evidence would not normally be required for the executors/administrators when payment is being made from an established bank or mortgage institution's account in the deceased's name, solely for the purpose of winding up the estate in accordance with the Grant of Probate or Letters of Administration. Similarly, where a life policy pays out on death, there shall be no need to obtain identification evidence for the legal representatives.
- c. Payments to the underlying named beneficiaries on the instructions of the executor or administrator may also be made without additional verification requirements. However, if a beneficiary wishes to transact business in his/her own name, then identification evidence shall be required.
- d. In the event that suspicion is aroused concerning the nature or origin of assets comprising an estate that is being wound up, report is required to be rendered to NFIU.

## **9. Unincorporated Business/Partnerships**

- a. Where the client is an un-incorporated business or a partnership whose principal partners/controllers do not already have a business relationship with the Capital Market Operators, identification evidence shall be obtained for the principal beneficial owners/controllers. This would also entail identifying one or more signatories in whom significant control has been vested by the principal beneficial owners/controllers.
- b. Evidence of the trading address of the business or partnership shall be obtained.



- c. The nature of the business or partnership shall be ascertained (but not necessarily verified from a partnership deed) to ensure that it has a legitimate purpose. Where a formal partnership arrangement exists, a mandate from the partnership authorizing the opening of an account or undertaking the transaction and conferring authority on those who will undertake transactions shall be obtained

## **C. Pure Corporate Clients**

### **1. General Principles**

- a. Complex organizations and their structures, other corporate and legal entities are the most likely vehicles for money laundering. Those that are privately owned are being fronted by legitimate trading companies. Care shall be taken to verify the legal existence of the client company from official documents or sources and to ensure that persons purporting to act on its behalf are fully authorized.

Enquiries shall be made to confirm that the legal person is not merely a “**brass-plate company**” where the controlling principals cannot be identified.

- b. The identity of a corporate company comprises:-

- i. registration number;
- ii. registered corporate name and any trading names used;
- iii. registered address and any separate principal trading addresses;
- iv. particulars of directors;
- v. owners and shareholders; and
- vi. the nature of the company’s business.

- c. The extent of identification measures required to validate this information or the documentary evidence to be obtained depends on the nature of the business or service that the company requires from the Capital Market Operator. A risk-based approach shall be taken. In all cases, information as to the nature of the normal business activities that the company expects to undertake with the Capital Market Operator shall be obtained. Before a business relationship is established, measures shall be taken by way of company search at the Corporate Affairs Commission (CAC) and other commercial enquiries undertaken to check that the clients-company’s legal existence has not been or is not in the process of being dissolved, struck off, wound up or terminated.

### **2. Non Face-to-Face Business**

- i. As with the requirements for private individuals, because of the additional risks with non-face-to-face business, additional procedures shall be undertaken to ensure that the client business, company or society exists at the address provided and it is for a legitimate purpose.
- ii. Where the characteristics of the product or service permit, care shall be taken to ensure that relevant evidence is obtained to confirm that any individual representing the company has the necessary authority to do so.

- iii. Where the principal owners, controllers or signatories need to be identified within the relationship, the relevant requirements for the identification of personal clients shall be followed.

### **3. Low Risk Corporate Business**

#### ***a. Public Quoted Companies***

- i. Corporate clients that are listed on the securities exchange are considered to be publicly owned and generally accountable. Consequently, there is no need to verify the identity of the individual shareholders.
- ii. it is not necessary to identify the directors of a quoted company.
- iii. Capital Market Operators shall ensure that the individual officer or employee (past or present) is not using the name of the company or its relationship with the Capital Market Operator for a criminal purpose. The Board Resolution or other authority for any representative to act on behalf of the company in its dealings with the Capital Market Operator shall be obtained to confirm that the individual has the authority to act. Phone calls can be made to the Chief Executive Officer of such a company to intimate him of the application to open the account with the Capital Market Operator.
- iv. No further steps shall be taken to verify identity over and above the usual commercial checks where the applicant company is:
  - a. Listed on a securities exchange; or
  - b. there is independent evidence to show that it is a wholly owned subsidiary or a subsidiary under the control of such a company.
- v. Due diligence shall be conducted where the account or service required falls within the category of higher risk business.

