



SECURITIES AND EXCHANGE COMMISSION

DEPOSITORIES AND RELATED PARTIES REGULATION

Rule 26

A. Registration Requirements for Depository

- (1) An application for registration of a depository company shall be made in the designated form and shall be accompanied by:
 - (i) copy of certificate of incorporation certified by the Corporate Affairs Commission (CAC);
 - (ii) two copies of the Memorandum and Articles of Association certified by the CAC, which shall include among other powers, the power to act as a depository;
 - (iii) certified copy of CAC Form showing names and particulars of the directors of the company;
 - (iv) copy of the latest audited accounts or audited statement of affairs for companies in operation for less than one year;
 - (v) a set of duly completed designated forms to be filed by a minimum of 3 sponsored individuals;
 - (vi) two copies of existing or draft rules and regulations;
 - (vii) sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the depository;
 - (viii) information relating to the following facilities:
 - (a) computerization/back up
 - (b) telephone and other electronic facilities
 - (c) settlement procedure;
 - (ix) information relating to internal control measures in relation to dematerialized certificates and the strong room;
 - (x) software maintenance agreement;



- (xi) fidelity bond of a value not less than 25% of paid up capital;
- (xii) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (xiii) sworn undertaking to comply with and enforce compliance by its participants with the provisions of the Act and these Rules and Regulations;
- (xiv) 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;
- (xv) evidence of minimum paid up capital of N5 billion;
- (xvi) any other document or information that may be required by the Commission from time to time;

Eligibility

2. An application for registration as a depository shall not be considered unless the sponsor is one of the following:
 - (i) a financial institution licensed by the appropriate regulatory agency;
 - (ii) a recognized Securities Exchange registered by the Commission;
 - (iii) 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 (i) and (ii) above.
3. 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.
4. **Ownership Structure**
 - (i) An individual acting alone or in partnership shall at all times hold not more than 35% of the equity capital of a depository.
 - (ii) A Participant shall at all times hold not more than 5% of the equity capital of the depository.



(B) **Registration Requirements for Participant**

- (1) An application for the registration of a participant shall be made to the Commission in the designated form through each depository in which the applicant proposes to act as a participant and shall be accompanied by the following:
- (i) a certified true copy of certificate of incorporation by the Corporate Affairs Commission (CAC);
 - (ii) certified copy of the Memorandum and Articles of Association by the CAC;
 - (iii) latest copy of audited accounts or audited Statement of Affairs by the Auditors for companies in operation for less than one year;
 - (iv) a set of duly completed designated forms to be filed by
A minimum of 3 sponsored individuals;
 - (v) information relating to the following facilities;
 - a. computerization/back up
 - b. telephone and other electronic facilities
 - (vi) information relating to internal control measures in relation to dematerialized certificates and the strong room;
 - (vii) software maintenance agreement;
 - (viii) fidelity bond of a value not less than 25% of paid up capita;
 - (ix) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
 - (x) sworn undertaking to comply with and enforce compliance by its staff/beneficial owners with the provisions of the Act and these Rules and Regulations;
 - (xi) 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 control;
 - (xii) an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions;



- (xiii) demonstrate an ability to settle trade on a delivery versus payment basis;
 - (xiv) 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 days after receipt from the applicant together with the depository's recommendations and certifying that the participant complies with the eligibility criteria including adequate infrastructure as provided in these Rules and Regulations and the rules of the depository.
- (3) **Eligibility**
For registration as a participant in a depository, the applicant shall meet any of the following requirements:
- (i) a bank duly licensed by the CBN;
 - (ii) a custodian of securities registered by the Commission;
 - (iii) a clearing corporation of a recognized Securities Exchange;
 - (iv) 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 such depository;
 - (v) a non-banking finance company with a minimum paid up capital of not less than N2 billion;
 - (vi) a registrar and share transfer agent registered by the Commission with a minimum paid up capital of N2 billion.



Rule 207 B

Regulation of Depositories and Related Parties

B1 Regulation of Depository

(1) 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.

