

SECURITIES AND EXCHANGE COMMISSION RULES AND REGULATIONS

Introduction

In order to effectively and efficiently carry out the objectives of securities regulation as embedded in the Investments and Securities Act 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 recognises 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 Investments and Securities Act grants 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 twelve (12) parts i.e. A to L and have nine (9) 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, investors protection fund; borrowing by States, local Government and other Government agencies amongst other things.

The Commission, however, is yet to make rules regulating a few specialised areas of the capital market because of their novelty or non-existence in our present environment. Some of these areas are being reviewed and discussed with market operators to enable proper rule-making in the near future.

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 Investments and Securities Act is therefore advised to be familiar with both the provisions of the Act and all the Rules of the S.E.C. regulating the capital market.

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

SECURITIES AND EXCHANGE COMMISSION RULES AND REGULATIONS

as amended by:

- (1) Securities and Exchange Commission Rules and Regulations (Amendment), 2002¹
- (2) Securities and Exchange Commission Rules and Regulations (Amendment), 2003²

1. Hereinafter referred to as SECRR(A) 2002.

2. Hereinafter referred to as SECRR(A) 2003.

- (3) Securities and Exchange Commission Rules and Regulations (Amendment), 2005³
- (4) Securities and Exchange Commission Rules and Regulations (Amendment), 2006 (1)⁴
- (5) Securities and Exchange Commission Rules and Regulations (Amendment), 2006 (2)⁵

Pursuant to the provisions of sections 258 and 262 and all other powers conferred upon it under the Investments and Securities Act (I.S.A.) of 1999, the Commission hereby makes the following Rules and Regulations:

GENERAL RULES AND REGULATIONS PURSUANT TO THE INVESTMENTS AND SECURITIES ACT, 1999

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3. Hereinafter referred to as SECRR(A) 2005.

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**GENERAL RULES AND REGULATIONS
PURSUANT TO THE INVESTMENTS AND
SECURITIES ACT, 1999**

PART A

A1. Rules of General Application

Rule 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, 1999, unless the context otherwise requires—

“**Act**” means Investments and Securities Act, 1999;

“**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, warrant or right;
 - (ii) through the conversion of security or;

- (iii) pursuant to the power to revoke a trust, discretion any account, or similar arrangement, any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall deemed to be outstanding for the purpose of computing the percentage of the class by any other person:

Provided that a person who in the ordinary course of business is a pledgee 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 pledgee 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;

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

“**capital market consultants**” for the purpose of these Rules and Regulations include the following—

1. legal practitioners;
2. accountants;
3. auditors;
4. engineers;
5. estate valuers;
6. other professionals whose opinions and activities impact directly on capital market transactions;

“Commission” means the Securities and Exchange Commission established under the Investments and Securities Act, 1999;

“exchange” shall include all securities exchanges, over-the-counter and other trading facilities within the meaning of the Act;

“plan” shall include all plans, contracts, authorisations 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 and includes 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” includes a stock exchange or an approved securities organisation such as commodity exchange, over-the-counter market, metal exchange, petroleum exchange, options, futures and derivatives exchanges and such other forms of securities organisations within the meaning of the Act.

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.

Rule 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. The head-

quarters of the Commission shall be located at the Federal Capital Territory, Abuja.

(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.

Rule 3. Filing of materials with the Commission

(1) All papers, documents and information required to be filed with the Commission pursuant to the provisions of the Act or any subsidiary legislation made thereunder shall be filed at the headquarters 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 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 ₦100,000.00 in the first instance and ₦5000.00 per day for every day the violation continues.

[SECRR(A) 2005, s. 1.]

(5) (i) All correspondence to the Commission by securities exchanges, other self-regulatory organisations (S.R.O's) and capital market operators shall be signed by the authorised signatories;

[SECRR(A) 2005, s. 2.]

(ii) All securities exchanges, other S.R.O's and capital market operators shall furnish to the Commission the names and specimen signatures of the authorised signatories from time to time.

[SECRR(A) 2005, s. 2.]

Rule 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 subrule (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 authorised 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.

Rule 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 subrule (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 subrule (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 subrule (2) of this Rule.

(7) All statements shall be in writing.

Rule 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 or by certified bank cheque payable to the Securities and Exchange Commission. Payments in cash should not exceed ₦10,000 (ten thousand naira) and shall be made at the Finance and Accounts Department of the Commission which shall issue official receipts for such fees.

Rule 7. Fine/penalty

Except as otherwise specified, any person who violates any provision of these Rules and Regulations shall be liable to a fine not exceeding ₦5,000 for every day of default.

Rule 8. Exemptions

(1) The provisions of the Act and these Rules and Regulations requiring registration shall not apply to—

- (i) 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 months exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;
- (ii) any security issued by a person, organised 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 ₦5,000,000 (five million naira);
- (iii) Government securities with respect to payment of filing fees;
- (iv) subject to the provisions of Part B.1 hereof, transactions by an issuer not involving any public offering.

(2) The Commission may by rules add any class of securities or transactions to those exempted under this regulation.

Rule 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 ₦2,500.00 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.

[SECRR(A) 2006 (2), s. 1.]

A2. General Rules on Registrations

Rule 10.

[SECRR(A) 2006 (1), s. 1.]

Rule 11. 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.

[SECRR(A) 2006 (1), s. 2.]

(3) Application forms are obtainable on payment of fees as prescribed in Schedule I of these Rules and Regulations.

[SECRR(A) 2006 (1), s. 2.]

Rule 12. Number of copies, signatures, Code of Conduct, etc.

(1) Two copies of the completed registration statement including two draft Prospectus and all other documents filed as part of the statement shall be filed with the Commission.

(2) Both copies of the registration statement shall be manually signed by the following persons—

1. the issuer (rep. by the company seal);
2. Chief Executive Officer;
3. the principal financial officer; and
4. any member of the Board of Directors or person performing similar function.

(3) If any name is signed on the registration statement pursuant to a power of attorney, two copies of such duly executed power of attorney shall be filed with the registration statement.

(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 and renewal 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 Market Operators as approved by the Commission.

Rule 13. 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 initialled by the registrant.

(4) All documents pertaining to any question shall be attached to the application form and shall be properly marked.

Rule 14. 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.

Rule 15. Sponsored individuals

(1) Sponsored individuals for purposes of this Regulation are the principal officers and/or professionals held out by the applicant companies 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 are required to file Form S.E.C. 2 as contained in Schedule III to these Rules and Regulations.

(3) All sponsored individuals 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—

- (i) 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;

[SECRR(A) 2005, s. 4.]

- (ii) 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.

[SECRR(A) 2005, s. 4.]

(5) Every stockbroker employed in an institution involved in capital market activities shall be sponsored for registration by that institution.

[SECRR(A) 2005, s. 5.]

(6) Companies registered/seeking registration to carry out multiple functions shall sponsor the total number of individuals prescribed for each function.

Provided that an applicant for any of the following related functions may sponsor only the minimum number prescribed for the lead function:

(1) *issuing house*

related functions—

(a) underwriter;

(b) investment adviser;

(2) *broker, broker/dealer*

related functions—

(a) portfolio/fund manager;

(b) investment adviser.

[SECRR(A) 2005, s. 5.]

Rule 16. Qualifications of sponsored individuals

(1) Sponsored individuals are required to have any of the following qualifications and job experience:

- (i) a first or higher degree or its equivalent in a relevant field including banking, finance, accounting, business management, law, economics and chartered secretary with a minimum of 4 years relevant post-qualification experience (excluding the National Youth Service Corps year); or

- (ii) a first or higher degree or its equivalent in a non-relevant field including science-oriented courses, the Arts, etc., with a minimum of 6 years relevant post-qualification experience; or
- (iii) a West African School Certificate (W.A.S.C.)/S.S.C., General Certificate of Education (G.C.E.) or Higher School Certificate or its equivalent with a minimum of 15 years relevant post-qualification experience.

(2) Where the sponsored individual intends to be registered as a Registrar, such officer must in addition to (1) above have any of the following qualifications and job experience:

- (i) a legal practitioner with a minimum of 5 years post-call experience;
- (ii) a first degree or its equivalent with a minimum of seven years relevant working experience in a Registrar's establishment registered by the Commission;
[SECRR(A) 2005, s. 6.]
- (iii) a school certificate holder with a minimum of 15 years working experience in a Registrar's establishment duly recognised by the Commission.

(3) Where the individual is sponsored by a rating agency such officer shall comply with rule 38 (3) (vii).

[SECRR(A) 2006 (1), s. 3.]

(4) All sponsored 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.

Rule 17. Minimum paid-up capital

(1) The minimum paid-up capital for the purpose of registration is as contained in Part A4 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—

- (i) copy of the Board resolution authorising the increase in share capital certified by the C.A.C.;
- (ii) evidence of registration of such increase with the Corporate Affairs Commission i.e. a letter from the C.A.C. evidencing the registration. Where an uncertified copy is filed, the applicant shall present the original copy of the letter for sighting along with the photocopy certified by the registrant's company secretary for filing with the Commission;
- (iii) C.A.C. Form C02/2.5 (Return or Allotment) certified by the Corporate Affairs Commission;
- (iv) 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 years) signed by an auditor, showing that the increase has been paid-up;
- (v) where capital contributed is in form of real property, title documents in the name of the company in respect of the capitalised property(ies) in any of the following ways shall suffice:
 - (a) the property should be relevant to the operations of the company;
[SECRR(A) 2003, s. 8.]
 - (b) the title deed must have been perfected, transferred and registered in the name of the company;
[SECRR(A) 2003, s. 8.]
 - (c) where the capitalised property is real property, an estate valuer's report and the search report by an independent solicitor shall be attached;
 - (d) where it is any other type of property, an appropriate valuer's report shall be attached;

- (e) bank statement showing evidence of deposit of prescribed paid-up capital before deduction to acquire fixed assets.

[SECRR(A) 2003, s. 8.]

(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.

[SECRR(A) 2003, s. 8.]

Rule 18. 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.

(2) The filing of any amendment to an application for registration by a registrant pursuant to subrule (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 subrule (1) of this Rule by a securities exchange shall constitute a report.

Rule 18A. 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.

[SECRR(A) 2002, s. 2, SECCR(A) 2006 (1), s. 4.]

Rule 19. Renewal of registration

(1) (a) All registered capital market operators, sponsored individuals and other corporate bodies shall file applications for renewal of their registration every five years.

[SECRR(A) 2006 (1), s. 5.]

(b) A registered individual shall renew his registration by filing Form S.E.C. 9B, while a corporate body shall renew by filing Form S.E.C. 9A, as contained in Schedule III of these Rules and Regulations.

(2) Every registered individual or corporate body shall file an application for renewal of registration at least 30 days prior to the due date of registration.

(3) The application for renewal shall be accompanied by a renewal fee as provided in Schedule I to these Rule and Regulations as well as the following:

- (a) latest management account of the applicant which shall include detailed schedules of balance sheet items and footnotes. The management account shall not be more than 30 days old at the date of filing;
- (b) valid fidelity bond (where applicable) or evidence of up-to-date payment of the premium;
- (c) proof of compliance with minimum paid-up capital requirement (if not already filed for the registered functions);
- (d) evidence of maintenance of the minimum number of sponsored officers (at least 2 for investment adviser, broker/dealer, sub-broker, Trustee, Registrar, portfolio manager, jobber and 3 for issuing house and other multiple functions);

- (e) Form S.E.C. 7 for amendment to registration statement since the registration of applicant or since the last renewal. This should be accompanied with the appropriate fee;

[SECRR(A) 2002, s. 4.]

- (f) completed Form S.E.C. 2A to be filed by the applicant to notify S.E.C. of any sponsored officer who has resigned from the company. This should be filed not later than two weeks of the occurrence of event failing which a penalty of ₦1,000 for the first two weeks shall become payable and thereafter ₦500 for every subsequent week of default. Note that renewal fees and penalties (where applicable) must be paid in full at the time of filing the renewal application;

[SECRR(A) 2002, s. 5.]

- (g) evidence of attendance within the renewal period, of at least one course organised by training bodies recognised by the Commission.

[SECRR(A) 2005, s. 8.]

(4) (a) Where a registered individual or corporate body fails, neglects or refuses to file an application for renewal of registration within the time stipulated above, its certificate of registration shall be summarily withdrawn after a 14 day period of grace.

(b) Where the certificate of registration of a registered individual or corporate body is suspended, the Commission shall publish such suspension in two national daily newspapers or Federal Government *Gazette* or electronic media.

(5) Where a registered individual or corporate body fails to meet the requirements for renewal of registration, the Commission shall give written notification of its intention to deny or refuse renewal of registration and such individual or corporate body shall be given an opportunity to be heard.

(6) (a) Any person subject to this Rule shall within 7 days upon receipt of the notice required under subrule (5) above, file a sworn statement including any document that may be necessary, showing reasons for its inability to meet the renewal requirements.

(b) Upon receipt of the sworn statement and any accompanying document the Commission shall within 14 days communicate its decision to the person concerned.

(7) Any person who fails to comply with the provisions of these Rules shall in addition to the normal renewal fee be liable to a late filing fee as specified in Schedule II to these Rules and Regulations and/or any other disciplinary action as may be deemed appropriate by the Commission.

(8) An applicant for renewal of 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 renewing its registration:

Provided that the Commission may where it deems fit, issue a provisional letter of renewal of registration pending confirmation by its Board.

[SECRR(A) 2006 (1), s. 5.]

Rule 20A. 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.

[SECRR(A) 2006 (1), s. 6.]

(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 (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—

1. file with the Commission, a list of all its clients with the outstanding liabilities written against their names;
2. file evidence of satisfactory discharge of its obligation to clients; the Commission reserves the right to verify the information;
3. discharge all outstanding obligations to the Commission e.g. returns, fees, penalties, etc.;
4. file information about the market operator taking over its operations;
5. file a sworn statement of indemnity, in favour of the market operator taking over its operations;
6. file a copy of the agreement between it and the market operator taking over its operations;
7. file a copy of the public notice of the withdrawal, which shall be published in two national daily newspapers.

[SECRR(A) 2002, s. 6, SECCR(A) 2006 (1), s. 7.]

Rule 20B. Suspension/Cancellation of registration

(1) The Commission may suspend or cancel the registration granted to a market operator or 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;
- (f) meet renewal requirements.

(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.

Effect of Suspension and cancellation of registration

(3) (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.

Publication of Order of Suspension or Cancellation.

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

[SECRR(A) 2006 (2), s. 2.]

Rule 21. 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 5 working days from the date of his leaving the employment.

(2) The corporate body shall within 30 days replace the sponsored individual who has left its employment with another officer by filing Form S.E.C. 2A accompanied by—

- (i) completed Form S.E.C. 2 from the new officer being sponsored;
- (ii) a copy of the letter of resignation from its previous sponsored individual;
- (iii) letter of termination from the company (where applicable);
- (iv) 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 subrule (2) shall comply with the requirements of rules 15 and 16.

(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;

[SECRR(A) 2002, s. 7.]

(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 5 working days from the date he resigns from his previous employment,
- (ii) file Form S.E.C. 2B within 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 3 years or more, he shall file a fresh application for registration with the Commission;

[SECRR(A) 2006 (1), s. 8.]

(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 5 working days from the date of the employee's resignation or dismissal.

[SECRR(A) 2002, s. 7, SECRR(A) 2006 (1), s. 8.]

(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 fulfilment 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 renewal/revalidation of registration as provided for in rule 19;
- (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 12 months, its registration shall become void. The market operator shall file a fresh application for registration.

[SECRR(A) 2002, s. 8, SECRR(A) 2006 (1), s. 9.]

(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 14 (fourteen) days upon the fulfilment 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 12 (twelve) months, its registration shall become void. The market operator shall file a fresh application for registration.

[SECRR(A) 2002, s. 8, SECRR(A) 2006 (1), s. 9.]

(7) Any person who fails to comply with the provisions of this regulation shall be liable to a late filing fee of ₦500.00 for every day that the default subsists and shall have its registration summarily suspended if the period of default exceeds 90 days.

[SECRR(A) 2006 (1), s. 9.]

A3. Registration of Securities Exchanges, Capital Trade Points and other Self-regulatory Organisations (S.R.O.)

Rule 22. Registration of securities exchanges

(1) Registration requirements

Application for registration as securities exchange shall be filed on Form S.E.C. 5 as provided in Schedule 3 to these Rules and Regulations and shall be accompanied by—

- (i) copy of the 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 authorised officer of the Commission;
- (ii) 2 copies of the Memorandum and Articles of Association and amendments (if any) certified by the C.A.C.;
- (iii) latest copy of audited accounts or statement of affairs signed by its auditors;

- (iv) 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”;
- (v) 2 copies of the listing requirements of the Exchange;
- (vi) sworn undertaking to promptly furnish the Commission with copies of any amendments to the Rules of the Exchange and the listing requirements;
- (vii) information relating to market facilities including—
 - (a) trading floors/facilities;
 - (b) Quotation Board;
 - (c) Information Board/ticker tape;
- (viii) detailed information about the trading system to be adopted;
- (ix) information as to its organisation including structure and profile of members of its Council/Board as well as rules and procedures;
- (x) instruction and inspection manual of members activities;
- (xi) detailed information about the promoters and principal officers of the Exchange;
- (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 to enforce compliance by its members with the provisions of the Act and these Rules and Regulations;
- (xiv) an application for registration of at least three (3) principal officers of the Exchange on Form S.E.C. 2;
- (xv) minimum paid-up capital requirement of ~~N~~500 million;
- (xvi) 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 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.