#### ***b. Private /Public unquoted Companies***

- i. Where the client is a private/public unquoted company and none of the principal directors or shareholders already have an account with the Capital Market Operator, the following documents shall be obtained from an official or recognized independent source to verify the business itself:
  - a. a copy of the certificate of incorporation/registration, evidence of the company's registered address and the list of shareholders and directors;
  - b. a search at the Corporate Affairs Commission (CAC) or an enquiry via a business information service to obtain the information in (a) above; and
  - c. an undertaking from a firm of lawyers or accountants confirming the documents submitted to the Capital Market Operator.
- ii. Attention shall be paid to the place of origin of the documents and the background against which they were produced. If comparable documents cannot be obtained, then verification of principal beneficial owners/controllers shall be undertaken.

#### 4. Higher Risk Business Relating to Private/Public unquoted Companies

- i. For private/public unquoted Companies undertaking higher risk business (in addition to verifying the legal existence of the business) the principal requirement is to look behind the corporate entity to identify those who have ultimate control over the business and the company's assets. What constitutes significant shareholding or control for this purpose will depend on the nature of the company. Identification evidence is required to be obtained for those shareholders with interests of 5% or more;
- ii. The principal control rests with those who are mandated to manage the funds, accounts or investments without requiring authorization and who would be in a position to override internal procedures and control mechanisms;
- iii. Identification evidence shall be obtained for the principal beneficial owner(s) of the company and any other person with principal control over the company's assets. Where the principal owner is another corporate entity or Trust, the objective is to undertake measures that look behind that company or vehicle and verify the identity of the beneficial-owner(s) or settlors. When a Capital Market Operator becomes aware that the principal-beneficial owners/controllers have changed, they shall ensure that the identities of the new ones are verified;
- iv. Capital Market Operators shall identify directors who are not principal controllers and signatories to an account for risk based approach purpose;
- v. where there is suspicion as a result of change in the nature of the business transacted or investment account, further checks shall be made to ascertain the reason for the changes ;
- vi. Particular care shall be taken to ensure that full identification and **“Know Your Clients”** requirements are met if the company is an International Business Company (IBC) registered in an offshore jurisdiction.

#### 5. Foreign Capital Market Operator

- i. For foreign Capital Market Operators, the confirmation of existence and regulated status shall be checked by one of the following means:
  - a. checking with the home country's Securities Market Regulator or relevant supervisory body;
  - b. checking with another office, subsidiary or branch in the same country;
  - c. checking with the Nigerian regulated correspondent Capital Market Operator of the overseas Operator;
  - d. obtaining evidence of its license or authorization to conduct Securities business from the Operator itself;

- ii. In addition to the identity of the Principal Employer, the source of funding shall be verified and recorded to ensure that a complete audit trail exists if the employer is dissolved or wound up;
- iii. For the Trustees of Occupational Pension Schemes, satisfactory identification evidence can be based on the inspection of formal documents concerning the Trust which confirm the names of the current Trustees and their addresses for correspondence. In addition to the documents, confirming the trust identification can be based on extracts from Public Registrars or references from Professional Advisers or Investment Managers;
- iv. Any payment of benefits by or on behalf of the Trustees of an Occupational Pension Scheme shall require verification of identity of the recipient;
- v. Where individual members of an Occupation Pension Scheme are to be given personal investment advice, their identities shall be verified;
- vi. where the Trustees and Principal Employer have been satisfactorily identified (and the information is still current) it may be appropriate for the Employer to provide confirmation of the identity of individual employees.

## **6. Other Institutions**

### ***A. Charities in Nigeria***

- i. Adherence to the identification procedures required for money laundering prevention purpose would remove the opportunities for opening unauthorized accounts with false identities on behalf of charities. Confirmation of the authority to act in the name of the charity is mandatory.
- ii. The practice of opening unauthorized accounts of this type under sole control is strongly discouraged. Accounts for charities in Nigeria are required to be operated by a minimum of two signatories duly verified and documentation evidence obtained.

