

RULES ON NATIONAL INVESTOR PROTECTION FUND

Preamble

In furtherance of the Commission's mandate to regulate and develop the Nigerian capital market and in particular, its duty to ensure the protection of investors in the Capital Market, the Board of the Securities and Exchange Commission approved the establishment of a nationwide fund known as the **National Investor Protection Fund**. The following rules have also been approved by the Board to provide details of management of the fund, disbursements from the fund and other matters relating thereto.

Part 1 PRELIMINARY **Citation and Commencement**

These rules shall be cited as the National Investor Protection Fund Rules 2015 and shall come into effect as approved by the Commission.

Part 2 ESTABLISHMENT OF THE NATIONAL INVESTOR PROTECTION FUND

1. Pursuant to the provisions of Section 13 K of the Investments and Securities Act 2007 there is hereby established the National Investor Protection Fund. (In these Rules, known as "**the Fund**")
2. The Fund shall:-
 - a) Be a Company Limited by Guarantee duly incorporated under the Provisions of the Companies and Allied Matters Act, (CAMA) Cap C20, LFN, 2004;
 - b) Be a Legal person with perpetual succession and may sue and be sued in its name;
 - c) Be for the purpose of compensating investors whose losses are not covered under the Investor Protection Fund administered by Securities Exchanges and Capital Trade Points;

- d) Have a Board which shall consist of the Board of Directors of the Fund and shall be responsible for the Administration of the Fund;
- e) Have a Secretariat from which day to day activities of the Fund shall be carried out.

Part 3 APPLICABILITY OF THESE RULES

These rules shall apply only to defalcations by Capital Market Operators not dealing members of Securities Exchanges or Capital Trade Points.

Part 4 THE BOARD

- 4. The Board shall consist of:-
 - i) The Chairman who shall be the Director General of the Securities and Exchange Commission
 - ii) Such number of Executive Commissioners appointed for the Commission from time to time.
 - iii) three other members who shall be appointed by the Commission.
- 5. The members mentioned under Section 4 (iii) shall be persons qualified to be appointed as Directors in a public company in Nigeria and must possess not less than ten (10) years cognate experience in the capital market.
- 6. The tenure of the Director General and other Executive Commissioners as members of the Board of Directors of the Fund shall be tied to their respective tenures as members of the Commission's Executive Management, stipulated under the Investments and Securities Act, 2007(as amended).
- 7. The tenure of other members of the Board shall be for a term of two (2) years renewable for another term upon approval by the Board of the Commission and no more.

Provided that a member of the Board shall cease to hold office if he-

- (a) becomes of unsound mind;

- (b) becomes bankrupt or makes a compromise with creditors;
- (c) is convicted of a felony or any offence involving dishonesty;
- (d) is guilty of serious misconduct in relation to his duties; or
- (e) is a person who has a professional qualification, and is disqualified or suspended (other than at his own request) from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

8. The Board shall be responsible for the general management of the Fund.

Part 5 MANAGEMENT OF THE FUND

9 The Fund shall be managed by the Board of Directors or such Fund Manager as may be appointed by the Board.

10 Every decision taken by the Board in the course of administration of the Fund shall be in accordance with the provisions of these Rules.

11 Where the Fund is managed by a Fund Manager:-

- (a) The Fund Manager shall be duly registered by the Commission;
- b) The Fund Manager shall invest the resources of the Fund as shall be approved by the Board from time to time;
- c) The Proceeds from the investment of the Fund shall either be further invested or deposited in a designated account as shall be determined by the Board;

12 The Board shall act in good faith and take decisions in the interest of the Fund at all times.

Part 6 FUNDING

13 The Commission shall provide the initial take-off grant of the Fund. Other sources of funds shall be:-

- i. Grants, subventions and Donations.
- ii. Annual contributions to be made by all Capital Market Operators not subject to contribute to the Investors Protection Fund of Securities Exchanges and Capital Trade Points;

Provided that the amount of contributions to be made by the respective class of persons in paragraph (ii) above shall be determined by the Board from time to time.

- iii. Assets, properties or cash that shall be realized from liquidated operators after compensation to investors;
- v. Proceeds from investment of the resources of the Fund;
- vi. Monies borrowed by the Board from the Commission for the purpose of the Fund.

14 Contributions to the Fund and proceeds from the investment of the Fund shall be lodged in a special account opened for this purpose by the Board.

Part 7 ELIGIBILITY TO BENEFIT FROM THE FUND

15 The Board shall determine who is eligible to benefit from the Fund.

16 Beneficiaries of the Fund shall be investors who suffer pecuniary loss arising from:-

(a) the insolvency, bankruptcy or negligence of a Capital Market Operator; and

(b) defalcation committed by a Capital Market Operator or any of its directors, officers, employees or representatives in relation to securities, money or any property entrusted to, or received or deemed received by the Capital Market Operator in the course of its business for which it was registered by the Commission as a capital market operator.

