



NEW RULES/AMENDMENTS OF THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION

*Pursuant to Section 313(6) of the Investments and Securities Act, 2007, the following
new rule and amendments are made by the Commission:*

1. RULES ON BOOK BUILDING – Rule 78(c)

A. Rule 78 (c) (i) is amended to read: -

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.

B. Rule 78 (c) (2) is amended by including “banks” to the list of qualified institutional Investors to read as follows:

For the purposes of this rule, Qualified Institutional Investors shall include:

- i. ***Banks***

C. Rule 78 (c) (3) is amended to read: -

“In the book building process for equities a portion of the offer may be reserved for retail investors”.

D. Rule 78(c) (6) (xiii) is amended to read as follows:-

(xiii) The book runners and the issuer shall not later than 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.”

RULE 307A: - CORPORATE BONDS

1. **Rule 307(A) (1) (C)** is amended by deleting “by the general meeting” and including the word “Board” to read as follows:

(c) Two copies of the Board resolution authorizing the issue of the bond;

The following proviso is added to the rule to read as follows: -

Provided that a 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.

2. **Rule 307(A) (2) (a) (iii)** is amended to read as follows:

(iii) All issues of corporate bonds shall be rated by a rating agency (optional for private placements)

3. **Rule 307(A) (2) (c)** is amended by deleting “by the general meeting” and inserting “Board” to read as follows:

“There shall be a resolution by the *Board* authorizing the issue of the bond”;

The following proviso is also included as follows:

Provided that a 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.

2. **Rule 40** is amended by the creation of **a new sub rule (k), "Debt - Equity Conversion"**

RULES ON DEBT - EQUITY CONVERSION

A New Rule 40 (e) is created to read as follows:

Definition

Debt - Equity conversion is a process that enables conversion of instruments into equity based on predetermined agreement/conditions by the parties involved.

Registration Requirements

- (1) 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/Information Memorandum containing the following details:
 - (i) Introduction
 - (ii) Definition of terms
 - (ii) Summary of convertible Loan
 - (a) 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 Certificate of incorporation of the issuer certified by the company Secretary(if the company is coming for the first time);
- (g) Copies of the memorandum and Articles of Association (including amendments thereto) of the issuer certified by the company secretary;
- (h) The most recent audited accounts;
- (i) Certificate of increase in share capital(where applicable);
- (j) Option Notice (where applicable).
- (k) Any other information that may be relevant to the transaction.

This rule also applies to convertible preference shares.

3. **RULES ON FUND OF FUNDS AND FEEDER FUNDS**

A new Rule 282A is created to read as follows:

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 mutual fund 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.

A. FUND OF FUNDS

Registration Requirement

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.

B. FEEDER FUNDS

Registration Requirement

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.

4. **GENERAL:**

- a. 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;
- b. A Feeder Fund Manager shall appoint a Custodian/Trustee for the Fund;
- c. 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.
- d. The contents of the Agreements referred to above shall include but not be limited to the following:

- i. the class of assets or units of the Master Fund available for investment by the Feeder Fund;
- ii. 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;
- iii. 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;
- iv. settlement cycle and payment for purchase or subscriptions, and repurchase or subscriptions and repurchase or redemptions of the Master Fund;
- v. 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;
- vi. 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;
- vii. 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;
- viii. 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;
- ix. 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;

- x. the manner and timing of a notice by the Master Fund of a planned or proposed liquidation, merger, or division;
 - xi. 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;
 - xii. the rights and duties of the parties.
- e. At least 85% of assets of the Feeder Fund must be invested in the approved Master Fund.

5. 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.

- i. Description of the Master/Feeder Investment;
- ii. Disclosure on the type of underlying CIS the scheme proposes to invest;
- iii. Statements that the fees and charges are as prescribed for unit trust under the Commission's Rules and Regulation;
- iv. Statement indicating whether these fees will be borne at one level or divided between the Master and Feeder Fund;
- v. The periodic reports issued by the Feeder Fund shall provide full information in relation to the investment in the underlying Master Fund.

6. 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.

7. Target Investor of the Feeder Fund:

The fund shall be open for participation by only High Networth or Institutional Investors who understand the risk of investing in such funds and shall be clearly stated in the funds offering documents.

4. OTHER SUNDRY AMENDMENTS

a. Rule 1: Definition of terms used in the Rules and Regulations

Rule 1 is amended to include the definition of **“Qualified Institutional Investor”** to read as follows;

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

b. Rule 23 : Registration of National Association of Securities Dealers (NASD)

Rule 23(1) (xiv) was amended to read as follows;

(xiv) Minimum paid up capital requirement of N50 million;

c. Rule 38: Registration of Rating Agency

Rule 38(1) is amended by the inclusion of the following provision:

“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 frameworks 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”.

d. Rule 40C: Shelf Registration

Rule 40 C (3) (a) is amended to read as follows;

(a) Unless otherwise indicated by the Commission, all entities qualified under the law for purpose of issuance of municipal bond, supranational institutions, SPVs, public companies and other entities covered under the Act which have been listed on a securities exchange for a minimum period of twelve months are eligible to issue, offer for subscription or purchase, or issue an invitation to the public or a select few subscribe for or purchase securities in accordance with a shelf registration”.

e. Rule 56 : Contents of a Prospectus

A new Rule 56 A is created to separate the contents of a Right circular from the contents of a prospectus

Rule 56A shall read as follows;

Every Right Circular shall contain the following information:

- 1) The front cover shall state the name of the issuer, the issuing house, certificate of incorporation (RC) 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.

- 2) A detailed table of contents in the fore part of the right circular showing the subject matter of the various sections or subscriptions;
- 3) 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;
- 4) The chairman’s letter / statement which should disclose ,working capital adequacy and future developments of the company and any other material information;
- 5) Five years historical financial information on balance sheets, profit and loss account, cash flow and notes to the accounts;
- 6) 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;
- 7) Procedure for application and allotment;
- 8) Receiving agents and receiving banks;
- 9) Application form.

f. Rule 56 (1) (viii): is amended by deleting the Phrase “profit forecast and the underlying assumptions (not applicable to right issues)”.

The amended **Rule 56(1) (viii)** will now read as follows:

“Letter from the reporting accountants reviewing the audited accounts for the period”.

g. Part B4- Rule 97 Regulation of Public Companies.

A new Rule 97(2) (5) is created to read as follows:

Every public company shall in its annual report state its level of compliance with the provisions of the code of corporate governance for public companies as contained in schedule XII of these Rules and Regulations.

Other rules before the new Rule 97 and after will be renumbered accordingly.

h. Functions of Registrars

A new Rule 193 (6) is created to read as follows:

“A Registrar of a public company may dispatch Annual Reports and notices of General Meetings to Shareholders by electronic means.

i. RULE 206

Rule 206 (2) (a-g) dealing with the functions of reporting accountants should be deleted and the other sub-sections re-numbered. These provisions require the reporting accountant to report on the profit forecast of the issuer.

j. RULE 206 (4)(b)

Rule 206 (4) (b) dealing with profit forecast should be deleted.

MADE AT ABUJA THIS 12th DAY OF SEPTEMBER 2011