### ***B. Registered Charities***

- i. When dealing with an application from a registered charity, the Capital Market Operator shall obtain and confirm the name and address of the charity concerned.
- ii. To guard against the laundering of fraudulently obtained funds (where the person making the application or undertaking the transaction is not the official correspondent or the recorded alternate) a Capital Market Operator is required to send a letter to the official correspondence, informing him of the schemes application before it. The official correspondence shall be requested to respond as a matter of urgency especially where there is any reason to suggest that the application has been made without authority.
- iii. Applications on behalf of unregistered charities shall be dealt with in accordance with procedures for clubs and societies set out in these rules.

### **C. Clubs and Societies**

- i. In the case of applications made on behalf of clubs or societies, a Capital Market Operator shall take reasonable steps to satisfy itself as to the legitimate purpose of the organisation by sighting its constitution. The identity of at least two of the principal contact persons or signatories shall be verified initially in line with the requirements for private individuals. The signing authorities shall be structured to ensure that at least two of the signatories that authorize any transaction has been verified. When signatories change, Capital Market Operators shall ensure that the identities of at least two of the current signatories are verified.
- ii. Where the purpose of the club or society is to purchase the shares of regulated investment company or where all the members would be regarded as individual clients, all the members in such cases are required to be identified in line with the requirements for personal clients.
- iv. Capital Market Operators are required to look at each situation on a case –by case basis.

### **D. Occupational Pension Schemes**

In all transactions undertaken on behalf of an Occupational Pension Scheme where the transaction is not in relation to a long term policy of insurance, the identities of both the Principal Employer and the Trust are required to be verified.

### **E. Religious Organizations (ROs)**

A religious organisation is expected by law to be registered by the Corporate Affairs Commission (CAC) and shall therefore have a registered number. Its identity can be verified by reference to the CAC, appropriate headquarters or regional area of the denomination. As a Registered organisation, the identity of a least two signatories to its account shall be verified.

### **F. Three-Tiers of Government/Parastatals**

Where the client for business is any of the above, the Capital Market Operator shall verify the legal standing of the applicant, including its principal ownership and the address. A certified copy of the Resolution or other documents authorizing the opening of the account or to undertake the transaction shall be obtained in addition to evidence that the official representing the body has the relevant authority to act. Telephone contacts shall also be made with the Chief Executive Officer of the organisation/parastatals concerned, intimating him of the application to open the account with the Capital Market Operator.

### **G. Foreign Consulates**

The authenticity of clients that request to undertake transactions with Capital Market Operators in the name of Nigerian-resident foreign consulates and any documents of authorization presented in support of the application shall be checked with the Ministry of Foreign Affairs or the relevant authorities in the Consulate's home country.

## **H. Special Surveillance on certain transactions**

Where a transaction is frequent and unjustifiable or unreasonable; is surrounded by conditions of unusual or unjustified complexity; appears to have no economic justification or lawful objective or in the opinion of the Capital Market Operator involves terrorist financing or is inconsistent with the known transaction pattern of the account or the business relationship, that transaction shall be deemed to be suspicious and the Capital Market Operator involved shall seek information from the customer as to the origin and destination of the funds, the aim of the transaction and the identity of the beneficiary.

## **26. INTERMEDIARIES OR OTHER THIRD PARTIES TO VERIFY IDENTITY OR TO INTRODUCE BUSINESS**

### ***A. Who to rely upon and the circumstances***

Whilst the responsibility to obtain satisfactory identification evidence rests with the Capital Market Operator that is entering into the relationship with a client, it is reasonable, in a number of circumstances, for reliance to be placed on another Capital Market Operator to:

- i. undertake the identification procedure when introducing a clients and to obtain any additional KYC information from the client; or
- ii. confirm the identification details if the clients is not resident in Nigeria; or
- iii. confirm that the verification of identity has been carried out (if an agent is acting for underlying principals).