[SECRR(A) 2005, s. 10.]

(4) A notice under subrule (3) of this regulation shall contain the reasons and grounds upon which the Commission is considering not to register an exchange and shall stipulate the time (not being less than 14 days for other applicants and 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 subrule (3).

[SECRR(A) 2005, s. 9.]

Rule 23. Registration of National Association of Securities Dealers

(1) Registration Requirements

An application for registration as an association or body of securities dealers shall be made on Form S.E.C. 5A contained in Schedule III to these Rules and Regulations accompanied by—

- (i) copy of the Certificate of Incorporation certified by the Corporate Affairs Commission (C.A.C.);
- (ii) two copies of the Memorandum and Articles of Association certified by the C.A.C.;
- (iii) latest copy of audited accounts or statement of affairs signed by its auditors;

- (iv) copy of existing or proposed by-laws or rules, Code of Conduct, Code of Dealing, etc.;
- (v) sworn undertaking to promptly furnish the Commission with copies of any amendments to the rules of the Association;
- (vi) information relating to market facilities including—
 - (a) computerisation and telephone systems;
 - (b) Quotation Board;
 - (c) Information Board/ticker tape;
- (vii) detailed information about the trading system to be adopted;
- (viii) information as to its organisation including structure and profile of members of its Council/Board as well as rules and procedures;
- (xi) instruction and inspection manual of members activities;
- (x) detailed information about the promoters and principal officers of the Association;
- (xi) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (xii) undertaking to comply with and enforce compliance by its members with the provisions of the Act and these Rules and Regulations;
- (xiii) application for registration of at least three principal officers of the Association on Form S.E.C. 2;
- (xiv) minimum paid-up capital requirement of ~~N~~500 million;
- (xv) any other document required by the Commission from time to time.

(2) Rule 22 (2), (3) and (4) shall apply in case of denial or suspension of registration of association.

[SECRR(A) 2006 (1), s. 10.]

Rule 24. Registration of capital trade points

(1) Registration Requirements

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—

- (i) copy of the 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 authorised officer of the Commission;
 - (ii) two copies of the Memorandum and Articles of Association certified by the C.A.C.;
 - (iii) latest copy of audited accounts or statement of affairs signed by its auditors;
 - (iv) two copies of existing or proposed by-laws or rules, Code of Conduct, Code of Dealing, etc.;
 - (v) two copies of the listing requirements of the capital trade point;
 - (vi) sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the capital trade point and the listing requirements;
 - (vii) information relating to market facilities including—
 - (a) trading floors/facilities;
 - (b) Quotation Board;
 - (c) Information Board/ticker tape, where applicable;
- [SECRR(A) 2002, s. 10.]
- (viii) detailed information about the trading system to be adopted;
 - (ix) information as to its organisation including structure and profile of members of its Council/Board as well as Rules and Procedures;

- (x) instruction and inspection manual of members activities;
- (xi) detailed information about the promoters and principal officers of the capital trade point;
- (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 members with the provisions of the Act and these Rules and Regulations;
- (xiv) an application for registration of at least three (3) principal officers, two of whom must be knowledgeable and have sufficient experience in operations of the capital market, on Form S.E.C. 2;

[SECRR(A) 2002, s. 10.]

- (xv) minimum paid-up capital requirement of ~~N~~20 million;
- (xvi) any other document required by the Commission from time to time.

(2) Rule 22 (2), (3) and (4) shall apply in case of denial or suspension of registration of a capital trade point.

Rule 25. Registration of securities clearing and settlement company

A. 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:

- (i) copy of certificate of incorporation certified by the Corporate Affairs Commission (C.A.C.);
- (ii) two copies of the Memorandum and Articles of Association certified by the C.A.C.;
- (iii) latest copy of audited accounts or statement of affairs signed by its auditors;

- (iv) two copies of existing or proposed Rules and Regulations, Code of Conduct;
- (v) sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the clearing company;
- (vi) information relating to clearing facilities including—
 - (a) computerisation/back-up facilities;
 - (b) telephone and other electronic facilities;
- (vii) information relating to settlement facilities including settlement procedure;
- (viii) information relating to internal control measures in respect of access to demobilised materials and the strong room;
- (ix) software maintenance agreement;
- (x) Fidelity Bond representing 25% of paid-up capital;
- (xi) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (xii) sworn undertaking to comply with and enforce compliance by its members with the provisions of the Act and these Rules and Regulations;
- (xiii) an application for registration of at least three (3) principal officers of the company on Form S.E.C. 2;
- (xiv) 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;
- (xv) minimum paid-up capital requirement of ~~N~~500 million;
- (xvi) any other document required by the Commission from time to time.

[SECRR(A) 2006 (2), s. 3.]

(2) Rule 22 (2), (3) and (4) shall apply in case of denial or suspension of registration of an agency.

Rule 26. Registration of depository agency

Registration requirements

Rule 27. Registration of custodial agency

Registration requirements

A4. Registration of Capital Market Operators

Rule 28.

(1) The following capital market operators are subject to registration by the Commission:

1. issuing houses/merchant bankers;
2. underwriters;
3. broker/dealers;
4. sub-brokers;
5. jobbers;
6. share transfer agents;
7. banker to issue/receiving bankers;
8. Registrars;
9. trustees;
10. investment advisers (corporate and individuals);
11. fund/portfolio managers;
12. rating agencies;
13. capital market consultants.

(2) Only corporate bodies are qualified to file applications for the following functions:

1. Broker/dealer;
2. Underwriter;

3. Issuing house;
4. Registrar;
5. Trustee;
6. Fund/portfolio manager;
7. Rating agency:

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

[SECRR(A) 2005, s. 3, SECRR(A) 2006 (1), s. 2.]

Rule 29. Registration of issuing house

(1) Registration requirements

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—

- (i) a minimum of 3 sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) copy of certificate of incorporation certified by the C.A.C. Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorised officer of the Commission;
- (iii) copy of Memorandum and Articles of Association certified by the C.A.C. which shall include among others the power to act as issuing house;
- (iv) copy of Form C.O. 7 certified by the C.A.C.;
- (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (vi) profile of the company;
- (vii) Fidelity Bond representing 25% of paid-up capital;
- (viii) sworn undertaking to keep proper records and render returns;

- (ix) evidence of minimum paid-up capital of ₦150 million;
- (x) any other document required by the Commission from time to time.

[SECRR(A) 2003, s. 8.]

(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 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 subrule (3) of this Rule shall contain the reasons and grounds upon which the Commission is considering not to 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 subrule (3).

[SECRR(A) 2005, s. 11.]

Rule 30. Registration of underwriters

(1) *Registration Requirements*

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—

- (i) a minimum of 2 sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) copy of certificate of incorporation certified by the C.A.C. Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorised officer of the Commission;

- (iii) copy of Memorandum and Articles of Association certified by the C.A.C. which shall among others include power to act as underwriters in the capital market;
- (iv) copy of Form C.O. 7 certified by the C.A.C.;
- (v) sworn undertaking to abide by the Commission's Rules and Regulations;
- (vi) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (vii) profile of the company;
- (viii) 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);
- (ix) sworn undertaking to keep proper records and render returns;
- (x) evidence of minimum paid-up capital of ₦100 million;
[SECRR(A) 2003, s. 8.]
- (xi) any other document or information required by the Commission from time to time.

(2) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of an underwriter.

[SECRR(A) 2005, s. 12.]

Rule 31. Registration of brokers/dealers and jobbers

A. Broker/Dealer

Registration Requirements

(1) 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—

- (i) a minimum of two sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
 - (ii) 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 authorised officer of the Commission;
 - (iii) a copy of Memorandum and Articles of Association certified by the C.A.C. which among others shall include the power to act as broker/dealer;
 - (iv) a copy of Form C.O. 7 certified by the C.A.C.;
 - (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
 - (vi) profile of the company covering among others brief history of the company organisational structure, shareholding structure, principal officers, etc. (see Form S.E.C. 3 for details);
 - (vii) Fidelity Bond representing 20% of paid-up capital;
 - (viii) sworn undertaking to keep proper records and render returns;
 - (ix) a copy of the Dealership Certificate of the authorised dealing clerk being sponsored by the applicant;
 - (x) evidence of minimum paid-up capital of ₦70 million;
- [SECRR(A) 2003, s. 8.]
- (xi) any other information or document that may be required by the Commission from time to time.

(2) Every broker or dealer who files an application for registration on Form S.E.C. 3 as the case may be shall file with such application in duplicate a statement of financial condition in such details as will disclose the nature and amount of assets and liabilities and the worth of such broker or dealer as of a date within 60 days of the date on which the statement is filed.

(3) Securities owned by such broker or dealer or in which the broker or dealer has an interest shall be listed in a separate schedule and valued at the current market price.

(4) The schedule of securities furnished, as a part of the statement of financial conditions shall be deemed confidential.

(5) Nothing contained in these Rules and Regulations shall derogate from the rules of any securities exchange, which give customers of a member, broker or dealer the right to obtain information relative to these financial conditions.

(6) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a broker/dealer.

[SECRR(A) 2005, s. 13.]

B. Jobbers

Registration requirements

The provisions of rule 31 A above shall apply.

Rule 32. Registration of sub-brokers

Registration requirements

(1) An application for registration as sub-broker shall be filed by the applicant on Form S.E.C. 2C as contained in Schedule III to these Rules and Regulations and accompanied by—

- (i) a completed Form S.E.C. 2 for any sponsored individual (where application is by a corporate body);
- (ii) a copy of the Certificate of Incorporation or registration of business names (where applicable) 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 authorised officer of the Commission;
- (iii) a copy of the Memorandum and Articles of Association (where applicable) certified by the Corporate Affairs

Commission which among others shall include the powers to act as sub-broker;

- (iv) a copy of Form C.O. 7 (where applicable) certified by the C.A.C.;
- (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (vi) profile of the company covering among others brief history of the company organisational structure, shareholding structure, principal officers, etc., or where the applicant is an individual, a detailed curriculum vitae shall be filed;
- (vii) Fidelity Bond representing 20% of paid-up capital (applicable to corporate bodies only);
- (viii) sworn undertaking to keep proper records and render returns;
- (ix) a copy of a sworn statement of guarantee from the sponsoring broker/dealer;
- (x) evidence of minimum paid-up capital of ₦5 million (applicable to corporate bodies only. In the case of an individual, evidence of minimum net worth of ₦500,000);
[SECRR(A) 2003, s. 8.]
- (xi) any other information or document that may be required by the Commission from time to time.

(2) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a sub-broker.

[SECRR(A) 2005, s. 14.]

Rule 33. Registration of banker to an issue/receiving banker

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—

- (i) a minimum of two sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) 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 authorised officer of the Commission;
- (iii) 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;
- (iv) copy of the latest audited accounts or audited statement of affairs for banks in operation for less than one year;
- (v) profile of the bank covering among others, its history, organisational structure, shareholding structure, principal officer's type of services rendered and details of past and present activities;
- (vi) Fidelity Bond issued by the Nigeria Deposit Insurance Corporation (N.D.I.C.);
- (vii) evidence of compliance with the minimum paid-up capital as stipulated by the Central Bank of Nigeria;
- (viii) a copy of Form C.O. 7 certified by the Corporate Affairs Commission;
- (ix) full address of head office and branches (if any);
- (x) sworn undertaking to keep proper records and render returns as stipulated by the Commission;
- (xi) sworn undertaking to abide by the Investments and Securities Act, 1999 and the Rules and Regulations of the Commission;
- (xii) any other information or documents that may be required by the Commission from time to time.

(2) Rule 29 (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.

[SECRR(A) 2005, s. 14.]

Rule 34. Registration of Registrars and share transfer agents

Registration Requirements

(1) An application for registration as a Registrar shall be filed on Form S.E.C. 4 contained in Schedule III to these Rules and Regulations and shall be accompanied by—

- (i) a minimum of 2 sets of duly completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) copy of Memorandum and Articles of Association of the company certified by the C.A.C. which shall among others include the power to act as Registrar;
- (iii) copy of Certificate of Incorporation certified by the C.A.C. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;
- (iv) copy of Form C.O. 7 certified by the C.A.C.;
- (v) copy of latest audited accounts or statement of affairs for companies in operation for less than one year;
- (vi) Fidelity Bond representing 20% of paid-up capital;
- (vii) sworn undertaking to keep proper records and render returns;
- (viii) information on facilities including—
 - (a) fire-proof cabinet;
 - (b) filing cabinets;
 - (c) registers;
 - (d) information system and other back-up facilities;
- (ix) information relating to the following:

- (a) control measures to ensure access to facilities by only authorised persons;
- (b) proposed clients;
- (x) evidence of minimum paid-up capital of ₦50 million;
[SECRR(A) 2003, s. 8.]
- (xi) any other document or information required by the Commission from time to time.

(2) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a Registrar.

[SECRR(A) 2005, s. 15.]

Rule 35. Registration of trustees

Registration Requirements

(1) An application for registration as trustee shall be filed on Form S.E.C. 4A and shall be accompanied by—

- (i) a minimum of 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) copy of Memorandum and Articles of Association of the company certified by the C.A.C. which shall among others include the power to act as trustees;
- (iii) copy of Certificate of Incorporation certified by the C.A.C.. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;
- (iv) copy of Form C.O. 7 certified by the C.A.C.;
- (v) latest copy of audited accounts or statement of affairs for companies in operation for less than one year;
- (vi) Fidelity Bond representing 10% of the paid-up capital;
- (vii) sworn undertaking to keep proper records and render returns;

- (viii) evidence of minimum paid-up capital of ₦40 million or any other sum as prescribed by the Commission from time to time;

[SECRR(A) 2005, s. 16.]

- (ix) 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 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a trustee.

[SECRR(A) 2005, s. 17.]

Rule 36. Registration of investment advisers (corporate and individuals)

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—

- (i) 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) a copy of Certificate of Incorporation certified by the C.A.C. where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;
- (iii) a copy of Memorandum and Articles of Association certified by the C.A.C. which shall among others include power to act as investment adviser;
- (iv) a copy of Form C.O. 7 certified by the C.A.C.;
- (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
- (vi) Fidelity Bond representing 20% of paid-up capital;

- (vii) sworn undertaking to keep proper records and render returns;
- (viii) evidence of minimum paid-up capital of ₦5 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:

- (i) certified copy of certificate of registration of business name (where applicable);
- (ii) 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;
- (iii) evidence of minimum net worth of ₦500,000.

[SECRR(A) 2003, s. 8.]

(3) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of an investment adviser.

[SECRR(A) 2005, s. 19.]

Rule 37. Registration of fund/portfolio managers

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—

- (i) 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) a copy of Certificate of Incorporation certified by the C.A.C. where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;

- (iii) a copy of Memorandum and Articles of Association certified by the C.A.C. which shall among others include power to act as fund/portfolio manager;
- (iv) a copy of Form C.O. 7 certified by the C.A.C.;
- (v) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one (1) year;
- (vi) Fidelity Bond representing 20% of paid-up capital;
- (vii) sworn undertaking to keep proper records and render returns;
- (viii) evidence of minimum paid-up capital of ₦20 million.

[SECRR(A) 2003, s. 8.]

(2) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of fund/portfolio manager.

[SECRR(A) 2005, s. 20.]

Rule 38. Registration of rating agency

(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, 1990.

(2) A rating agency in Nigeria that is affiliated to a foreign rating company shall supply the following information:

- (i) evidence of registration of such company in the foreign country;
- (ii) profile of the foreign company and principal officers;
- (iii) audited accounts of the foreign company;
- (iv) affiliation agreement between the Nigerian company and the foreign company.

[SECRR(A) 2006 (1), s. 11.]

Registration Requirements

(3) An application for registration as a rating agency shall be filed in Form S.E.C. 3A and shall be accompanied by—

- (i) a minimum of 2 sets of completed Form S.E.C. 2 to be filed by the sponsored individuals;
- (ii) a copy of the Certificate of Incorporation certified by the Corporate Affairs Commission;
- (iii) a copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission and which shall among others, include the power to act as a rating agency;
- (iv) a copy of Form C.O. 7 certified by the Corporate Affairs Commission;
- (v) a copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (vi) profile of the company covering among others, brief history of the company, organisational structure, shareholding structure, principal officers and detailed information about the promoters;
- (vii) 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;
- (viii) existing or proposed by-laws or rules, guidelines and Code of Conduct;
- (ix) details of rating criteria, methodology and principles;
- (x) 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 14 working days of such alteration:

Provided that a certified copy of all relevant resolutions are forwarded to the Commission within two days of the passing of the resolutions;

- (xi) 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—
 - (a) name(s) of company/securities/issue(s) rated;
 - (b) the rating given including any changes in previous rating (if any);
 - (c) rating methodology (including basic assumptions);
 - (d) an appropriate application/registration fee as determined by the Commission from time to time; and
 - (e) sworn undertaking that the rating agency shall comply with the Act; the Rules and Regulations under the Companies and Allied Matters Act, 1990 and any other relevant legislation(s).

(4) 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.