(2) Functions, Duties and Responsibilities

A central securities depository shall:

- a) enforce its rules, provisions of the Investments and Securities Act and the Rules and Regulations made thereunder;
- b) supervise compliance by participants with the depository rules;
- c) hold all securities of the same kind deposited with it by a participant collectively in a separate central securities repository;
- d) maintain a central securities account with due regard to the interests of the participant and its clients;
- e) notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;
- f) balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer:
 - i) in respect of each kind of certificated security , not less than once every six months;
 - ii) in respect of each kind of uncertificated security :
 - a) if that aggregate has not changed, not less than once every month.
 - b) if that aggregate has changed , on the business day after such change;
- g) administer and maintain a record of uncertificated securities deposited with it;



- h) be entitled to access the records of uncertificated securities administered and maintained by its participants;
- i) disclose to participants and issuers the fees and charges required by it for its services;
- j) on request disclose to -
 - i. the Commission information about the securities held by a participant in a central securities account;
 - ii. an issuer information about the securities issued by that issuer and held by participants in central securities account;
- k) if a participant ceases to be a participant, notify the Commission thereof as soon as possible;
- l) conduct its business in a prudent manner and with due regard to the right of the participants, clients and issuers.

(3) **Eligible Securities for Dematerialisation**

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

- (i) Shares, scripts, stocks, bonds, debentures, debenture stock or other securities of like nature in or of any incorporated company or body corporate;
- (ii) 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.

(4) **Agreement Between Depository and Issuer**

- (i) 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 the securities.
- (ii) 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.



(5) **Depository Rules**

The depository rules shall, amongst others, provide for –

- (a) 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;
- (b) arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
- (c) 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 Investments and Securities 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 30 days after the completion of such proceedings;
- (d) requirements in respect of a participants' financial soundness and valid financial cover that the participant shall hold in respect of:
 - (i) the participant's actual and potential liabilities;
 - (ii) conditional and contingent liabilities to the securities depository; and
 - (iii) liabilities which existed before, or after a person has ceased to be a participant;
- (e)
 - (i) 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;
 - (ii) 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
 - (ii) 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;
- (f) where a participant agrees, or is otherwise required to –



- (i) 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;
 - (ii) 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
 - (iii) give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;
- (g) 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;
- (h) a participant's securities depository accounts not to show a debit balance;
- (i) 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;
- (j) the manner in which participants shall give instructions to the securities depository;
- (k) the purpose for which the depository may issue directives;
- (l) the manner in which a Participant shall hold and administer securities;
- (m) a declaration that the rules are binding on the securities depository, a participant, an issuer of securities deposited in the depository, their officers, employees and clients.
- (6) **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.



(7) **Connectivity**

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

(8) **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.

(9) **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.

(10) **Evaluation of Systems and Controls**

- (a) A depository shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls.
- (b) The depository shall cause to be inspected annually, the mechanism referred to in (a) above by an expert and forward the report to the Commission within 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.

(11) **Measures Against Risks**

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.

(12) **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.

(13) **Records to be maintained**

- (i) 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 activities as a depository.
- (ii) A depository shall notify the Commission of the place where the records and documents are maintained.
- (iii) 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 years from the date of last entry in the records or date the document was made.

(14) **Prohibition of Assignment**

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

B2. **Regulation of Participant**



(15) **Definition of Participant**

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.

(16) **Functions, Duties and Responsibilities**

A participant shall:

- a) settle trades on behalf of its clients;
- b) if securities are deposited with it, deposit them with a central securities depository unless the client expressly directs otherwise in writing;
- c) maintain a securities account for a client in respect of securities deposited;
- d) reflect the number or nominal value of each kind of securities deposited in a securities account;
- e) administer and maintain a record of all securities deposited with it in accordance with depository rules;
- f) record all securities of the same kind deposited with it in a sub-register if so required by the depository rules;
- g) disclose to clients and issuers the fees and charges required by it for its services;
- h) notify a client in writing or as otherwise agreed to by the client of an entry made in the client's securities account;
- i) on request disclose to:
 - i. the Commission information about the securities recorded in a securities account;
 - ii. an issuer information about the securities issued by that issuer and recorded in a securities account;
- j) have a central securities account with a central securities depository, and may:
 - i. deposit securities with or withdraw securities from that central securities depository; or



ii. transfer, pledge or cede an interest in securities through that central securities depository;

- k) 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
- l) balance and reconcile the aggregate of the securities account with the central securities accounts on a daily basis.