### ***B. Introductions from Authorised Financial Intermediaries***

- i. Where an intermediary introduces a client and then withdraws from the ensuing relationship altogether, then the underlying clients has become the applicant for the business. He shall be identified in line with the requirements for personal, corporate or business clients as appropriate.
- ii. An introduction letter shall be issued by the introducing Capital Market Operator or person in respect of each applicant for business. To ensure that product-providers meet their obligations, that satisfactory identification evidence has been obtained and will be retained for the necessary statutory period, each introduction letter shall either be accompanied by certified copies of the identification evidence that has been obtained in line with the usual practice of certification of identification documents or by sufficient details/reference numbers, etc that will permit the actual evidence obtained to be re-obtained at a later stage.

### ***C. Written Applications***

For a written application (unless other arrangements have been agreed that the service provider will verify the identity itself) an intermediary shall provide along with each application, the clients' introduction letter together with certified copies of the evidence of identity which shall be placed in the clients' file.

#### ***D. Non-Written Application***

Unit Trust Managers and other product providers receiving non-written applications from financial intermediaries (where a deal is placed over the telephone or by other electronic means) have an obligation to verify the identity of clients and ensure that the intermediary provides specific confirmation that identity has been verified. A record shall be made of the answers given by the intermediary and retained for a minimum period of five years.

#### ***E. Introductions from Foreign Intermediaries***

Where introduced business is received from a regulated financial intermediary who is outside Nigeria, the reliance that can be placed on that intermediary to undertake the verification of identity-check shall be assessed by the Compliance officer or some other competent persons within the Capital Market Operator on a case by case basis based on the knowledge of the intermediary.

#### ***F. Corporate Group Introductions***

- i. Where a client is introduced by one part of a financial sector group to another, it is not necessary for identity to be re-verified or for the records to be duplicated provided that:
  - a. the identity of the clients has been verified by the introducing parent company, branch, subsidiary or associate in line with the money laundering requirements to equivalent standards and taking account of any specific requirements such as separate address verification;
  - b. no exemptions or concessions have been applied in the original verification procedures that would not be available to the new relationship;
  - c. a group introduction letter is obtained and placed with the clients' account opening records; and
  - d. in respect of group introducers from outside Nigeria, arrangements shall be put in place to ensure that identity is verified in accordance with requirements and that the underlying records of identity in respect of introduced clients are retained for the necessary period.
- ii. Where a Capital Market Operator have day-to-day access to all the Group's **“Know Your Customer”** information and records, there is no need to identify an introduced clients or obtain a group introduction letter if the identity of that clients has been verified previously. However, if the identity of the clients has not previously been verified, then any missing identification evidence will need to be obtained and a risk-based approach taken on the extent of KYC information that is available on whether or not additional information shall be obtained.
- iii. Capital Market Operators shall ensure that there is no secrecy or data protection legislation that would restrict free access to the records on request or by law enforcement agencies under court order or relevant mutual assistance procedures. If it is found that such restrictions apply, copies of the underlying records of identity shall, wherever possible, be sought and retained.

- v. Where identification records are held outside Nigeria, it shall be the responsibility of the Capital Market Operators to ensure that the records available do, in fact, meet the requirements in these regulations.

**G. *Business Conducted by Agents***

- i. Where an applicant is dealing in its own name as agent for its own client, a Capital Market Operator shall, in addition to verifying the agent, establish the identity of the underlying client.
- ii. A Capital Market Operator may regard evidence as sufficient if it has established that the client:
  - a. is bound by and has observed these regulations or the provisions of the Money Laundering (Prohibition) Act, as amended; and
  - b. is acting on behalf of another person and has given a written assurance that he has obtained and recorded evidence of the identity of the person on whose behalf he is acting.
- iii. Consequently, where another Capital Market Operator deals with its own client (regardless of whether or not the underlying client is disclosed to the Capital Market Operator) then:
  - a. where the agent is a Capital Market Operator, there is no requirement to establish the identity of the underlying clients or to obtain any form of written confirmation from the agent concerning the due diligence undertaken on its underlying clients; or
  - b. where a regulated agent from outside Nigeria deals through a client's omnibus account or for a named clients through a designated account, the agent shall provide a written assurance that the identity of all the underlying clients has been verified in accordance with their local requirements.
  - c. Where such an assurance cannot be obtained, then the business shall not be undertaken.
  - d. In circumstances where an agent is either unregulated or is not covered by the relevant money laundering legislation, then each case shall be treated on its own merits. The knowledge of the agent will inform the type of the due diligence standards to apply.