(5) Sworn undertaking that every employee of an agency shall display a high standard of professionalism and integrity in the conduct of his business.

(6) Sworn undertaking that no rating would be carried out where adequate, accurate and timely material information had not been obtained.

(7) A declaration that rating is an opinion and not a professional investment advice.

(8) Evidence of minimum paid-up capital of ₦20 million.

(9) Any other document or information required by the Commission from time to time.

(10) Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of rating agencies.

[SECRR(A) 2005, s. 21.]

Rule 39. Registration of capital market consultants

(1) The following professionals whose opinion impact directly on capital market transactions are subject to registration by the Commission—

- (i) legal practitioners;
- (ii) accountants;
- (iii) auditors;
- (iv) engineers;
- (v) estate valuers;
- (vi) any other professional that may be determined by the Commission from time to time.

Registration Requirements

An application for registration as a capital market consultant shall be filed as follows:

A. CORPORATE BODIES (LIMITED LIABILITY COMPANIES)

- (1) registered corporate bodies shall file a set of Form S.E.C. 3;
- (2) the application by the corporate body shall be accompanied by—
 - (a) set of duly completed Form S.E.C. 3;
 - (b) two sets of duly completed Form S.E.C. 2 to be filed by at least two partners who shall be known as sponsored officers one of whom shall be the principal partner;
 - (c) curriculum vitae of the sponsored officers including details of activities arranged in order of time from secondary school till date;
 - (d) a copy of the Certificate of Incorporation of the company certified by the Corporate Affairs Commission. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;
 - (e) profile of the firm/company indicating details of past and current activities;
 - (f) two copies of the Memorandum and Articles of Association certified by the C.A.C.;
 - (g) a signed copy of the audited account or audited statement of affairs;
 - (h) full postal address of immediate past employer of sponsored officers;

- (i) sworn undertaking to keep proper records and render returns as may be specified by the Commission from time to time;
- (j) evidence of minimum paid-up capital of ~~₦~~5 million.

[SECRR(A) 2003, s. 8.]

The following shall be forwarded as evidence of capital contribution:

- (i) bank statement;
- (ii) audited account or sworn income and expenditure statement signed by the principal partner.

B. FIRMS AND PERSONS DOING BUSINESS IN THEIR TRUE NAMES

- (1) application shall be made in Form S.E.C. 2 accompanied by the following:
 - (a) certified copy of certificate of business name (where applicable);
 - (b) curriculum vitae of at least two partners (known as sponsored officers 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 address of immediate past employer of sponsored officers;
 - (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 ₦2 million (for partnership) and in the case of an individual, ₦500,000;

[SECRR(A) 2003, s. 8.]

- (2) the consultant and the sponsored officers shall be required to undergo police clearance and submit a police clearance certificate before the application is considered;
- (3) the consultant shall make a sworn statement that the requirements of the Investments and Securities Act have been complied with. Where valuation of property is involved, the consultant shall make a sworn statement that the information contained in the valuation report is true and accurate and in compliance with the standard prevalent in the industry;
- (4) (i) all sponsored officers of market consultants are required to attach a copy of evidence of payment of their annual practising fee to the application;
- (ii) professional indemnity insurance policy shall be forwarded by the applicant.

C. Principal partners in a firm of solicitors applying for registration shall have a minimum of 5 years post-qualification experience while the other sponsored officer shall have a minimum of 2 years post-qualification experience.

D. Rule 29 (3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a capital market consultant.

[SECRR(A) 2005, s. 22.]

A5. Registration of Securities

Rule 40. Types of registerable securities

(A) All securities offered through the following medium are subject to registration by the Commission:

- (a) offer for subscription;
- (b) offer for sale;
- (c) rights issue;
- (d) bonus issue;
- (e) private placement by public companies;
- (f) securities arising from conversion of company to public limited company (P.L.C.);
- (g) debenture/loan stock;
- (h) State and local Governments bonds;
- (i) offer by introduction.

(B) *Registration Requirements*

(1) 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—

- (i) a copy of the resolution(s) by the general meeting authorising the offer and certified by the company Secretary;
- (ii) 2 copies of the Memorandum and Articles of Association (including amendments thereto) of the issuer certified by the C.A.C.;
- (iii) a copy of Certificate of Incorporation of the issuer certified by the C.A.C.;
- (iv) a signed copy of audited accounts for the preceding five years or number of years for which the issuer company has been in operation, (if less than five years) or audited

statement of affairs (in the case of a new company) disclosing the following information:

- (a) financial statements;
 - (b) date of incorporation;
 - (c) authorised share capital;
 - (d) 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.);
 - (e) profile of promoters/directors;
 - (f) profile of management staff;
 - (g) a summary of the objectives and business of the company;
- (v) 2 copies each of the draft Prospectus and abridged Prospectus;
 - (vi) 2 copies of the draft Trust Deed, where applicable;
 - (vii) 2 copies of the underwriting agreement and sub-underwriting agreement, where applicable;
 - (viii) 2 copies of 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;
 - (ix) letters of consent given by the parties to the issue, sworn to before a Notary Public/Commissioner for Oaths. Where the consent is contained in a power of attorney, executed and stamped copy of the power of attorney;
 - (x) notarised letter of consent signed by named individuals from the parties to the issue. Where the consent is contained in a power of attorney, it shall be executed and stamped;

[SECRR(A) 2006 (1), s. 12.]

- (xi) evidence of technical agreement (if any) reached between the issuer and technical partner(s), advisers/consultants;
- (xii) a letter from the issuer opting out of underwriting where the issue is not to be underwritten;
- (xiii) a copy of C.A.C. form containing the particulars of Directors, certified by C.A.C.;
- (xiv) a mandate letter by the issuer to the issuing house;
- (xv) evidence of payment of registration and filing fees;
- (xvi) a certificate of exemption from a recognised stock exchange;
- (xvii) a feasibility report on the project to be financed (for debt issue);
- (xviii) State Government Official *Gazette* or local Government by-law containing the instrument authorising the issue of the bond (applicable to State and Local Government bonds);
- (xix) Irrevocable Standing Payment Order (I.S.P.O.);
- (xx) rating report by a registered rating agency (applicable to a debt instrument);
- (xxi) any other document required by the Commission under these Rules and Regulations.

[SECRR(A) 2005, s. 23.]

(2) All securities required to be registered pursuant to the Act shall be registered with the Commission by the issuer filing an application as in subrule (1) above and the application shall in addition contain information to indicate the type and general character of the securities including the following:

- (i) the nominal value, the rate of dividends if fixed and whether cumulative or non-cumulative;
- (ii) a brief description of the preference shares if any;

- (iii) in the case of debts instruments, the rate of interest, the date of maturity or if the issue matures severally, a brief indication of the serial maturities;
- (iv) 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;
- (v) the organisational and financial structure and nature of business of the company, including any risk factors;
- (vi) 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 ~~N~~50,000 in value of whichever is higher;
- (vii) the bonus and profit sharing arrangements;
- (viii) the management and service contracts;
- (ix) write up from the issuing house on the issue;
- (x) schedule of claims and litigation;
- (xi) bridging loan agreement and schedule of other material contracts where applicable;
- (xii) evidence of property ownership or transfer;
- (xiii) any other document or information required by the Commission from time to time.

(3) Where it is intended to list the security on the Securities Exchange or with any association or body of security dealers recognised by the Commission, the issuer shall in addition to subrules (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.

(4) 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 documents of offer, shall be forwarded to the Commis-

sion 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 stamped power of attorney in favour of any other available party to sign on his behalf. This shall be filed with the offer documents.

(5) 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.

(6) Any other material information.

(C) SHELF REGISTRATION

Definition

(1) 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.

Scope of Securities

(2) Shelf Registration shall be applicable to all types of registrable securities as defined in section 264 of the Investments and Securities Act, 1999.

Eligibility for use of the Shelf Registration

(3) (a) Unless otherwise indicated by the Commission, all public companies listed on a recognized Securities Exchange for a minimum period of twelve months are eligible to issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in accordance with a shelf registration.

Provided that there shall be full disclosure of:

- (i) any prosecution commenced against either the issuer or any of its subsidiaries in respect of any breach of any se-

curities or banking laws or the Companies and Allied Matters Act, 1990;

- (ii) any action taken against the listed company by a recognized Securities Exchange in respect of any breach of the listing requirements of the Exchange;

(b) An issuer shall not be eligible for shelf registration where the issuer or any of its subsidiaries 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 calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus.

Transaction requirement

(4) The value of the issue on offer under shelf registration shall not be less than ₦5 billion.

Requirement for Shelf Prospectus and Supplementary Shelf Prospectus

(5) (i) A person 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.

Contents of Shelf Prospectus and Supplementary Shelf Prospectus

(6) (a) A shelf prospectus shall—

- (i) comply with the general form and contents of a prospectus as set out in sections 48 to 63 of the Investments and Securities Act 1999 and rules 52 to 59 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 indicate 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 the 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 prosecution 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, 1990 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 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; and

- (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 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 Investments and Securities Act, these Rules and Regulations or any listing requirements of a recognised 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 prosecution 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, 1990 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.

General Duty of Disclosure in Shelf Prospectus and Supplementary Shelf Prospectus

(7) (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 reasonably 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.

Issuing of Shelf Prospectus

(8) 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 supplementary shelf prospectus and not the shelf prospectus.

Delivery of Shelf Documents to the Public

(9) 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.

Fees for Shelf Registration

(10) All Issuers of a shelf prospectus shall pay a filing fee of ₦50,000 and a vetting fee of ₦200,000 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.

[SECRR(A) 2006 (2), s. 4.]

Rule 41. Collective investment schemes

1. UNIT TRUST

Requirements for Authorisation

- (a) An application for authorisation of a unit trust scheme shall be filed by the manager on Form S.E.C. 6A as pro-

vided in Schedule III to these Rules and Regulations and shall be accompanied with—

- (i) 2 copies of draft Prospectus;
 - (ii) 2 copies of draft Trust Deed;
 - (iii) proposed portfolio mix and expected yield;
 - (iv) notarised letters of consent signed by named individuals from the prospective parties to the scheme;
[SECRR(A) 2006 (1), s. 13.]
 - (v) two copies each of Certificate of Incorporation and Memorandum and Articles of Association of the manager certified by the C.A.C.;
 - (vi) two copies each of Certificate of Incorporation and Memorandum and Articles of Association of the Trustee to the Scheme certified by the C.A.C.;
 - (vii) two copies of Form C.O. 7 of the manager and trustee to the Scheme certified by the C.A.C.;
 - (viii) sworn undertaking to file evidence of maintenance of separate funds account in a reputable bank;
 - (ix) evidence that minimum paid-up capital complies with the requirements of the Commission as stipulated in these Rules and Regulations;
 - (x) any other material information.
- (b) An application for registration of units of the Scheme shall contain such information as will indicate the type and general characteristics of the units including the following:
- (i) The name under which the issuer is doing or intends to do business and address of its principal office;
 - (ii) the name of the proposed Scheme;
 - (iii) date of commencement;
 - (iv) investment objective of the Scheme;

- (v) number of units proposed for issue;
 - (vi) nominal value per unit;
 - (vii) the name and addresses of the directors or persons performing similar functions and the Chief Executive, financial or accounting officers of the issuer or of all partners if the issuer is a partnership;
 - (viii) the names and addresses of brokers to the Scheme;
 - (ix) the names and addresses of all persons owning 5% and above of any class of shares of the issuer either on record or beneficially as at the date of filing of the application for authorisation of the Scheme;
 - (x) the amount of the proposed units of the issue to which any person specified in subparagraphs (vii), (viii) and (ix) have indicated their intention to buy or subscribe;
 - (xi) the general nature of the business actually transacted or to be transacted by the manager;
 - (xii) sworn undertaking to file monthly reports and returns with the Commission;
 - (xiii) any other information required by the Commission from time to time.
- (c) An application for registration of subsequent or additional units of an authorised scheme shall be made on the prescribed form.

Functions of the Unit Trust Manager

- (d) The manager of a unit trust fund shall perform the following functions:
- (i) select and manage the portfolio of investment in accordance with the Trust Deed;
 - (ii) redemption and issue of units of the Unit Trust Scheme;
 - (iii) maintenance of schedule of unit holders;

- (iv) preparation of periodic accounting records of the Scheme;
- (v) keeping of the books of the Scheme (excluding books or documents relating to investment of the Scheme's Fund);
- (vi) filing of monthly and other periodic returns/reports with the Commission, Trustees of the Fund, the Registrars and unit holders;
- (vii) organising the Annual General Meeting of the Scheme;
- (viii) sourcing for more leveraged fund where permitted by the Trust Deed;
- (ix) representing the interest of the Scheme in both the national and global market;
- (x) complying with the provisions of the Investments and Securities Act, 1999, Trustee Investments Act, 1962, and the Trust Deed.

2. REAL ESTATE INVESTMENT SCHEME (REIS)—

(a) *Requirements for Registration of Real Estate Investment Trust*

An application for registration of a Real Estate Investment Trust shall be filed by the manager on Form S.E.C. 6A (1–3) as provided in Schedule III to these Rules and Regulations and shall be accompanied with—

- (i) 2 copies of draft prospectus;
- (ii) 2 copies of draft trust deed;
- (iii) letters of consent from the prospective parties to the trust;
- (iv) 2 copies each of certificate of incorporation and memorandum and articles of association of the manager certified by the C.A.C.;

- (v) 2 copies each of certificate of incorporation and memorandum and articles of association of the trustee to the trust certified by the C.A.C.;
 - (vi) 2 copies each of the particulars of the directors of the manager and trustee of the trust certified by C.A.C.;
 - (vii) sworn undertaking to file evidence of the maintenance of separate Trust Accounts in a reputable bank;
 - (viii) evidence that the minimum paid up capital of the Manager and Trustee complied with the requirements of the Commission as stipulated in these Rules and Regulations.
- (b) *Requirements for the Registration of Units of Real Estate Investment Trust*

An application for registration of the units of the investment trust shall contain the following information:

- (i) the name under which the issuer is doing business and the address of its principal office;
- (ii) the name of the proposed scheme;
- (iii) date of commencement;
- (iv) investment objective of the scheme;
- (v) investment outlets;
- (vi) number of units proposed for issue;
- (vii) nominal value per unit;
- (viii) the names and address of the Directors or persons performing similar functions, the Chief Executive Officer and the Chief Accountant;
- (ix) the name(s) and address(es) of brokers to the scheme;
- (x) the names and addresses of all persons owning 5% and above of any class of shares of the issuer both

- on record and beneficially as at the date of filing the application for registration of the trust scheme;
- (xi) the amount of the proposed units of the issue to which any person specified in paragraphs (viii), (ix) and (x) have indicated intention to buy or subscribe;
 - (xii) the general nature of the business actually transacted or to be transacted by the manager;
 - (xiii) sworn undertaking to file quarterly reports with the Commission;
 - (xiv) any other information required by the Commission from time to time.

[SECRR(A) 2006 (2), s. 5.]

3. INVESTMENT TRUST

The provisions of (1) above shall apply in respect of the registration of an Investment Trust.

4. COMMUNITY SAVINGS

Requirements for Registration of Community Savings Scheme (ESUSU, ADASHE, etc.)

[SECRR(A) 2005, s. 24.]

The Investments and Securities Act, 1999 requires the Commission to register the Community Savings Schemes (ESUSU, Adahse etc.) for statistical purposes. In order to achieve this, the Commission intends to work with Local Governments and Area Councils of the Federation using the following requirements—

(1) Every Community Savings Scheme shall have a register, to be referred to as “register of members” wherein the name and contributions of all members of the Fund shall be contained.

(2) Every Community Savings Scheme operator shall complete Form S.E.C. 6A1 for purposes of registration of the scheme and subsequently, every six months.

[SECRR(A) 2005, s. 24.]

(3) A Community Savings Scheme shall be operated within the community where the promoter and participants reside.

(4) All completed registration forms shall be submitted to the Local Government Council Secretariat within which the scheme operates.

[SECRR(A) 2005, s. 24.]

A6. Post-registration Compliance Requirements by Capital Market Operators

Rule 42. Membership of Self-regulatory Organisations (S.R.O.)

(1) In addition to registration with the Commission, a broker or dealer is required to be a member of one or more Self-regulatory Organisations (S.R.O).

(2) Where the broker or dealer effects transactions solely on a securities Exchange of which it is a member, that exchange is the appropriate S.R.O.

(3) A broker or dealer shall be a member of an association of securities dealers to effect transactions in an over-the-counter market.

(4) Where the broker or dealer effects transactions on any exchange and over-the-counter market, the appropriate Self-regulatory Organisation shall be the Exchange and the Association of Security Dealers.

Rule 43. Code of Conduct

(1) All registered persons shall comply with the Commission's Rules on orderly, fair and equitable dealings in securities and ensure that they maintain proper standards of conduct and professionalism in securities business. They shall also comply with the Code of Conduct for market operators approved by the Commission and contained in Schedule IX of these Rules and Regulations.

(2) All registered persons shall display the certificate of registration issued by the Commission at the reception of their offices.

Rule 44. Fingerprinting/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 authorised 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) An adverse report shall be a ground for—

- (i) denial of registration;
- (ii) withdrawal of registration where the Commission granted registration without knowledge of such adverse reports.