(17) **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.

(18) **Separate Accounts**

- (a) 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 participant's own securities.
- (b) 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.
- (c) 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.

(19) **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.

(20) **Transfer or Withdrawal by client**

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

(21) **Connectivity**



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.

(22) **Monitoring, Reviewing and Evaluating Internal Systems & Controls**

- (i) A participant shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls and systems.
- (ii) The participant shall cause to be inspected annually the mechanisms referred to in (i) above by an expert and forward the report to the depository within three months from the date of the inspection.
- (iii) 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.

(23) **Reconciliation**

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

(24) **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.

(25) **Records to be Maintained**

- (a) A participant shall maintain the following records and documents:
 - (i) records of all the transactions entered into with a depository and with a client.
 - (ii) details of securities dematerialized and rematerialized on behalf of clients with whom it has entered into an agreement;
 - (iii) records of instructions received from clients and statements of account provided to clients; and



(iv) records of approval, notice, entry and cancellation of pledge or hypothecation.

- (b) A participant shall make available for the inspection of the depository in which it is a participant, all the records referred to in (a) 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.
- (c) A participant shall notify the Commission of the place where the records and documents are maintained.
- (d) Without prejudice to any enactment and these Rules, a participant shall preserve the records and documents for a minimum period of 7 years from the date of last entry in the records or date the document was made.
- (e) A participant who enters into an agreement with more than one depository shall maintain separate records mentioned in (a) above in respect of each depository.

(26) **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 or tampered with and shall ensure that sufficient back up of records is available at all times, off site from the participant's office.

(27) **Prohibition of Assignment**

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

(28) **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.

(29) **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, either in-house by the issuer or by the Registrar to the issue who is registered with the Commission.

(30) **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 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.

(31) **Surrender of Certificate of Securities to be dematerialized**

- (i) 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;
- (ii) The participant shall:
 - (a) on receipt of information from the client under (i) 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 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.
- (iii) The issuer or its agent shall within 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 securities. It shall thereafter substitute in its record, the name 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.



- (iv) Immediately upon receipt of information from the issuer under (iii) 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 Paragraph (ii)(a) above and thereafter send notice thereof to the participant.
- (v) The issuer or its agent shall maintain a record of certificates of securities which have been dematerialized.

(32) **Reconciliation**

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

(33) **Connectivity**

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.

(34) **Information**

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

- (i) closure of register;
- (ii) record dates;
- (iii) payment of interest or dividend;
- (iv) annual general meeting;
- (v) redemption of debentures;
- (vi) conversion of debentures; and
- (vii) 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.

(35) **Creation of Pledge or Hypothecation**



- (i) 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.
- (ii) The participant shall make a note in its records of the notice of pledge and forward the application to the depository.
- (iii) The depository after confirmation from the Pledgee that the securities are available for pledge with the Pledgor, shall within fifteen 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 Pledgee.
- (iv) On the receipt of the notice under (iii) above, the participants of the Pledgor and Pledgee shall inform the Pledgor and Pledgee respectively of the creation of the pledge.
- (v) The pledge created under (iii) may be cancelled by the depository if the pledgor or pledgee makes an application for cancellation through its participant;
Provided that no pledge shall be cancelled by the depository without the concurrence of the pledgee.
- (vi) On the cancellation of the pledge, the depository shall notify the participant of the pledgor.
- (vii) On the foreclosure of the pledge, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.
- (viii) 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.

(36) **Investment Advice**

- (i) 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.



- (ii) 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.

(37) **Code of Conduct**

A participant shall abide by the Code of Conduct as set out in Schedule IX to these Rules and Regulations.

CODE OF CONDUCT FOR PARTICIPANTS

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 proper advance 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 to 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.