Provided, subject to the approval of the Board that an investor who participated in the wrongful act of the Capital Market Operator shall not benefit from the Fund.

- 17 These Rules do not apply to transactions not regulated by the Commission.
- 18 Persons who bring claims as beneficiaries to the Fund shall be required to tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be confirmed by the Fund.

Part 8 PAYMENTS FROM THE FUND

- 19 There shall from time to time, be paid from the Fund:-
 - a) Monies required by the Board for the payment of Compensation to claims made in accordance with these rules;
 - b) Monies required for the arrangement, service or repayment of loans obtained by the Board for the Commission;
 - c) Any expenses incurred in establishing the Fund or incurred by the Board in its administration and management of the Fund including expenses arising from professional services;
 - d) All other monies payable out of the Fund in accordance with the Provisions of the Investments and Securities Act, 2007 as approved by the Board.

Part 9 COMPENSATION OF INVESTORS

- 20 The Board of the Fund shall for the purpose of compensating investors set up a Committee (“**The Verification Committee**”) which shall be charged with the responsibilities of reviewing the claims of investors and making recommendations to the Board.
- 21 Compensation of an investor shall begin with an application from an investor to the Fund.
- 22 An application shall:-

- i. Be brought within twelve (12) months after the investor became aware or ought reasonably to have become aware of the status of the investments;
 - ii. Be brought in the form to be prescribed by the Board;
 - iii. Be accompanied by evidence of investments with the Capital Market Operator;
 - iv. Contain Proof that the Capital Market Operator is in distress and that the Applicant has suffered loss;
 - v. Contain accurate materials and facts to prove the claims of the Applicant;
- 23 The Committee shall investigate the claims of an Applicant and after deliberation on such claims shall present to the Board of the Fund, the findings of its investigation.
- 24 The decision of the Board on the recommendation of the Verification Committee shall be FINAL.

Part 10 AMOUNT OF COMPENSATION

- 25 The maximum amount payable to an investor who has suffered loss shall be Two Hundred Thousand Naira (N200, 000.00) or its equivalent in form of shares/units.
- Provided that where the amount of loss is lesser, the investor shall be paid the calculated amount of loss.
- 26 The amount of compensation may be reviewed from time to time as approved by the Board of the Fund.
- 27 The Fund is not under any obligation to pay compensation to an investor.
- 28 **Any claim prior to the incorporation of the Fund shall not be covered by the Fund.**

Part 11 **ADJUSTED PAYMENTS**

- 29 Payments of compensation could be adjusted by the Board depending on the recommendation submitted by the Verification Committee and other facts before it.
- 30 The following are circumstances that may necessitate a decision for adjusted payments:-
- a) Where the Board is satisfied payment in full would not be prudent having regard to other applications for compensation, or to any uncertainty as to the amount of the investor overall net claim, it may determine to pay an appropriate lesser sum in final settlement;
 - b) The Board may determine to reduce the compensation which would otherwise be payable to an investor in circumstances where it is satisfied that the investor is partly to blame for the loss which he has suffered,
 - c) The Board may also determine to make a payment on account or to pay a lesser sum where the investor has any prospect of recovery in respect of the claim from any third party or through an application for compensation to any other person or authority.

Part 12 **RECOVERIES AND SUBROGATION**

- 31 The Board upon the payment to any investor shall be subrogated to all rights of the investor against the distressed Capital Market Operator to the extent of such payment, and such subrogation shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such distressed Capital Market Operator.
- 32 In the event that an investor recovers or receives any payment in respect of a claim from a Capital Market Operator; such an investor shall refund to the Fund any monies paid to him/her by the Fund as compensation.
- 33 Any amount received by the Board by virtue of this rule shall be paid into the account of the Fund.

Part 13 REPORTS

Annual

- 34 The Board shall not later than three (3) months after the end of its financial year submit an Annual Report to the Commission covering each successive financial year.
- 35 The Annual Report shall inter alia include:-
- a) A statement showing the movements in the Fund during the year and a statement of assets and liabilities of the Fund at the end of the year,
 - b) A statement indicating all payments into the Fund and payments out of the Fund during the year, and
 - c) An Audit Report of the accounts of the Fund by approved Auditors of the Fund.

Quarterly

- 36 The Board shall also make quarterly reports to the Commission giving details of the exercise of its powers and functions.
- 37 The Board shall notify the Commission in writing of significant events occurring in the process of administering the Fund.

Part 14 RECORDS

- 38 The Board shall keep proper records which show and explain the transactions of the Fund and shall:-
- a) Disclose with reasonable accuracy the position of the Fund at any time;
 - b) Maintain and preserve these records in a readily accessible place for a period of ten (10) years from the end of the year during which the last entry was made on such record.

Justification

The proposed new rules on National Investor Protection Fund is made in order to enforce the Commission's mandate to regulate and develop the Nigerian capital market and ensure the protection of investors in the Capital Market.