Rule 45. 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 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 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 se-

curities 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—

- (i) file with the Commission within 5 days after the making of any claim under the bond a statement of the nature and amount of the claim;
- (ii) file with the Commission within 5 days of the receipt thereof, a copy of the terms of the settlement of any claim made under the bond.

Rule 46. Inspections

(1) A registered person shall be subject to inspection by the Commission for compliance with regulatory requirements within one month of registration.

(2) The Commission may after the inspection in subrule (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.

Rule 47. 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 5 years from the end of the year during which the last entry was made on such record, the first 2 years in an appropriate office of the registered person.

Rule 48. 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.

Rule 49. Changes in information at the time of registration

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

- (i) 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;
- (ii) where changes mentioned in paragraph (i) above affect the audited accounts, the amended accounts shall be filed with the Commission within six months of the occurrence of the aforementioned change.

[SECRR(A) 2005, s. 25.]

PART B*Regulation of Distribution of Public Securities**B1. Public Offer***Rule 50. Filing of registration statement**

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.

[SECRR(A) 2005, s. 26.]

Rule 51. 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—

- (i) before the issuer has filed a registration statement with the Commission; or
- (ii) after the registration statement has been filed but before it is cleared by the Commission; or
- (iii) after the Completion Board meeting but before the issue is authorised to open except in the following circumstances:
 - (a) preliminary negotiations or actual agreement between the issuer and the underwriter;
 - (b) oral offers not made to the public;
 - (c) 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 ₦5,000 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.

Rule 52A. 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:

- (i) the name of the issuer;
- (ii) 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;
- (iii) 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;

- (iv) 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.

[SECRR(A) 2006 (1), s. 14.]

Rule 52B. Guidelines for advertisement on the issue of securities

(1) It shall be unlawful for the issuer or issuing house to publish any advertisement relating to public offer without the approval of the Commission.

(2) (a) Issuing houses shall ensure compliance by the issuer, with these guidelines on advertisement.

(b) Issuing houses shall comply with the following:

- (i) 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;
- (ii) ensure that the issuer obtains approval in respect of all advertisements and publicity materials from the Commission through the issuing house.

(3) (i) 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.

(ii) Information on billboards 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 5 years 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 following advisory clause:

“please read the Prospectus/Rights Circular and where in doubt, consult your stockbroker, accountant, banker, solicitor or any other professional adviser for guidance before subscribing”,

shall be stated as a footnote in the print and electronic media advertisements.

[SECRR(A) 2006 (1), s. 14.]

Rule 53. Form, size, number, etc., of Prospectus

(1) Every Prospectus filed with the Commission as part of the registration statement shall be in duplicate, not longer in size than A4 paper and in printed form:

Provided that in the case of issuers of securities through the capital trade point, the prospectus may be abridged in terms of content and may not be in printed form.

[SECRR(A) 2002, s. 12.]

(2) The information required in a prospectus shall follow the order required in rule 53 and rule 54 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.

Rule 54. 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.

Rule 55. 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, 1999 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.

[SECRR(A) 2006 (1), s. 15.]

(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 Securities and Exchange Commission for registration;
- (b) this Prospectus is issued under the provisions of the Investments and Securities Act, 1999 and in compliance with the requirements of the Rules and Regulations of the Securities and Exchange Commission (“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 subrule (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 shares will qualify as a security in which trustees may invest under the Trustee Investment Act (Cap. 449), Laws of the Federation of Nigeria, 1990.

Rule 56. Contents of a prospectus/rights circular

(1) Every prospectus shall contain the information required by the Third Schedule to the Investment and Securities Act, 1999 and shall in addition state the following information:

- (i) the front cover shall state the name of the issuer, the issuing house, their respective C.A.C. registration certificate (R.C.) numbers, the type of offer, amount/number of shares being offered, the price and amount payable in full on application;
- (ii) 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;
- (iii) 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, forecast earnings per share, forecast earnings yield at the offer price, forecast price earnings ratio, forecast dividend per share and forecast dividend yield; whether or not the offer is underwritten and if there would be any preferential allotment;
- (iv) the offer stating the requirements of rules 55 (2) and (3), the times of opening and closing of the offer, the share capital of the company showing the authorised share

capital, issued and fully paid and the indebtedness of the company, stating details of bridging loan if any;

[SECRR(A) 2006 (1), s. 16.]

- (v) names and addresses of the directors and their respective shareholding and names and addresses of other parties to the issue;
- (vi) the Chairman's letter/statement which should disclose the history and business of the company, directors, management and staff, premises, purpose of the offer, profits, prospectus and dividends, working capital adequacy and future developments of the company, and any other material information;
- (vii) five year historical financial information stating the accountant's report, 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 years, audited historical financial information for the number of years in existence or an audited statement of affairs for a new company;
- (viii) letter from the reporting accountants reviewing the audited accounts for the period, profit forecast and the underlying assumptions (not applicable to rights issue);
- (ix) rating report (for debt issue);
- (x) statutory and general information stating date of incorporation, registration number and share capital history of the company, the principal shareholders, directors' interests, subsidiaries and associated companies, extract from the Articles of Association, claims and litigations, material contracts, consents, documents available for inspection, underwriting and any other material information;
- (xi) procedure for application and allotment;
- (xii) collecting agents;

- (xiii) the receiving bank;
- (xiv) application form;
- (xv) any other information required by the Commission from time to time.

[SECRR(A) 2005, s. 27.]

(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 **“For information concerning certain risk factors which should be considered by prospective investors, see “risk factors” commencing on the relevant page hereof ”**.

[SECRR(A) 2005, s. 27.]

(3) *Risk factors*

Risk factors peculiar to the issuer shall be stated in the prospectus including the following risks:

- (a) risks associated with the business activities of the entity;
- (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.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(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).

[SECRR(A) 2005, s. 27.]

(7) Information about 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.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(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 section 54 (3) of the I.S.A., 1999;
- (c) **“related party”** shall bear the same meaning as related company as defined in section 95 (1) of the I.S.A., 1999.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(11) *Mergers or take-over*

The Prospectus shall contain a statement as to whether or not either of the following has occurred during the preceding financial year and 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.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(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 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.

[SECRR(A) 2005, s. 27.]

(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 utilised 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 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 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 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 Generally-accepted Accounting Principles and S.E.C. Rules and Regulations.

[SECRR(A) 2005, s. 27.]

(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; if industrial property, e.g. factory, the capacity utilisation of the factory and all 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
Address	Leased	Tenure		been revalued)

- (b) The Prospectus shall contain a valuer's report where the assets have been revalued.

[SECRR(A) 2005, s. 27.]

(16) *Financial and non-financial disclosure requirements*

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.

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 re-

port. 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 recognising same as profit.

(b) Off-balance sheet items:

Off-balance sheet transactions shall be disclosed both in the financial statements and properly presented 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.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(18) *Corporate governance compliance*

The Prospectus and annual report shall state the level of compliance with the Code of Corporate Governance.

[SECRR(A) 2005, s. 27.]

(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.

[SECRR(A) 2005, s. 27.]

(20) *Capacity utilisation*

The issuer shall disclose in the Prospectus its percentage utilisation of installed capacity (where applicable).

[SECRR(A) 2005, s. 27.]

(21) *Research and development*

The issuer shall state in the Prospectus amount expended on research and development in the last three years, if any.

[SECRR(A) 2005, s. 27.]

(22) *Disclosure of developments/events occurring after submission of Prospectus but before opening the offer*

The issuer, issuing house and reporting accountants shall report immediately to the Commission, the occurrence of any event after the submission of Prospectus for clearance, which event is likely to alter the contents of information in the offer documents or render the earlier information misleading.

[SECRR(A) 2005, s. 27.]

Rule 57. Abridged Prospectus

(1) An abridged prospectus filed as part of registration statement in accordance with this Rule shall be deemed to be a prospectus for the purpose of the Investments and Securities Act, 1999 if it meets the requirements of the Commission under this Rule:

Provided that—

- (i) at the time the registration statement is filed, an application has been made to a recognised securities exchange for the securities to be listed;

- (ii) the issuer proposes to raise more than ₦10 million where it intends to list its securities on the main market and not more than ₦10 million where it intends to list its securities on the second-tier market.

(2) Where it is not intended to list the securities on a recognised 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.

Rule 58A. 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 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 Investments and Securities Act, 1999 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.”;

- (i) the dates of opening and closing of the offer;
- (ii) indebtedness of the company;
- (iii) history and business of the company;

- (iv) parties to the issue;
- (v) purpose of the offer;
- (vi) summary of financial information;
- (vii) claims and litigations.
- (viii) material contracts;
- (ix) procedure for application and allotment (state if there would be preferential allotment);
- (x) collecting agents and receiving banker;
- (xi) application form;
- (xiii) 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 summarised form as may be appropriate in the light of the circumstances under which it is to be used.

Rule 58B. Contents of statement in lieu of Prospectus

The statement in lieu of Prospectus shall be in compliance with the Fourth Schedule of the Act.

Rule 59. 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 manually by the person giving consent. A corporate body giving consent shall do so through duly authorised persons who shall be a director, company secretary or persons acting in those capacities with the seal of that body. Original copies of such consent shall be filed with every application.

Rule 59A. Parties to an issue/scheme

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 professionals

whose opinions and activities directly impact on capital market transactions.

[SECRR(A) 2005, s. 38.]

Rule 60. Opening and closing of offer

(a) A rights issue, offer for subscription or offer for sale of securities to the public shall remain open for a period not exceeding 28 working days:

Provided that in the case of privatisation, it shall not exceed 40 working days.

[SECRR(A) 2006 (1), s. 17.]

(b) The Commission may, on an application by the issuer, grant extension of time on the happening of any of the following events:

- (i) 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);
- (ii) crisis such as labour unrest or riots which could lead to office shutdowns;
- (iii) a minimum of three (3) days public holidays within an offer period;
- (iv) natural disasters such as earthquake, fire outbreaks, etc.

[SECRR(A) 2003, s. 1, SECRR(A) 2006 (1), s. 17.]

(c) Any application for extension of time 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 offer document. No offer under (a) shall continue beyond the closing date unless prior written approval of the Commission is obtained.

[SECRR(A) 2003, s. 1.]

Rule 61. Application form

(1) 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.

(2) Applications shall be rejected for any of the following reasons and any allotments made contrary thereof shall be null and void:

- (a) incorrect multiples of units;
- (b) omission of signature;
- (c) omission of company seal/R.C. No.;
- (d) thumb print impression not witnessed;
- (e) wrong amount;
- (f) failure to write names in the correct order;
- (g) printed signature;
- (h) improper completion of application forms;
- (i) name/signature erased;
- (j) omission of surname;
- (k) incomplete address;
- (l) multiple applications;
- (m) applications by persons below the age of 18 years;
- (n) applications by nominees for non-eligible persons;
- (o) any other reasons which the Commission may by rules prescribe from time to time.

(3) 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.

Rule 62. 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.

Rule 63. 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.

Rule 64. 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 opened for that purpose with the receiving banker duly registered as a capital market operator.

- (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.

[SECRR(A) 2006 (1), s. 18.]

- (b) The particulars of the account shall be forwarded to the Commission within seven (7) days of the opening of the account.

[SECRR(A) 2006 (1), s. 18.]

- (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.

[SECRR(A) 2006 (1), s. 18.]

- (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 authorised uses of the proceeds among others, as well as forward to it, a copy of the approved Prospectus.

[SECRR(A) 2006 (1), s. 18.]

(2) After 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 and in the case of over-subscription, another certified cheque representing the value of the over-subscription in the name of the Registrar, and deliver same to the issuing house the next working day after clearance of the allotment proposal.

Such monies shall be delivered by the issuing house to the Registrar not later than 2 working days after clearance of the allotment proposal.

(3) (a) All proceeds of the issue including underwriting commitments shall be paid to the issuer not later than the next working day following the allotment as approved by the Commission where the issuing house is also the receiving banker.

(b) In any case where the issuing house is not the receiving banker, proceeds of issue shall be paid to the issuer within 2 working days of allotment.

(4) All surplus monies shall be returned to the affected subscribers by the Registrar within five working days of the approval of the allotment proposal.

[SECRR(A) 2002, s. 14, SECRR(A) 2006 (1), s. 19.]

(a) The Commission may approve the utilisation of surplus monies where—

- (i) it was disclosed in the Prospectus that it shall be utilised, stating the uses such fund would be put;
- (ii) the authority to utilise such fund was contained in the resolution of the general meeting of the company that authorised the raising of funds through public offer of securities, and;
- (iii) the surplus amount to be utilised is not more than 25% of the surplus monies.

[SECRR(A) 2006 (1), s. 19.]

- (b) The Registrar shall within 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 despatch.

[SECRR(A) 2006 (1), s. 19.]

(5) The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the Prospectus.

(6) (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.

Rule 65. Summary report on completion of a public offer

(1) The issuing house shall within 21 working days of approval of allotment file with the Commission a summary report containing among others, the following:

[SECRR(A) 2006 (1), s. 20.]

- (a) problems arising generally from the conduct of the issue;
- (b) satisfactory compliance of parties with their obligations under the issue;
- (c) workability of the timetable adopted by the parties to the issue;
- (d) details regarding the return of surplus monies;
- (e) details and any evidence of despatch of share certificates;
- (f) status of listing of the securities at the Exchange;

- (g) details and evidence of payment of net proceeds of issue to the issuer;
- (h) analysis of total cost incurred during the course of the offer;

[SECRR(A) 2005, s. 29.]

- (i) any other relevant information and recommendation.

[SECRR(A) 2005, s. 29.]

(2) The issuer and the issuing house shall file with the Commission not later than 90 days after clearance of allotment reports on Form S.E.C. QR8 giving detailed information on the utilisation of proceeds of issue. Evidence of such utilisation shall be provided as appendix to the report.

Rule 66. 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 authorising the facility/loan;
- (d) C.B.N. approval (where applicable).

Rule 66A. Annual report and accounts

(1) The issuers shall release and file simultaneously with the Commission and the Stock Exchange, and not more than 48 hours after, to the public, quarterly and interim financial statements and annual report within 30 days of the end of quarter and within

180 days of audited annual report. Such reports shall be prepared in accordance with relevant statements of accounting standards and the Generally-accepted Accounting Principles (G.A.A.P.).

(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.

[SECRR(A) 2005, s. 30.]

Rule 67. 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.

Rule 68. Allotment period and submission of allotment proposal

(1) An allotment proposal shall be presented to the Commission not later than 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—

- (i) summary of applications received;
- (ii) list of allottees with 50,000 shares and above and list of all allottees acquiring 5% or more of the shares on offer;

- (iii) list of all applications received including list of those rejected and the basis for rejection;
- (iv) 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.

[SECRR(A) 2002, s. 15, SECRR(A) 2005, s. 31, SECRR(A) 2006 (1), s. 21.]

(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.

Rule 69. Basis of allotment

(1) Preferential allotment shall be agreed to by the shareholders subject to the consent of the Commission and shall be disclosed in the offer document for the issue.

(2) In the case of over-subscription in a public offer, or renounced shares in a rights issue, preference shall be given to small investors applying for the specified minimum subscription level and the higher the number of shares applied for, the lower the percentage allotted.

[SECRR(A) 2005, s. 32.]

Rule 70. Under-subscription

(1) Underwritten securities shall be warehoused by the underwriter(s) and sold on the floor of the Securities Exchange or capital trade point within six months after allotment.

[SECRR(A) 2005, s. 33.]

(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 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 issue is not fully subscribed, the under-subscribed portion which is not underwritten shall revert to the company as part of its unissued authorised share capital.

[SECRR(A) 2005, s. 33.]

(6) (i) 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.

[SECRR(A) 2005, s. 33.]

(ii) Where an issue not underwritten is under-subscribed (that is less than 25% subscription level and 50% in case of securities offered through the capital trade point), the issue shall be aborted by the issuer/issuing house.

[SECRR(A) 2005, s. 33.]

(iii) The issuing house shall publish in at least two daily national newspapers details of the decision to abort the offer not later than 5 working days after the Commission has been notified of the decision.

[SECRR(A) 2005, s. 33.]

(iv) The Registrar to the issue shall return monies to subscribers to the aborted issue not later than 30 days of the decision to abort the issue.

[SECRR(A) 2005, s. 33.]

(v) Subject to the prior approval of the Commission, an aborted issue may be resuscitated by the issuer/issuing house within 30 days of date of notification of the aborted issue to the Commis-

sion. No resuscitation of such issue shall be entertained by the Commission after subscription monies have been returned to subscribers as prescribed in paragraph (iv) above.

[SECRR(A) 2005, s. 33.]

Rule 71. Publication of allotment

The issuing house shall within five working days of allotment, publish the allotment in at least two national daily newspapers.

[SECRR(A) 2006 (1), s. 22.]

Rule 72.

[SECRR(A), 2006 (1), s. 23.]

Rule 73. Cost of issue

The total cost of issue shall not exceed 7% of the gross total proceeds from the issue or such percentage as the Commission may prescribe from time to time.

[SECRR(A) 2006 (1), s. 24.]

Rule 74. 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 authorising 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.

Rule 75. Underwriting of public issues

(1) All public issues shall be underwritten except where the issuer specifically requests in writing for non-underwriting and the Commission finds that it is in the interest of the public not to require underwriting. The copy of the letter from the issuer requesting for non-underwriting of its issue shall be filed with the Commission.