**H. *Correspondent Relationship***

- i. Transactions conducted through correspondent relationships need to be managed, taking a risk-based approach. **“Know Your Correspondent”** procedures are required to be established to ascertain whether or not the correspondent Capital Market Operator or the counter-party is itself regulated for money laundering prevention. If regulated, the correspondent, Capital Market Operator is required to verify the identity of its clients in accordance with FATF-standards. Where this is not the case, additional due diligence will be required to ascertain and assess the correspondent



Capital Market Operator internal policy on money laundering prevention and know your clients procedures.

- ii. The volume and nature of transactions flowing through correspondent accounts with Capital Market Operator from high risk jurisdictions or those with inadequacies or material deficiencies shall be monitored against expected levels, destinations and any material variances shall be checked.
- iii. Capital Market Operators shall maintain records of having ensured that sufficient due diligence has been undertaken by the remitting bank on the underlying client and the origin of the funds in respect of the funds passed through their accounts.
- vi. Capital Market Operators shall guard against establishing correspondent relationships with high risk foreign banks (e.g. shell banks with no physical presence in any country) or with correspondent banks that permit their accounts to be used by such banks.

***I. Acquisition of One Capital Market Operator/Business by Another***

- i. When one Capital Market Operator acquires the business and accounts of another Capital Market Operator, it is not necessary for the identity of all the existing clients to be re-identified, provided that all the underlying clients' records are acquired with the business. It is, however, important to carry out due diligence enquiries to confirm that the acquired operator had conformed with the requirements in these regulations.
- ii. Verification of identity shall be undertaken as soon as it is practicable for all the transferred clients who were not verified by the transferor in line with the requirements for existing clients that open new accounts, where:-
  - a. the money laundering procedures previously undertaken have not been in accordance with the requirements of these regulations;
  - b. the procedures cannot be checked; or
  - c. the clients-records are not available to the acquiring Capital Market Operator.

**27. RECEIVING CAPITAL MARKET OPERATORS AND AGENTS**

***A. Vulnerability of Receiving Bankers and Agents to Money Laundering***

Receiving Capital Market Operators may be used by money launderers in respect of offers for sale where new issues are over-subscribed and their allocation is scaled down. In addition, the money launderer is not concerned if there is a cost involved in laundering criminal money. New issues that trade at a discount will, therefore, still prove acceptable to the money launderer. Criminal funds can be laundered by way of the true beneficial-owner of the funds providing the payment for an application in another person's name, specifically to avoid the verification process and to break the audit trail with the underlying crime from which the funds are derived.

***B. Who shall be identified?***

- i. Receiving Capital Market Operators shall obtain satisfactory identification evidence of new applicants, including such applicants in a rights issue where the value of a

single transaction or a series of linked transactions is US\$10,000 or its equivalent for foreign transfers or N250,000 for individuals and N500,000 for corporate body or more.

- ii. If funds to be invested are being supplied by or on behalf of a third party, it is important that the identification evidence for both the applicant and the provider of the funds are obtained to ensure that the audit trail for the funds is preserved.

**C. *Applications Received via Brokers***

- i. Where the application is submitted (payment made) by a broker or an intermediary acting as agent, no steps need be taken to verify the identity of the underlying applicants. However, the following standard procedures apply:
  - a. The lodging agent's stamp shall be affixed on the application form or allotment letter; and
  - b. Application/acceptance forms and cover letters submitted by lodging agents shall be identified and recorded in the Capital Market Operator's records.
- ii. The terms and conditions of the issue shall state that any requirements to obtain identification evidence are the responsibility of the broker lodging the application and not the receiving Capital Market Operator.
- iii. Where the original application has been submitted by a regulated broker, no additional identification evidence will be necessary for subsequent calls in respect of shares issued and partly paid.

**D. *Applications Received from Foreign Brokers***

If the broker or other introducer is a regulated person or institution (including an overseas branch or subsidiary) from a country with equivalent legislation and financial sector procedures, and the broker or introducer is subject to anti-money laundering rules or regulations, then a written assurance can be taken from the broker that he/she has obtained and recorded evidence of identity of any principal and underlying beneficial owner that is introduced.