(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 the whole issue and full payment has been made and received by the issuer, the following shall apply:

- (i) The underwriter shall sell the securities on an Exchange.
- (ii) The underwritten securities shall be sold within six months from the date of allotment to the underwriter. The date of allotment and entry of the underwriter's name in the register of members shall be three days from the date of fulfilment of the underwriting commitment.
- (iii) Where the securities are not disposed of within the six month period, the underwriter may apply to the Commission for extension. The Commission may within ten days grant or deny such application for extension.
- (iv) Underwriters shall submit quarterly returns to the Commission in respect of the undisposed securities until same is fully disposed.

[SECRR(A) 2006 (1), s. 25.]

(5) Where any party or parties in an underwriting agreement intend to terminate the agreement, such party or parties shall give not less than 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.

[SECRR(A) 2005, s. 35.]

(6) 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 5 working days;
- (b) a maximum period of 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 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.).

[SECRR(A) 2005, s. 35.]

(7) The underwriting agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the Investments and Securities Act, 1999 and the Commission's Rules and Regulations made thereunder.

[SECRR(A) 2005, s. 35.]

Rule 76. Amount to be underwritten

(1) The amount or percentage of the issue underwritten by any issuing house is subject to review and amendment by the Commission if such is in the interest of the capital market or the investing public.

(2) The level of underwriting commitment at any time shall not be more than two and half times ($2\frac{1}{2}$) the paid-up share capital and reserves of the underwriter in the aggregate.

Rule 77. Underwriting commission

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.

[SECRR(A) 2006 (1), s. 26.]

Rule 78A. Time amount underwritten is made available

(1) In all cases of firm underwriting commitment the underwriter shall make 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 made available to the issuer the next working day after clearance of allotment and on which day the underwriting commission shall fall due and become payable.

Rule 78B. 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:

- (i) definitions;
- (ii) obligations of the issuing house(s);
- (iii) obligations of the issuer;
- (iv) representation and warranties by the issuer;
- (v) covenant by the issuer;
- (vi) covenant by the issuing house(s);
- (vii) indemnities;
- (viii) remuneration of the issuing house(s);
- (ix) agreement defining the relationship between the joint issuing houses where there is more than one issuing house;
- (x) conditions and terminations;
- (xi) time;
- (xii) notices;
- (xiii) governing laws;
- (xiv) 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 5 working days;
- (b) a maximum period of 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 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 Investments and Securities Act, 1999 and the Commission's Rules and Regulations made thereunder.

B2. Regulation of Trading on Rights

Rule 79.

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.

Rule 80.

(a) Any issuer offering new shares to its existing shareholders by way of rights shall deliver to the Commission, a Rights Circular containing among others, the following information:

- (i) the rights price;
- (ii) the period for which the rights will be tradable on the securities exchanges or a specified over-the-counter market (O.T.C.).

(b) In the case of a public quoted company, the issuer shall apply to the exchange(s) or the National Association of Securities Dealers (N.A.S.D.) for the quotation of the rights on the exchange(s) or the O.T.C. for the period referred to in subrule (a) (ii) above.

(c) 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.

Rule 81.

(a) 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.

(b) A shareholder exercising the right referred to in subrule (a) above shall as transferor, renounce in favour of the shareholder's stockbroker the quantity of share provisionally allotted to the shareholder which he intends to sell, by completion of the usual instrument or transfer form authenticated by the relevant Registrars.

Rule 82.

(a) The issuer shall ensure that existing shareholders receive a copy of the Rights Circular or become aware of the rights offer not less than 21 days before the opening of the offer.

(b) The Registrar shall despatch 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.

(c) The exchange(s) shall in the interval between the receiving of the application for the rights offer and the opening date of the offer,

place the share price of the issuer on technical suspension which suspension shall be lifted after the close of the offer.

Rule 83.

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 authorised to sell;
- (c) an additional transfer form with the selling shareholder as transferor for the quantity of the rights the shareholder wishes to keep.

Rule 84.

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.

Rule 85.

Delivery of the rights by a selling broker to a buying broker may be effected in either of the following manners:

- (a) 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;
- (b) use of certified stock/share transfer form where the requirements in (a) above have already been lodged for-

mally 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.

Rule 86.

The 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.

Rule 87.

- (a) Any lodgement of 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.
- (b) Any lodgement 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 lodgements with the Registrars by providing—
 - (i) a copy of the original Rights Circular or certified stock/share transfer form(s) accompanied respectively by the requisite documentation specified in rule 81 above;
 - (ii) 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.
- (c) 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).
- (d) Stockbrokers shall file with the Commission on the prescribed form returns on rights traded.

Rule 88.

Share certificates shall be issued and despatched by the Registrars to the ultimate purchasers of the rights within the time specified in these Rules and Regulations for despatch of share certificates.

B3. Regulation of Private Placement

Rule 89. Definitions

(1) No public company shall offer securities by way of private placement without the prior approval of the Commission.

(2) “**Private placement**” shall mean the issue of securities not involving public offering.

[SECRR(A) 2006 (1), s. 27.]

Rule 90. Conditions for approval of offer

Private placement by public companies shall be subject to the following conditions:

- (i) 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.
- (ii) The securities shall not be offered to more than 50 subscribers.
- (iii) The resolution of the company authorising 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.
- (iv) The notice of the general meeting authorising the placement shall be published in two national daily newspapers and evidence of the publications shall be filed with the Commission.
- (v) The aggregate number of shares to be offered through private placement by a public quoted company shall not

exceed 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.

- (vi) The price of the securities of the company, if quoted, shall be on technical suspension during the period of placement.
- (vii) The offer shall be for a period as proposed by the issuer and approved by the Commission but not exceeding 10 working days:

Provided that the Commission may extend the period under special circumstances.

[SECRR(A) 2006 (1), s. 28.]

Rule 91.

[SECRR(A) 2006 (1), s. 29.]

Rule 92.

[SECRR(A) 2006 (1), s. 30.]

Rule 93. 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—
 - (i) 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
 - (ii) 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 repre-

sentative had requisite knowledge, and the offeree is able to bear the risk of investment.

Rule 94. Access to information, etc.

(1) Access to information shall be only by reason of the offeree's position to the issuer.

(2) Each offeree shall have access to the same kind of information included in a placement memorandum or any offering document.

(3) The offeree shall have 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.

At a reasonable time prior to the sale of securities, the issuer shall furnish to the offeree, the same kind of information included in a placement memorandum to the extent necessary for proper understanding of the issuer, its business and the securities being offered.

Rule 95.

[SECRR(A) 2006 (1), s. 32.]

Rule 96. Filing requirements

(1) The issuer shall within 10 working days of the close of offer, file a report on the offer with the Commission.

[SECRR(A), 2002, s. 20, SECCR(A) 2006 (1), s. 34.]

(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) time of payment;
- (d) nature of the offeree;
- (e) amount company is raising.

[SECRR(A) 2002, s. 21, SECCR(A) 2006 (1), s. 34.]

(3) The report shall be signed by person(s) duly authorised to do so by the issuer.

Rule 97. Placement memorandum

Where a private placement is proposed in line with this regulation, the issuer shall file two copies of the placement memorandum containing, amongst others, the following:

- (i) Summary of the offer.
- (ii) Financial summary for five years, (or less if the company is less than five years old).
- (iii) Directors/Parties.
- (iv) Chairman's letter.
- (v) Profit forecast (optional).
- (vi) Historical financial information containing the accounting policies, balance sheets, profit and loss accounts, cash flow statements and notes to the Accounts.
- (vii) 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.
- (viii) Placement period.
- (ix) Application form.

[SECRR(A) 2006 (1), s. 35.]

PART C

Regulation of Conduct of Securities Business

Rule 98. Electronic offer and transfer of securities

Without prejudice to other provisions in these Rules and Regulations, a company may offer or transfer its securities electronically: Provided that where an investor elects to have a share certificate, the company shall issue him or her with a share certificate.

[SECRR(A) 2006 (1), s. 36.]

Rule 99. 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 ₦50,000.00 with a stockbroker on account of transaction and a stockbroker may pay cash, not exceeding ₦50,000.00 on account of sale of securities.

(2) Where a prospective purchaser deposits cash not exceeding ₦50,000.00 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.

[SECRR(A) 2005, s. 37.]

Rule 100. Know your customer

(1) Capital market operators shall obtain information about their clients before entering into a binding contract. For this purpose, they shall demand, among others, the following—

- (a) Individuals—
 - (i) Names;
 - (ii) Mother's maiden name;
 - (iii) Residential Address (Street, Number and Name of Town);
 - (iv) Next of kin;

- (v) Passport photograph;
- (vi) Thumb print (where applicable);
- (vii) Signature;
- (viii) Any form of identification including, Drivers license, International passport or National identity card;
- (ix) Employer's name and address or vocation and place of business;
- (x) Purpose and reason for opening the account or establishing the relationship;
- (xi) Sources of wealth or income and expected origin of the funds to be used during the relationship;
- (xii) Place of domicile;
- (xiii) Home town / State of origin;
- (b) Institutional (Corporate) Investors—
 - (i) Name and Address;
 - (ii) Certificate of incorporation certified by C.A.C.;
 - (iii) Memorandum and Articles of Association certified by C.A.C.;
 - (iv) C.A.C. Form showing list and particulars of Directors certified by C.A.C.;
 - (v) C.A.C. Form on return of allotment of shares, showing share structure, certified by C.A.C.;
 - (vi) Purpose and reason for opening the account or establishing the relationship;
 - (vii) Expected origin of the funds to be used during the relationship.

(2) Where a customer is acting on behalf of another, e.g. someone else is supplying the funds, or the investment is being held in the name of someone else, the capital market operator shall verify the

identity of the client as well as the third party to ensure that the audit trail for the funds is preserved.

(3) Capital market operators shall require duly executed power of attorney from a party purporting to act on behalf of another in the sale or purchase of securities. A power of attorney executed abroad shall be registered in Nigeria before it can be relied upon by a market operator.

(4) (i) Market operators shall put in place procedures for recording transactions conducted through e-mail or other electronic devices or by telephone and take relevant identification evidence.

(ii) A broker shall have a recorder to record telephone instruction from a customer and shall within the prevailing settlement period, obtain a written confirmation of the telephone instruction.

(5) Where a recognized financial institution introduces a customer, the capital market operator shall request for an introduction letter which must either be accompanied by certified copies of the identification evidence that had been obtained from the customer or by sufficient details/reference numbers that will permit actual evidence obtained to be confirmed at a later stage.

(6) Where a customer fails to provide satisfactory identification within a reasonable time, a market operator shall not open the account, commence business relationship or perform the transaction and where money has been deposited, the operator shall make a suspicious transaction report to the Economic and Financial Crimes Commission and the Commission.

(7) Where a potential customer, a customer or beneficial owner is a politically exposed person, a capital market operator shall take the following steps—

- (a) the decision to open the account or to continue the relationship shall be taken at senior management level; and
- (b) ascertain the source of funds;

- (c) for the purpose of this sub-rule, a politically exposed person shall include a serving or former political appointee in any tier of government of the federation or their agencies and their relations such as wives, brothers, sisters, children and other close relations.

(8) A capital market operator shall, in its know your customer procedure, give prior notice to a customer that information provided will be verified. Such notice shall be as or in similar form to the sample in Schedule VIII.

[SECRR(A) 2005, s. 38.]

Rules 101 to 104. *See the provisions of sections 74 – 80 of the Act.*

Rule 105. 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:

- (i) documentary evidence of the indebtedness for which the securities certificate is pledged as collateral;
- (ii) 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;
- (iii) duly executed transfer forms.

(2) Where a company intends pledging securities as collateral for a loan, in addition to (1) (i) above, the company shall deposit with the pledgee, the following documents:

- (i) board resolution signed by the Chairman of the company and the company secretary;
- (ii) 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 waiv-

ing any right to be notified of subsequent transfer by the Registrar;

- (iii) duly executed transfer form signed and sealed by the Chairman and company secretary and noted by the Exchange on which the securities are quoted.

(3) Duty of the broker

The broker shall ensure that any certificate or statement of shareholding issued by the relevant authority to which subrules (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

On receipt of lodgement of securities certificates and documents specified in subrule (1) above, the Registrar shall effect the necessary changes in names and addresses within twenty-four (24) hours if verification proves satisfactory.

C1. Trading in Securities

The provisions of these Rules and Regulations shall apply to transactions relating to securities ownership.

Rule 106. 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:

- (i) public quoted companies;
- (ii) public unquoted companies;
- (iii) Governments and Government Agencies;
- (iv) investment schemes.

Rule 107. Registerable securities

The following securities are subject to registration by the Commission:

- (i) securities issued, that is, ordinary shares, bonus shares, debentures, preference shares, rights issue and units of a unit/investment trust scheme, and asset backed securities;
- (ii) issue of securities for the purpose of taking over an existing business or asset;
- (iii) any securities offered to the public;
- (iv) State/Local Government bonds/securities;
- (v) investment contracts or participation in any profit sharing agreement or in any oil or gas or other mineral royalties or lease.

Rule 108. 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.

Rule 109A. Rules relating to securities ownership

- (i) Every Registrar shall file with the Commission information on beneficial owners of 5% or more of the company's shares.
[SECRR(A) 2006 (1), s. 37.]
- (ii) Any subsequent transaction by holder in (i) above shall also be filed with the Commission on Form S.E.C. 6B.
- (iii) Information in (i) and (ii) above shall be filed within 5 days of the change in ownership.

Rule 109B. Rules relating to acquisition of own shares by companies

(1) These Rules shall apply to public companies including banks that are quoted on the Securities Exchange.

(2) Every company acquiring its own shares shall file an application with the Commission for the approval of such acquisition ac-

company 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 Articles of Association of the company shall contain a clause authorising the acquisition by the company of its own shares;
- (ii) the company shall not acquire more than 15% of its issued shares;
- (iii) an undertaking that no voting rights shall be exercised by the company or its nominee or trustee in respect of the acquired shares;
- (iv) the company and/or the directors shall file details of the directors' shareholding before and after the acquisition.

(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.

Rule 109C. 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.

Rule 110. 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 subrule (1) (e) of this Regulation, dealing by an insider applies to dealings at a recognised 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, utilises 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 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 in a position, involving a professional or business relationship to 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
- (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.

Rule 111. 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 section 95(2) ISA, 1999.

[SECRR(A) 2005, s. 39.]

Rule 112. 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 stockbroking/dealing companies engaged by a company to which he is a director.

Rule 113. Disclosure in interest of stockbroking/dealing companies in quoted companies

Stockbroking/dealing companies shall disclose their interest in public quoted companies in offer documents as well as in their Annual Report and Accounts.

Rule 114. Disclosure of interest in 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.

Rules 115 to 118. *See the provisions of sections 81 – 89 of the Act.*

PART D

Regulation of Securities Exchanges and Transactions on Exchanges, Capital Trade Points and other Self-regulatory Organisations

D1. Securities Exchanges

Rule 119A. 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 recognised securities exchange. The Securities Exchange may impose conditions for granting such “permitted trading status” and file same with the Commission.

Rule 119B. Notices to members of exchange

(1) A securities exchange shall file with the Commission, within five (5) working days before issuing to members of the Exchange, any notices, circulars, lists, bulletins, etc., or a copy of any such material.

(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 Exchange may issue it, to members.

(4) A facsimile or other electronic copy of such notice may be sufficient.

Rule 119C. Securities exchanges to require disclosure of information likely to affect financial condition

- (a) 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.

- (b) Information relating to the following shall specifically be disclosed by the company:
- (i) Changes in the board of the company;
 - (ii) The death or resignation of a principal officer;
 - (iii) Significant drop or increase in company's inventory;
 - (iv) Major fire outbreak;
 - (v) Major theft or major destruction of the company's assets or disruption of production;
 - (vi) Any changes in the rights attached to any class of listed securities into which they are convertible;
 - (vii) The results of any new issues and the effect, if any, of further issues on outstanding options, warrants and convertible securities.

[SECRR(A) 2005, s. 42.]

Rule 120. 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—

- (i) the number of shares sold and the aggregate naira amount;
- (ii) the principal amount of bonds sold and the aggregate naira amount;
- (iii) the number of right and warrants sold and total amount in naira;
- (iv) any other information concerning such securities.

(2) (a) The Chief Executive of 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 Chief Ex-

ecutive of the Commission a written report on the activities of the Exchange during the previous quarter.

(b) The Director-General of the Commission shall forward to the Minister every written report received by him in accordance with subrule (1) of this Rule and shall also submit such written comments thereon as he may wish to make.

Rule 121. Floor trading

(1) No members of a registered Exchange while on the floor of the Exchange, shall initiate directly, 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 subrule (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 stabilisation 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/computerised trading systems.

Rule 122. 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 16 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 Chairman shall permit the brokers to do so up to such units of the shares brought to the floor by them provided there are sufficient funds in their trading accounts.

(3) (i) The Chairman shall keep 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.

(ii) He shall also keep records of attendance of dealing members.

(iii) Submit daily official list to the Commission.

(iv) Report all impropriety on the floor to the Chief Executive immediately they occur or are brought to his notice.

(4) (i) The price movement of securities shall be based on market forces, individual company's incidental macro and micro economic factors and preferences of clients.

(ii) Price movements above 5% shall be justified and notified to the Commission not later than the next working day.

(iii) Recognised securities exchanges shall take reasonable steps to avoid arbitrage in the trading on securities. The highest closing price of a security on any of the exchanges shall be the opening price on all the other exchanges.

(5) The Chairman shall display the official list at least one hour before trading commences.

Rule 123. Disposal of reports and documents filed with the Exchange, 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 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.

Rule 124. 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 not later than 30 days (or such shorter period as the Commission may authorise) before any action is taken on such amendments, repeal or addition by the members of the Exchange or by any governing body thereof.

(2) If any change is made in a proposed amendment, repeal or addition after the report is filed with the Commission, the 30 days period (or such shorter period as the Commission may authorise) shall begin to run from the time the Commission is notified of such change unless the change does not, after the substance of the proposed amendment, repeal or addition or the change is made in conformity with a suggestion by the Commission.

Rule 125. 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 shares or amounts of such class when issued upon listing; and
- (b) without further application for listing upon issuance as to additional shares or amounts of such class then or thereafter authorised.

(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 modi-

fication 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.

Rule 126. 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—

- (i) the approval of the Securities Exchange listing the security;
- (ii) the title of the security so approved;
- (iii) the date of filing with the Securities Exchange of the application for and of any amendments thereto; and
- (iv) 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 recognised 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.

Rule 127. 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.

Rule 128. 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.

Rule 129. 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 122 of these Rules and Regulations.

Rule 130. 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 therefor.

(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.

Rule 131. 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 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 10 days appeal to the Commission for review of the decision of the Exchange.

The Commission shall within 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 10 days consider and dispose of the application and notify the Commission when such application is approved.

Rule 132. Rules of securities associations relating to listings/quotations

(1) In cases where an association 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, a provision to the effect 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 free and transparent market, and not permit unfair discrimination between customers or issuers, broker or dealers to produce fair and informative quotations both at the wholesale and retail levels 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.

(2) *Over-the-counter markets*

Definition: As used in any rules adopted pursuant to the provisions of these Regulations—

- (a) the term **“customer”** shall not include a broker/dealer;
- (b) the term **“the completion of the transaction”** means—
 - (i) in the case of a customer who purchases a security through or from a broker or dealer except as provided in subparagraph (ii) of this subrule, the time when the customer 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;
 - (ii) in the case of a customer who purchases a security through or from a broker or dealer and who makes payment therefor 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;
 - (iii) in the case of a customer who sells a security through or to a broker or dealer except as provided in subparagraph (iv) of this subrule 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 or dealer transfers the security from the account of the customer; and
 - (iv) 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.

Rule 133. Fraud and misrepresentation

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

Rule 134. 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 or dealers which regularly disseminates quotations of identified brokers or dealers but shall not include a quotation sheet prepared and distributed by a broker or dealer in the regular course of his business and containing only quotations of the broker/dealer;
- (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 130 or 131 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.

Rule 135. Review of decisions of Self-regulatory Organisations (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.

Rule 136. Dealing members

(1) The rules of an exchange may permit a member of the Exchange to license 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 a course of dealings that may assist in the maintenance of fair and orderly market, and that the Exchange may suspend or cancel the licensing of the dealing member if there is a finding by the Exchange of any substantial or continued failure by a dealing member to engage in such a course of 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 subrule

(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 thereunder, 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 15 days after the filing of copies of the Rules thereof.

(4) The Exchange shall within 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) (i) Pursuant to the Act and rule 42 (1) of these Rules and Regulations, the rules of a securities exchange may permit its licensed dealing member to be licensed as a dealing member in any other recognised Securities Exchange or capital trade point or association.

(ii) A securities exchange shall not make any rule to prohibit or penalise any of its dealing members from trading in any listed securities on any other recognised 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 the Exchanges on the subject-matter and this shall be filed with the Commission within 5 days of execution.

Rule 137. Records to be maintained by the exchange members, etc.

(1) Every member of an exchange or any association or body of securities dealers recognised 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 itemised 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) itemising 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 transfer;
 - (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 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 authorised 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 authorised 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, including any disciplinary action 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 misdemeanour, 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 subrule (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.

Rule 138. Records to be preserved by certain exchange members, etc.

(1) Every member, broker or dealer shall preserve for a period of not less than 6 years, all the records required to be made pursuant to paragraphs (a), (b), (c) and (d) of subrule (1) of rule 137.

(2) Every person subject to this Rule shall preserve for a period of not less than 3 years, in an easily accessible place—

- (a) all records required to be made pursuant to paragraphs (e), (f), (g), (h) and (i) of subrule (1) of rule 137;
- (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 6 years in an easily accessible place, all records required under paragraph (j) of subrule (1) of rule 137, 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 may be substituted therefor; or
- (b) if a person who has been subject to the provisions of rule 137 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.

Rule 139. Filing of report

(1) The provisions of this Rule shall apply to every dealing member of a recognised 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 recognised 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 30 days after the date of the report of the financial condition.

(5) For the purposes of subrule (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.

Rule 140. Nature and form of reports

A report of financial condition filed pursuant to rule 148 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 of 1990; provided, however, that such report need not be certified if, since the date of the previous financial statement or report filed pursuant to rule 138, 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 subrule (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 authorised 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 authorised officer.

Rule 141. Use of statements filed with the Commission and the Exchange

Any member, broker or dealer who is subject to the provisions of rule 138 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 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.

Rule 142. 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 rules 139 and 140 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 subrule (1) of this Rule shall be deemed granted, unless the Commission within 30 days after receipt thereof, enters an order denying the application.

D2. Capital Trade Points

The provision of rules 119-131 and 135-142 shall apply. However, where a capital trade point is of the opinion that compliance with any of the above rules would cause hardship/burden on it, it may apply to the Commission for waiver from complying with the said rule. The following shall apply to companies listed on C.T.P.

(a) *Accounts:*

Companies listed on the C.T.P. are required to submit half-yearly un-audited accounts and an audited annual account which should be published in one national and one local newspaper. The account need not be bound.

(b) *Application form:*

The photocopy of the application form for subscription may be accepted.

(c) *Parties to Issue:*

Companies raising money through the C.T.P. need not employ the full complements of the parties to a public offer. The issuer may package the offer or employ the services of any of the registered market operators. However an independent Registrar shall be employed by the issuer.

(d) *Cost of Issue:*

The cost of issue shall be limited to the actual amount raised and not the total value of the offer.

(e) *Payment of S.E.C. fee:*

The Commission's fees on transactions shall not exceed 0.25% of the value of the securities traded.

[SECRR(A) 2002, s. 13.]

D3. National Association of Securities Dealers

The provisions of rules 131 to 142 shall apply.

D4. Commodity and Futures Exchange

Rule 143. Registration requirements

- (i) All commodity and futures exchanges and branches thereof shall register with the Commission as provided in Part A3 of these Rules and Regulations.

- (ii) An application for registration as an exchange shall be made in accordance with the provisions of rule 22 of these Rules and Regulations.

Rule 144A. Governing Council

- (i) The Exchange shall have a governing council.
- (ii) The Governing Council 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.
- (iii) The functions, composition and powers, etc., of the Governing Council shall be as stated in the Rules of the Exchange and approved by the Commission.

Rule 144B. Code of Conduct

The Exchange shall have a Code of Conduct, approved by the Commission, for its staff and members.

Rule 145. Floor brokers/futures commission merchants/floor traders, introducing brokers and associated persons

Registration Requirements

- (i) All floor brokers, futures commission merchants, introducing brokers and associated persons wishing to operate in the commodity/futures market shall register with the Commission.
- (ii) An application for registration as a market operator shall be filed on the form prescribed in Part A4 rule 29 of these Rules and Regulations.
- (iii) The application, shall contain the information and be accompanied by the documents required under rule 29 of these Rules and Regulations.

Rule 146. Separation of account

- (i) Monies received should be promptly deposited in a segregated account.
- (ii) 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 organisation or another operator, shall be deposited under an account name that clearly identifies them as such.
- (iii) Under no circumstances shall any portion of clients' monies be withdrawn except for purpose of payment of deposits and margins to the clearing house, payment of debts due to the members from the client, or reimbursement of monies expended by the members on behalf of the client, monies drawn on the clients' authority, monies properly requested for payment to a client in connection with any physical deliveries of futures transactions on the Exchange or any other market.
- (iv) 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.
- (v) 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 ₦2000 for every day the default persists.
- (vi) 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.

Rule 147. Commodity futures trading adviser

Registration Requirements

- (i) All commodity trading advisers, whether individual or corporate shall register with the Commission in accordance with the provisions of Part A4 rules 32 and 33 of these Rules and Regulations.
- (ii) An application for registration as a commodity trading adviser, shall be filed on the forms prescribed in rule 32.

Rule 148. Clearing and Settlement Agency

Registration Requirements

- (i) All clearing and settlement agencies shall register with the Commission in accordance with rule 25 of these Rules and Regulations.
- (ii) An application for registration as a Clearing and Settlement Agency filed with the Commission on the prescribed form shall be accompanied with the following:
 - (a) certified true copy of the Certificate of Incorporation;
 - (b) two certified copies of its Memorandum and Articles of Association with all amendments thereto and its existing by-laws or rules which are referred to as Rules of the Clearing and Settlement Agency;
 - (c) an undertaking to submit to the Commission copies of any proposed amendments to its rules prior to their adoption;
 - (d) an undertaking to comply with and to enforce, so far as is within its powers, compliance by its members with the provisions of the Act and any amendments thereto and of any rule or regulation made thereunder; and
 - (e) any other data as to its organisation, rules and procedures.
- (iii) The Commission shall register a Clearing and Settlement Agency only if it appears to the Commission that the

agency is organised 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.

- (iv) 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 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 60 days of the date on which the statement is filed.

Rule 149. Registration of commodities, futures, options contracts

- (i) 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.
- (ii) 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 recognised by the Commission being an association or body set up for the promotion and further development of the market.
- (iii) 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 recognised.

Rule 150. Periodic returns

- (a) The operators registered herein shall make periodic returns of their operations, that is quarterly and annual returns to the Commission or as may be prescribed by the Commission.
- (b) 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—
 - (i) commodity/futures exchange;
 - (ii) floor traders, brokers and future commission merchants;
 - (iii) commodity trading advisers;
 - (iv) commodity pool operators;
 - (v) clearing agency.

Rule 151. Fees

- (i) The fees chargeable by the Commission 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.
- (ii) 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.

Rule 152. Fidelity Bond

All operators are required to obtain a Fidelity Bond against fraud or defalcation by their personnel.

Rule 153. Maintenance of adequate records of affairs and transactions

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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 not exceeding ₦500 for every day or part thereof in which such failure, refusal or neglect persists.
- (v) 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.
- (vi) Such records shall include current ledgers or other similar records, which show or summarises, with appropriate references to supporting documents, each transaction affecting its assets, liability, income expenses and capital accounts.
- (vii) All books and records required to be made 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 years in its operating office.

Rule 154. 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—

- (i) 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;
- (ii) renewal and auxiliary ledger reflecting assets, liabilities, reserve, capital, income and expenses accounts;
- (iii) all cheque books including counterfoils of used cheque, bank statements, cancelled cheque and cash reconciliation of the market operator or clearing house;
- (iv) all trial balances, financial statements, and internal audit working papers relating to the business of the market operator or clearing houses;
- (v) 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;
- (vi) 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;
- (vii) 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;

- (viii) 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—
 - (a) 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
 - (b) transactions in contracts which are direct obligations of the Federal Republic of Nigeria;
- (ix) subject to relevant provisions of these Regulations, every market operator shall preserve for a period of not less than 10 years, the first 5 years in an easily accessible place, all pertinent records which shall, among others, include—
 - (a) all cheque books, bank statements, cancelled cheques and cash reconciliations;
 - (b) all bills receivable or payable (or copies thereof) paid or unpaid, relating to the business of such operator;
 - (c) originals of all communication received and copies of all communication sent by such operator, (including inter-office memoranda or communications) relating to his business;
 - (d) 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;
 - (e) all guarantees of accounts and all powers of attorney and other evidence of the granting of discre-

tionary authority given in respect of an account and copies of resolutions empowering an agent to act on behalf of a corporation; and

- (f) all written agreements (or copies thereof) entered into by such operator relating to his business as such, including agreements in respect of any account;
- (x) every operator shall preserve for a period of not less than 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;
- (xi) 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;
- (xii) 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;
- (xiii) the Exchange shall file with the Commission three copies of a report of any proposed amendment or repeal of or any addition to its rules not less than 30 days (or such shorter period as the Commission may authorise) before any action is taken on such amendment, repeal or addition by the members of the Exchange or by any governing body thereof;
- (xiv) such proposed amendment, repeal of or addition to its rules shall receive prior approval of the Commission before it becomes effective;
- (xv) provided however, that under emergency circumstances the report need not be filed as provided in this regulation but in such a case the Exchange shall file three copies of a report giving the Commission as much notice as the cir-

cumstances permit, together with a written statement of the reasons why the filing of the report was impracticable.

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 itemised 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 realised;

(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 standardised 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 itemised 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 realised;
- (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 organisation, 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 unrealised 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 organisation which receives documents from its clearing members representing investment of customers' funds shall keep a record showing separately for each clearing member the following—

- (a) the date on which such documents were received from the clearing member;
- (b) a description of such documents; and
- (c) the date on which such documents were returned to the clearing member or the details of disposition by other means.

Rule 155. 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 deal in 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 subrule (1) of this Regulation, dealing by an insider applies to dealings at a recognised exchange and off-the-market dealings in advertised commodities. Insider dealing occurs where a person or group of persons who is in possession of some confidential price sensitive information not generally available to the public, utilises such information to buy or sell commodities and futures for its own account or makes such information available to a third-party (either knowingly or unknowingly) who uses it for his benefit.

Rule 156.

[SECRR(A) 2006 (1), s. 38.]

Rule 157. Floor/pit trading

- (i) No member of the Commodity Exchange shall, while on the floor of the Exchange, 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, whether any transaction shall be one of purchase or sale.

- (ii) The provisions of subrule (i) 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.

Rule 158. Exchange members

The rules of a commodity/futures exchange may permit a member of the Exchange to be licensed as an exchange member and in such a situation the rules shall, among others—

- (i) prescribe adequate minimum capital requirements in compliance with the Rules and Regulations of the Commission;
- (ii) require as a condition for licensing as an exchange member 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;
- (iii) include procedures for the effective and systematic surveillance and investigation of the activities of exchange members.

Rule 159. Minimum financial requirements

- (i) 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 44 and 45 of these Rules and Regulations and as may be specified by the Commission from time to time.
- (ii) A registered operator shall maintain capital adequacy in accordance with the Rules, conditions and procedures stipulated by the Commission from time to time.

Rule 160. 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 concerns crop 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.

Rule 161. 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.

Rule 162. Records and reports of warehouses, depositories and other similar entities: visitation 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 authorised 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 5 years from the date thereof.

Rule 163. 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 thereunder of commodities of grades conforming to specified standards. Such standards shall have been officially promulgated and adopted by the Commission. 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 Commission 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 Commission.

Rule 164. 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—

- (a) **“associated person”** means any natural person who is associated in any of the following capacities with—
 - i. 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;
 - ii. 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
 - iii. 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
 - iv. 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
 - v. 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;
- (b) **“business day”** means any day other than a Saturday, Sunday or 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;
- (c) **“clearing member”** means any person who is a member of, or enjoys the privilege of clearing trades in his own name through the clearing organisation of a contract market;
- (d) **“clearing organisation”** means the person or organisation 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;

- (e) **“commodity”** means and includes cocoa, rubber, palm kernel, palm oil, coffee, hides and skin, gold, wheat, cotton, rice, corn, oats, barley, rye, flax-seed, grain sorghums, mill feeds, butter, eggs, potatoes, wool tops, fats and oils (including lard, tallow, cottonseed meal, groundnut oil, soyabean meal oil, and all other fats and oils), cottonseed, groundnuts, soyabeans, soyabean meal, livestock products, oranges, solid 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;
- (f) **“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;
- (g) **“commodity option transaction”, “commodity option”** each 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;
- (h) **“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 com-

modity 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;

- (i) **“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;
- (j) **“contract market”** means a commodity/futures exchange;
- (k) **“contract of sale”** includes sales, purchases, agreements of sale or purchase and agreements to sell or purchase;
- (l) **“controlled account”** an account shall be deemed to be controlled if a holder of power of attorney or otherwise actually directs trading for such account;
- (m) **“customer”, “commodity customer”** have the same meaning and refer to a customer trading in any commodity named in the definition of commodity herein;
- (n) **“customer funds”** means all money, securities, and property received by any commodity futures market operator or by a clearing organisation from, for, or on behalf of customers or option customers—
 - (1) 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
 - (2) 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;
- (o) **“delivery month”** means the month of delivery specified in a contract of sale of any commodity for future delivery;
- (p) **“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;
- (q) **“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;
- (r) **“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;
- (s) **“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—

- (1) 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 unrealised gain or loss on such contracts;
 - (2) in the case of foreign options customers in connection with open foreign options transactions money, securities and property representing premiums paid or received;
 - (3) other funds required to guarantee or secure open transactions plus or minus any unrealised gain or loss on such transactions;
- (t) **“future delivery”**, this term does not include any sale of a cash commodity for deferred shipment or delivery;
- (u) **“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 therefrom; and
 - (2) shall include any person required to register as a futures commission merchant under the Act;
- (v) **“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;

(w) **“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 therefrom; and
- (2) includes any person required to register as an introducing broker by virtue of subrule (2) (i) of the general provisions of these Rules and Regulations, provided that the term “introducing broker” shall not include—
 - (i) any futures commission merchant, floor broker, or associated person, acting in his capacity as such;
 - (ii) 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
 - (iii) any commodity pool operator who acting in his capacity as a commodity pool operator, solely operates commodity pools;

(x) **“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;

- (y) **“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;
- (z) **“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;
- (zi) **“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;
- (zii) **“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;
- (ziii) **“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;
- (ziv) **“person”** includes individuals, associations, partnerships, corporations, and trusts;
- (zv) **“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;
- (zvi) **“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;

(zvii) **“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—

- (1) for one of the following persons; or
- (2) 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 organisation;

- (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 dependant 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;
- (zviii) “**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.