**E. *Multiple Family Applications***

- i. Where multiple family applications are received supported by one cheque and the aggregate subscription price is US\$10,000 or its equivalent for foreign transfers; and N250,000 or more for an individual person, then identification evidence will not be required for:
  - a. a spouse or any other person whose surname and address are the same as those of the applicant who has signed the cheque;
  - b. a joint account holder; or
  - c. an application in the name of a child where the relevant company's Articles of Association prohibit the registration in the names of minors and the shares are to be registered with the name of the family member of full age on whose account the cheque is drawn and who has signed the application form.

- ii. However, identification evidence of the signatory of the financial instrument will be required for any multiple family application for more than US\$10,000 or its equivalent for foreign transfers; or more than N250, 000 for an individual; or more than N500, 000 for a body corporate where such is supported by a cheque signed by someone whose name differs from that of the applicant. Other monetary amounts or more may, from time to time, be stipulated by any applicable money laundering legislation/guidelines.
- iii. Where an application is supported by a financial institution's branch cheque or brokers' draft, the applicant shall state the name and account number from which the funds were drawn:
  - a. on the front of the cheque; or
  - b. on the back of the cheque together with a branch stamp; or
  - c. providing other supporting documents.

#### ***F. Linked Transactions***

- i. If it appears to a person handling applications that a number of single applications under US\$10,000 and N500, 000 in different names are linked (e.g. payments from the same Capital Market Operator account) apart from the multiple family applications above, identification evidence shall be obtained in respect of parties involved in each single transaction.
- ii. Installment payment issues shall be treated as linked transactions where it is known that total payments will amount to US\$10,000 or its equivalent for foreign transfers or N250,000 for an individual; or N500,000 for body corporate or such other monetary amounts as may, from time to time, be stipulated by any applicable money laundering legislation or guidelines. Either at the outset or when a particular point has been reached, identification evidence shall be obtained.
- iii. Applications that are believed to be linked and money laundering is suspected shall be processed on a separate batch for investigation after allotment and registration has been completed. Returns with the documentary evidence are to be rendered to the NFIU accordingly. Copies of the supporting cheques, application forms and any repayment-cheques shall be retained to provide an audit trail until the receiving Capital Market Operator is informed by NFIU or the investigating officer that the records are of no further interest.

### **28. EXEMPTION FROM IDENTIFICATION PROCEDURES**

Where a client's identity was not properly obtained as contained in these regulations and Requirements for Account Opening Procedure, Capital Market Operators shall re-establish the client's identity in line with the contents of these regulations, except where it concerns:

#### ***i. Nigerian Capital Market Operators***

Identification evidence is not required where the client for business is a Nigerian Capital Market Operator or person covered and regulated by the requirements of these regulations.

***ii. One-off Cash Transaction (Remittances, Wire Transfers, etc)***

Cash remittances and wire transfers (either inward or outward) or other monetary instruments that are undertaken against payment in cash for clients who do not have an account or other established relationship with the Capital Market Operator (i.e. walk –in clients) present a high risk for money laundering purposes. It is therefore required that adequate procedures are established to record the transaction and relevant identification evidence taken, where necessary. Where such transactions form a regular part of the Capital Market Operator's business, the limits for requiring identification evidence of US \$10,000 or its equivalent for foreign transfers; N250,000 for individual and N500,000 for a corporate body must, however, be observed.

***iii. Re-investment of Income***

The proceeds of a one-off transaction can be paid to a client or be further re-invested where records of his identification requirements were obtained and kept. In the absence of this his/her identification requirements shall be obtained before the proceeds are paid to him or be re-invested on his behalf in accordance with the relevant provision of these regulations.

**29. SANCTIONS FOR NON-COMPLIANCE WITH THE REGULATIONS**

Failure to comply with the provisions contained in these regulations will attract appropriate sanction in accordance with Money Laundering Act/Combating Financing Terrorism laws and as detailed in the Anti-Money Laundering Act/Combating Financing Terrorism section of these regulations.