D5. Clearing and Settlement Agencies

PART E

Regulation of Capital Market Operators

E1. General

Rule 165A. 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.

[SECRR(A) 2006 (2), s. 6.]

Rule 165B. Compromise with creditors

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

Rule 166. Issuing house fees

Issuing house fees on equities and interest bearing securities shall not exceed 2.5 percent of the market value of the securities or as prescribed by the Commission from time to time.

Rule 167. Broker/Dealer fees

(1) Broker/dealer fees for the purchase or sale of securities on behalf of their clients shall not exceed 3% of the market value of the securities.

(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 S.R.O.

Rule 168A. Maintenance of adequate records of affairs and transactions

(1) All registered 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 subrule (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 subrules (1) and (2) of this Regulation shall be liable to a fine of ₦1,000 for every day such contravention, failure, neglect or refusal persists; in addition to any other sanction the Commission may impose.

Rule 168B. Appointment of Compliance Officer

(1) Every market operator shall appoint a compliance officer who shall be responsible for monitoring 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.

[SECRR(A) 2006 (2), s. 8.]

Rule 169. Examination by Self-regulatory Organisations

(1) A market operator, subject to these Regulations, shall permit duly authorised officer(s) of an S.R.O. to which the market operator belongs to examine the activities and records of such operator.

(2) An 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 30 days after the quarter in which such inspections were carried out.

Rule 170. Reports to be filed

- (1) Every registered Market Operator whether active or not shall file with the Commission reports listed in Schedule IV of these Rules and Regulations—
 - (i) Quarterly returns shall be filed within thirty days after the end of the quarter.
 - (ii) Annual accounts certified by an auditor and prepared on a calendar or fiscal year basis, shall be filed not later than six months after the end of the accounting year.
 - (iii) Where a market operator fails to file quarterly returns two times consecutively, and nine months in the case of annual reports, he 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.

[SECRR(A) 2005, s. 43.]

- (2) report to the Commission, the Exchange to which it is a member, and the Registrar, the discovery of the theft or loss of any security. Such reports shall be made within 48 hours of the discovery and shall state the following information if applicable—
 - (i) name of issuer;
 - (ii) type of security;
 - (iii) date of issue;
 - (iv) maturity date;
 - (v) denomination;
 - (vi) interest rate;
 - (vii) certificate number;
 - (viii) name in which registered;
 - (ix) date of discovery.

Rule 171. Recognition of accountants

The Commission shall not recognise as a qualified accountant any person who is not duly recognised and entitled to practice as such under the laws of Nigeria or any accountant who is barred by the Commission, for the protection of investors, from acting as such in connection with any public offering.

Rule 172. Auditor's report

(1) The auditor's report shall be duly signed and dated and shall contain—

- (a) a reasonably comprehensive statement as to whether the auditor reviewed the procedures followed for safeguarding the securities of customers, and including, if with respect to significant items in the report covered by the certificate and auditing procedures generally recognised 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 made 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 accountant under the circumstances of the particular case.

(2) 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 rule 157 of these Regulations.

Rule 173. Opinions to be expressed

The report of the auditor shall state clearly his opinion with respect to the financial statement covered by the report and the accounting principles and practices reflected therein.

Rule 174. 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.

E2. Brokers/Dealers

Rule 175. Functions

Registered brokers/dealers shall have the following functions amongst others—

- (i) purchasing securities on behalf of his clients and himself;
- (ii) disposing of securities on behalf of his client and himself;
- (iii) trading on registered securities exchanges and over-the-counter markets;
- (iv) other services ancillary to (i) to (iii) above;
- (v) disclose to the Commission any single deal in a company's securities of 500,000 units and above within a day.

[SECRR(A) 2005, s. 44.]

Rule 176. Net capital requirement

No broker or dealer shall permit his aggregate indebtedness to exceed 200 percent of his net capital.

Rule 177. Records of transactions with clients

A broker/dealer shall maintain proper and adequate records of transactions for and on behalf of each client. Such records shall include among others—

- 1. mandate forms;
- 2. contract notes;
- 3. clients' statement of accounts;
- 4. deposit receipt for purchase of shares;

5. scrip receipt for certificate deposit;
6. the exact price at which each quantity of shares were bought or sold;

[SECRR(A) 2005, s. 45.]

7. the full details of fees charged on secondary market transactions.

[SECRR(A) 2005, s. 45.]

Rule 178. Segregation of accounts/hypothecation/margin accounts, etc.

(a) A broker/dealer is required at all times to keep separate accounts for every client transaction and shall not engage in the following acts—

- (i) mixing of client's funds with funds of the broker/dealer in a single account;
- (ii) mixing of securities carried for the account of a customer with securities carried for the accounts of any other customer or self;
- (iii) pledging of any securities of a client to borrow in the ordinary course of business as a broker/dealer;
- (iv) use of client's fund to purchase securities not specified in the prior mandate of the client;
- (v) alteration of the client's mandate without obtaining the prior consent of the client;
- (vi) use of client's uninvested funds for purposes other than for the benefit of the client;
- (vii) any other act that may be specified by the Commission from time to time for the protection of investors.

(b) 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—

- (i) a broker/dealer maintaining margin accounts shall, as a matter of policy, disclose it in the annual audited accounts and to his clients;
- (ii) no broker/dealer shall extend credit to his clients in excess of 200 percent of his net capital in the aggregate per annum;
- (iii) margin accounts maintained by a broker/dealer shall not be used for any other purpose other than for transaction in securities;
- (iv) a broker/dealer shall file a quarterly report with details of the operations of the margin account.

Rule 179. Periodic reports to clients

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

- (i) a quarterly report of its clients accounts showing all purchase transactions on behalf of the client including the statement of account for the period.
- (ii) a quarterly report detailing the client's share portfolio, including the statement of share ownership from the clearing agency.

[SECRR(A) 2006 (2), s. 9.]

(2) Notwithstanding subrule (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.

Rule 180. Soliciting deposit

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

Rule 181. Mandate to purchase shares

Every broker/dealer shall ensure that the aggregate worth of all mandates to purchase securities for clients does not exceed 200 per-

cent of paid-up share capital and reserves of the stock broking company.

Rule 182A. Broker acting as agent

(1) A broker acting as agent of the transferor shall verify the certificate or statement of holdings for such security with the Registrar of the issue before any deal on such security can be done on an exchange. On no account shall a client's holding be disposed of without specific mandate.

[SECRR(A) 2005, s. 46.]

(2) The period between when a certificate statement of holdings for a security is verified and lodged shall not exceed 5 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 lodgement within 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.

[SECRR(A) 2005, s. 46.]

(4) In the case of nominal transfer, the broker shall submit evidence of verification and lodgement with the Registrar within 5 days and the certificates (where applicable) mailed by registered post by the broker to the clients within 5 days after collection from the Registrar.

(5) Unauthorised disposal of shares or non-purchase or delay in purchase of shares where it is available and non-remittance of the proceeds of sale to client shall attract a fine of up to ~~N~~5000 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.

[SECRR(A) 2005, s. 46.]

Rule 182B. Suspension of a Broker

(1) Any broker suspended for a period longer than three months, shall provide the Commission, not later than seven 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 unconcluded 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 or ailing capital market operator in the interest of the general investing public.

[SECRR(A) 2005, s. 47, SECRR(A) 2006 (2), s. 6.]

E3. Sub-broker

The provisions of Part E2 shall apply.

E4. Jobber

The provisions of Part E2 shall apply.

E5. Issuing Houses

Rule 183. Functions

Registered issuing houses shall have the following functions amongst others—

- (i) financial/investment advisory services;
[SECRR(A) 2005, s. 48.]
- (ii) acting as agent of issuer for purposes of primary issues and schemes of arrangement under mergers and take-over;
[SECRR(A) 2005, s. 48.]
- (iii) co-ordinating activities of other professionals and parties to the issue;
- (iv) preparing the Registration Statement, the Prospectus and other offer documents;
- (v) any other roles ancillary to any of the above.
[SECRR(A) 2005, s. 48.]

Rule 184. Separate accounts for proceeds of issue

(1) 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.

(2) The issuing house to every issue shall ensure that all proceeds of the issue are kept in a separate account in accordance with these Rules and Regulations.

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

[SECRR(A) 2002, s. 23.]

Rule 185. Returns to be filed

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

- (i) allotment proposal;
- (ii) statement of account as at the date of allotment;
- (iii) evidence of transfer of the proceeds of the issue to the issuer;
- (iv) certified copies of returns filed with the Corporate Affairs Commission;
- (v) semi-annual statement of activities in the capital market including staff movement;
- (vi) completed Form S.E.C. QR3 as contained in Schedule Three;
- (vii) evidence of publication of results of allotment in at least two national newspapers.

E6. Underwriters

Rule 186. Definition and functions

Underwriting is an arrangement whereby an underwriter undertakes for a permissible commission to pay an issuer of security at a predetermined date, an amount based on the price of the shares determined by 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.

Rule 187.

(a) Persons who may act as underwriters:

- (i) 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.
- (ii) The following may act as underwriters—
 - (a) merchant banks;
 - (b) issuing houses;
 - (c) insurance companies;
 - (d) any other person as may be determined by the Commission from time to time.
- (iii) Every mandate to act as underwriter must be evidenced in an underwriting agreement which shall be filed with the Commission along with the offer documents in a public offer of securities.
- (iv) 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.
- (v) Where there is more than one underwriter, an agreement regulating the relationship between them shall be filed with the Commission.
- (vi) The provisions of these Rules shall be read in conjunction with the rules guiding public offer of securities and in particular rules 76 to 78 dealing with amount to be underwritten, underwriting commission and amount of time underwritten is made available to the issuer.

(b) 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) authorisation 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.

All underwriters shall forward to the Commission a copy of the letter of offer from the issuer appointing them as underwriter for the issue.

E7. Fund/Portfolio Managers

Rule 188. Functions

Registered fund/portfolio managers may perform the following functions amongst others—

- (i) financial advisory services;
- (ii) determination of type of securities to transact in;
- (iii) publication of financial market periodicals;
- (iv) management of funds and portfolios on behalf of investors;
- (v) any other role ancillary to any of the above.

Rule 189. Books and records to be maintained by fund/portfolio managers

(1) Every fund/portfolio manager shall keep and maintain accurately the following books and records relating to his functions, namely—

- (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 ledgers reflecting assets, liabilities, reserves, capital, income and expenses accounts;
- (c) all cheque books including counterfoils of used cheques, bank statements, cancelled cheques and bank/cash reconciliation of the manager;
- (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 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, except—
 - (a) transactions effected in any account over which neither the manager nor any advisory representative

of the manager has any direct or indirect influence or control; and

- (b) transactions in securities which are direct obligations of the Federal Republic of Nigeria.

(2) The records and books referred to in subrule (1) of this Regulation shall state the title and amount of the security involved, the date and nature of the transaction, purchase, sale or other acquisition or disposition, 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 subrule (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 subrule (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 subrule (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—

- (i) 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;
- (ii) 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.

(8) All books or records required to be made under the provisions of subrules (1) to (7) of this rule shall be maintained and preserved in a readily accessible place for a period of not less than 6 years from the end of the year during which the last entry was made

on such record, the first 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 3 years after the termination of the business.

Rule 190. 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 fur-

nish a list of all recommendations made by the manager within the immediate preceding period of not less than 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: **“it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list”**;
- (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.

Rule 191. 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 who has 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 unless—

- (a) all the funds of the client are deposited in one or more bank accounts which contains only the client's funds;
- (b) the account or accounts are maintained in the name of the manager as agent or trustee of the clients;
- (c) the manager maintains a separate record for each account, which shows the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account and the exact amount of the beneficial interest of each client in the account;
- (d) the manager, immediately after accepting custody or possession of the funds or securities from any client, notifies the client in writing of the place and manner in which the funds or securities are being maintained;
- (e) the manager sends to each client monthly an itemised statement showing the funds and securities in the custody or possession of the manager as at the end of the period and all debits and credits in the clients account's during the period;
- (f) all the funds and securities of clients are 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.

(2) 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 promptly after each examination by the fund/portfolio manager.

E8. Investment Advisers

Rule 192. Functions

(1) Registered investment advisers may perform the following functions:

- (i) financial advisory services;
- (ii) making recommendations as to types of securities to buy or sell;
- (iii) 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.

E9. Registrars and Share Transfer Agents

Rule 193. Functions

(1) The Registrar shall pursuant to these Rules and Regulations perform the following functions amongst others—

- (i) keeping the register of members of a company and effecting appropriate changes in the register;
- (ii) issuing share/debenture/bond certificates;
- (iii) returning surplus monies and monies for rejected applications;
- (iv) preparing and despatching dividend/interest warrants;
- (v) distributing rights circulars;
- (vi) despatching annual reports, accounts and notices of meetings;

- (vii) verifying and despatching securities certificates to new investors in respect of the transfers of existing securities;
- (viii) collecting interests on debenture and loan stocks from the issuer for onward despatch to debenture or stock-holders where applicable;
- (ix) any other function ancillary to all the above.

(2) A Registrar which is a wholly owned subsidiary of an issuer shall not act as Registrar to the holding company's issue.

(3) No capital market operator shall act as an issuing house and a Registrar in the same issue.

(4) No Registrar shall maintain more than 50% of investors' funds in one Bank.

[SECRR(A) 2005, s. 49.]

Rule 194. Types of registers to be kept

(1) Every Registrar, subject to the Act and these Rules and Regulations shall keep manual and/or electronic register of members of client companies with adequate back-up facility.

(2) The back-up facility shall be kept in a safe place outside the premises of the Registrar.

Rule 195. Manual register

(1) A Registrar shall use hardbound cover books and the pages of the manual register shall be serially numbered. The pages of the register shall neither be removed nor torn.

(2) All entries into the manual register shall be made by the Registrars in a sequential record.

Rule 196. Transfer of existing shares in manual register

Entries into a register in respect of transfer of existing shares and stocks shall contain the following information among others—

- (i) name of security;

- (ii) number of securities dealt in;
- (iii) dates certificates were received for verification;
- (iv) dates deals were done on securities;
- (v) dates certificates were received for lodgement;
- (vi) dates certificates were sent to company secretaries for signing and sealing;
- (vii) dates certificates were returned to Registrars for despatch to new shareholders;
- (viii) dates certificates were finally despatched to new shareholders.

Rule 197. Electronic register

The Registrar shall ensure proper and accurate entries into the electronic register of members and such entries shall correspond with the entries in the manual register.

Rule 198. Entry of members' names

(1) Entries of names and addresses of members shall be written in capital letters and entered into the register within twenty-four hours from the date of—

- (a) receiving the approval of allotment proposal in the case of public issues; or
- (b) receipt of lodgement from the broker/dealer in the case of secondary market.

(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.

Rule 199. Custody of register

The Registrar shall keep the register and diskettes or any other storage system in a fire-proof cabinet under lock and key and the

key shall always be in the custody of the Registrar or his duly authorised representative.

Rule 200. 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 lodgement in secondary market transactions.

(2) The Registrar shall cross-check the names and addresses on certificates before despatching the certificates to the shareholders.

[SECRR(A) 2005, s. 50.]

(3) The Registrar shall keep the certificates in a fire-proof cabinet under lock and key until the certificates are despatched to the shareholders.

(4) Undelivered certificates shall be kept by the Registrar in a fire-proof cabinet under lock and key and the issuing company shall be informed accordingly.

After a period of one 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 2 national daily newspapers and evidence of compliance shall be filed with the Commission.

The Registrar shall make the list of unclaimed certificates available for inspection by shareholders or their representatives in his offices.

(5) Delivery of the certificates to the transferee shall be effected within 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 7 days of the dispatch.

[SECRR(A) 2006 (1), s. 39.]

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

Rule 201. Return monies

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 5 working days of approval of allotment of securities or at such other time as may be approved by the Commission.

[SECRR(A) 2002, s. 25.]

Rule 202. Mode of return

(1) All return monies shall be paid by special crossed cheque unless the subscriber requests in writing to be paid by open cheque.

(2) Such monies shall be returned by registered post or through a reputable courier service.

Rule 203. 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) An evidence indicating 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 amount due each such person within 10 working days.

(4) All unclaimed return monies shall after 6 months be transferred by the Registrar into an investors' protection fund established pursuant to the Act.

(5) The investor concerned shall thereafter apply to the fund to recover the amount due to him.

Rule 204. Issue of dividend warrants, etc.

(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 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.

(5) Upon receipt of the notice of and money for dividend/interest from the company, the Registrar shall prepare and despatch warrants to security holders within 20 working days from the date of receipt thereof.

(6) All dividend/interest warrants shall be signed by the Registrar or any other person duly authorised by the company to act as Registrar.

(7) 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.

(8) 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.

[SECRR(A) 2005, s. 51.]

E10. Trustees

Rule 205. Functions

The functions of trustees to unit trust schemes and other funds are as follows—

- (i) monitoring of the activities of the fund manager on behalf of and in the interest of unit holders or fund contributors;
- (ii) maintaining custody of funds and documents relating to the investments by the Scheme or Fund;
- (iii) monitoring of the register of unit holders or contributors;
- (iv) ascertaining the profitability rationale for investment decision-making of the fund manager;
- (v) ascertaining compliance with the provisions of the Trustee Investments Act, 1962, the Investments and Securities Act, 1999 and the Trust Deed, by the fund manager;
- (vi) ascertaining that monthly and other periodic returns/reports relating to the Scheme or Fund are sent by the fund manager to the Commission.

E11. Capital Market Consultants

A REPORTING ACCOUNTANTS

Rule 206. Functions

Registered Reporting Accountants shall have the following functions, amongst others:

- (1) Review of the issuer's audited accounts or statement of affairs (where applicable). In the course of this assignment, he shall—

- (a) Review audit working papers for the relevant period covered by the report;
- (b) Review financial statements by computing ratios, identifying significant trends and investigating unusual variations;
- (c) Discuss with the company'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 utilized are in compliance with International and Nigerian 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 so that the real figures shall be shown;
- (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 document to ensure internal consistency of financial information.

(2) Review of the estimates of the performance of the company.

In doing this, he shall:

- (a) Examine and prepare a separate report on the accounting policies and calculations used for the forecast as well as the assumptions derived therefrom;
- (b) Review the nature and background of the company's business (e.g. profile, activities, main products, market, customers, suppliers, divisions, management, workforce

and performance) so as to enable him ascertain the direction in which the company is going;

- (c) Review the assumptions on which the forecast is made;
- (d) Review the procedures followed in preparing the forecast by ascertaining the degree of accuracy of previous forecasts prepared by the company, if any;
- (e) Ascertain whether estimates and assumptions used are regularly and frequently reviewed as necessary;
- (f) Ascertain whether forecast results are fairly representative of management's best estimate of achievable results;
- (g) Ascertain whether working capital availability appears adequate for forecast requirements.

(3) Circularize the banks and major customers of the issuer to ascertain the actual indebtedness so as to make sure that it is actually disclosed in the offer document.

(4) Prepare his report, addressed jointly to the directors of the issuer 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 company. This includes—
 - (i) Profit and loss accounts, dividends and retained earnings information;
 - (ii) Full and summarized balance sheet;
 - (iii) Cash flow Statement;
 - (iv) Notes to the profit and loss accounts, balance sheet and cash flow statements;
- (b) The two years profit forecast which shall state, *inter alia*—
 - (i) That the sole responsibility for the forecast and the underlying assumption lies with the directors;

- (ii) That the forecast has been properly or not properly prepared in line with the stated assumptions and consistent with the accounting policies adopted by the company.

(5) 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.

[SECRR(A) 2005, s. 52.]

Rule 207. Functions

E12. Banker to an Issue/Receiving Banker

E13. Depository

E14. Custodial Agency

PART F

Regulation of Foreign Investments and Cross-border Securities Transactions

F1. Foreign Investments

GENERAL INFORMATION

Foreign investors/securities-dealers intending to invest or participate in the Nigerian Capital Market are advised to familiarise themselves with the provisions of the following laws, etc.:

- (i) Investments and Securities Act, 1999.
- (ii) Companies and Allied Matters Act, 1990.
- (iii) Central Bank of Nigeria Act, No. 24 of 1991.
- (iv) Banking and other Financial Institutions Act, No. 25 of 1991.
- (v) Nigerian Investment Promotion Commission Act, No. 16 of 1995.

- (vi) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995.

Rule 208. 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—

“broker/dealer” means a market operator registered as such by the S.E.C. and licensed by any recognised securities exchange as a dealing member to transact business on the floors of the Exchange or licensed by any association of securities dealers registered by the S.E.C.;

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

“capital market operator” mean issuing houses, brokers/dealers, investment advisers, portfolio managers, underwriters or any other securities dealer registered by the S.E.C.;

“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 investors;

“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—

- (a) foreign institutional investors (F.I.I.’s) (e.g. pension funds, unit trust funds, investment trust funds, institu-

tional portfolio managers, nominee companies, asset management companies, or any other corporate body);

- (b) 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;

“securities” shall have the same meaning as in the Investment Securities Act and shall also include derivatives, securities, debts, or any other instrument registered by the S.E.C.;

“S.E.C.” means the Securities and Exchange Commission;

“secondary market” means a resale market where securities originally issued in the primary market are bought and sold.

Rule 209.

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 second-

ary 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.

Rule 210.

Any person investing in securities of public companies involving foreign capital shall do so through capital market operators registered by the Commission.

Rule 211.

(1) Foreign capital market operators wishing to establish securities businesses 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) proof of registration from the Securities Commission or the regulatory Authority of their country of domicile;
- (c) latest audited accounts of the applicant company in its country of domicile;
- (d) management/promoter's profile;
- (e) a certified true copy of the Memorandum and Articles of Association or its equivalent;
- (f) certified true copy of the certificate of incorporation in the country of domicile; and
- (g) 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 accom-

panied by required documents pursuant to these Rules and Regulations.

Rule 212.

(1) Any person investing in securities in Nigeria with foreign capital is required by the provisions of Act 16 and 17 of 1995 to bring in such capital through an authorised dealer and should obtain a certificate of capital importation as prescribed by law.

(2) The certificate of capital importation shall entitle foreign investors to—

- (a) open a foreign currency domiciliary account with any authorised dealer for investment purposes in accordance with Part II, section 17 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995;
- (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 incomes received by way of interests, etc., through an authorised dealer at autonomous market rates subject to deductions of withholding and capital gains taxes.

Rule 213.

For purposes of investments in Nigeria generally, and pursuant to the N.I.P.C. Act, No. 16 of 1995, there is no restriction except in the following areas which are prohibited to both Nigerians and foreigners—

- (a) petroleum enterprises (as defined in section 32 of the 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.

Rule 214. Modalities for portfolio investments

- (a) Portfolio investors subscribing in primary market securities should effect their transactions through registered capital market operators registered by the Commission.
- (b) Portfolio investors transacting business in the secondary market securities should effect their transactions through licensed broker/dealers on the floors of the exchanges or through the O.T.C. market registered by the Commission.

Rule 215.

- (a) Portfolio investors can appoint market operators registered by the Commission to perform, for and on their behalf, any or all of the following services—
 - (i) act as custodian of securities;
 - (ii) confirmation of transactions in securities;
 - (iii) settlement of purchases and sale;
 - (iv) information reporting.
- (b) A copy of the letter of appointment of a custodian should be filed with the Commission by the appointee within 10 working days after such appointment.

Rule 216.

- (a) The market operator appointed under rule 215 above shall keep separate accounts detailing on a daily basis

the capital utilisation for which he is acting as a custodian.

- (b) The market operator shall make returns to the Commission on a quarterly basis in the form prescribed by the Commission.

Rule 217. Divestment of securities

- (a) A foreign investor shall divest his holdings in securities of public companies through the Exchange or on a recognised 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 registered by the Commission.

Rule 218.

The capital market operator shall notify the Commission of divestment by foreign investors within 5 working days of any such divestment and shall state among others, the following—

- (a) the name(s) and address(es) of the person(s) divesting;
- (b) the name of the company whose shares/assets are being divested including the status and nature of business;
- (c) date, price and amount of initial investments;
- (d) the volume/percentage divested;
- (e) price at which divestment was made;
- (f) evidence of payment of capital gains tax;
- (g) the mode of divestment;
- (h) mandate letter from foreign investors to a registered market operator (or a power of attorney holder) stating among others intent to divest;
- (i) list of the allottees/beneficiaries and the amount or percentage each acquired.

Rule 219. Repatriation of proceeds from divestment

Dividends, capital gains and interests derived from investments in securities shall be repatriated through authorised dealers in line with section 24 of Act 16 and section 15 (4) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, No. 17 of 1995 and guidelines issued by the Minister.

Rule 220. Sale or offer for subscription of securities

A foreign Government, a company incorporated or organised 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.

Rule 221.

Every 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. Foreign issuers are required to file their application on Forms S.E.C. 6F. Such application shall be accompanied by the registration fee prescribed by the Commission from time to time.

Rule 222.

(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 Organisation of Securities Commissions (I.O.S.C.O.), grant exemption from compliance with any of the requirements for registration to securities issued in such country.

(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.

F2. Cross-border Securities Transactions

Rule 223. 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 Form S.E.C. 6F.

Rule 224.

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 rules 36, 37 or 38, as the case may be or with any other requirement prescribed by the Commission.

Rule 225. Content of the Prospectus

Issuers of securities shall provide and submit to the Commission for approval a prospectus containing the following information:

- (1) *Identity of directors, senior management and advisers:*
 - (a) provide the names, business addresses and functions of the company's directors (executive and non-executive) and senior management;
 - (b) provide 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) provide 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 whether interest will be paid).

(3) *Summary/statistics of offerings:*

For each method of offering, e.g. 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 selected historical financial data regarding the company, which shall be presented for the five 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 years of the five-year 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 year end balance sheet information.

- (b) The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues, income (loss); net income

(loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long-term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share in both the currency of the financial statements and the local (Nigerian) currency, including the formula used for any adjustments to dividends declared; and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statement.

- (c) Where the financial statements provided in response to subrule (2) are prepared in a currency other than the local currency, disclosure of the exchange rate between the financial reporting currency and the local currency should be provided, using the exchange rate designated by Nigeria for this purpose—
 - (i) at the latest practicable date;
 - (ii) the high and low exchange rates for each month during the previous six months; and
 - (iii) for the five 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 capitalisation and indebtedness (distinguishing between guaranteed, and secured and unsecured, indebtedness) as of a date not earlier than 60 days prior to the date of the document, showing the company's capitalisation 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 will not be 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 it is engaged or proposes to engage; factors relating to the countries in which it operates; the absence of profitable operations in market for the company's securities; reliance on the expertise of management; potential dilution; 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. The risk factors shall not be made part of the chairman's letter.

(5) *Information on the company:*

History and development of 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 reclassification, 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 principal capital expenditures and divestitures (including interests in other companies), since the beginning of the company's last three financial years to the date of the offering or listing document;
 - (vi) information concerning the principal capital expenditures 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 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 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 instalment 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, coun-

try 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 utilisation 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 utilisation 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 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 work-

ing 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 fulfil 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 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 labour 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 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 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 na-

ture 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 counsellors 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 analysing 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 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 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 analysing 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 in-

dependent 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 re-

sponsible 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 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 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 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 years, they shall

be disclosed. If the securities are not regularly traded in an organised 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 war-

rants 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 authorised 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” ar-

rangement 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 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;
- iii. 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 itemised 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 authorised;
 - (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 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 authorised 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 authorised capital or capital increase and, where appropriate, the duration of the authorisation; (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

instalment 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, authorisations 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 organisations 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 authorised 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.

Rule 226. Depository receipts by Nigerian entities

(1) For all levels of Global Depository Receipt, the issuer shall furnish the Commission with information on the following—

- (i) nature of the programme;
- (ii) number of shares involved;
- (iii) parties (foreign/local);
- (iv) international clearing system desired;
- (v) 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);
- (vi) copies of documents obtained from and filed with the foreign country;

- (vii) 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;
- (viii) copies of latest annual report;
- (ix) 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—

- (i) a certified copy of the resolution of the members/directors authorising the issue (Corporate Affairs Commission certified true copy required);
- (ii) number of shares for the G.D.R./A.D.R. and the percentage it represents of the outstanding shares of the issuer;
- (iii) capital history of the issuer (e.g. total share capital, paid-up capital, issued and un-issued, etc.);
- (iv) parties to the issue;
- (v) evidence of approval of the foreign regulatory authorities;
- (vi) evidence of consent(s) of any international party to the transaction;
- (vii) certified true copy of resolution of members at A.G.M./E.G.M. of the issuer approving the offer;

- (viii) currency in which securities for the programme would be denominated (e.g. Dollars, Pound Sterling, local currency, etc.);
- (ix) a prospectus for foreign capital sourcing and another one for local offering (a single document for both domestic and foreign markets may be issued);
- (x) 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.

PART G

Regulation of Mergers, Take-overs and Acquisitions

Rule 227. 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;

“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 opportunity of being heard, be liable to a penalty of ~~N~~5000 per day during the period of default.

G1. Mergers, Acquisitions and Combinations

Rule 228. Scope of the Regulation

The provisions of this Regulation shall apply to—

- (i) public or private companies;
- (ii) every merger, acquisition or combination between or among companies, involving acquisitions of shares or assets of another company.

Rule 229. Approval by the Commission

(1) Every merger acquisition or combination between or among companies shall be subject to the prior review and approval of the Commission.

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(2) Approval for mergers, acquisition or combination shall be given if, and only 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.

Rule 230. Exemptions

The provisions of this Regulation shall not apply to—

- (i) 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;
- (ii) transactions undertaken under authority given by any Federal Government agency vested with such statutory power.

Rule 231. Procedures for Obtaining Approval for Mergers

Companies proposing a merger, acquisition or other forms of business combination shall:

- (1) file with the Commission, a pre-merger notice for evaluation;
- (2) upon notification of approval in principle, of (1) above, file a draft Scheme of Arrangement for clearance;
- (3) file an application in the Federal High Court seeking an order to convene a court ordered meeting;
- (4) 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.
- (5) comply with post-approval requirements.

[SECRR(A) 2005, s. 53.]

Rule 232. Requirements for pre-merger notice

The pre-merger notice shall be filed by submitting to the Commission a report, which shall contain the following—

- (i) a letter of intent signed by the merging companies accompanied by board resolutions of the merging companies supporting the merger;
- (ii) a detailed draft write-up of the proposed transaction including all the background studies relating to the merger, acquisition or combination and justification for it which shall include the following—
 - (a) detailed information about product lines or operations of the companies;
 - (b) a list of the major competitors in that product market and the market position or market share of each company;
 - (c) the structure and organisation of the companies;
 - (d) revenue information about the operations of the companies;
 - (e) an analysis of the effect of the transaction on the relevant market including the post transaction market position of the acquiring or surviving company;
 - (f) Memorandum and Articles of Association of the merging companies certified by the Corporate Affairs Commission;
- (iii) the latest financial statement of the companies;
- (iv) certificate of the corporation of the merging companies.

[SECRR(A) 2005, s. 54.]

Rule 233. Requirements for formal approval

(1) Upon receipt of a favourable response to a pre-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 diskette copy of the Scheme of Arrangement 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—
 - beneficial ownership;
 - indebtedness;
 - shareholders' resolution;
 - extract from Memorandum and Articles;

- B. Memorandum on profit forecast—
 - letters from reporting accountants;
 - profit forecast for at least two years;
 - basis and assumptions for the profit forecast.
- C. Letters from financial advisers.
- D. 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:

- Background.
- Basis and assumptions.
- Valuation method.

- Allotment of new shares.
- Post scheme shareholdings.

APPENDIX VI

SCHEME OF ARRANGEMENT BETWEEN THE MERGING COMPANIES:

- A. Preliminary (expressions and meanings);
- B. & C. Statement of the authorised share capital of the merging companies and shareholding positions;
- D. State the various resolutions for the proposed Scheme;
- E. The Scheme, detailing the following:
 - (1) state proposals of the Scheme;
 - (2) effects of the Scheme or allotment;
 - (3) consequences of the Scheme or certificate;
 - (4) creditors;
 - (5) employees;
 - (6) directors;
 - (7) conditions precedent;
 - (8) effective date of Scheme;
 - (9) modification;
 - (10) date.

APPENDIX VII

Notices of court-ordered meetings to the shareholders of the merging companies.

- (b) evidence of increase in share capital of the acquiring 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 ₦500 million – 1%
 - next ₦500 million – 0.75%
 - any sum thereafter – 0.50%
 - (ii) private companies – nominal value of the issued and paid-up capital of the resultant company calculated as in (i) above;
- (d) draft prospectus (if necessary) or draft particulars in the case of listing on the second-tier securities market;
- (e) two 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).

[SECRR(A) 2005, s. 55.]

(2) (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)”.

[SECRR(A) 2005, s. 55.]

(3) 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.

Rule 234. Post-approval requirements

After the final approval given by the Commission and the court-order sanctioning the scheme, the following requirements shall be complied with by the applicant—

- (a) obtain the court-order sanctioning the Scheme;
- (b) file a copy of the court-order sanctioning the Scheme within seven (7) days of the court making the order;
- (c) file a copy of the newspaper publication of the court-order;
- (d) file a statement of the actual cost of the Scheme;
- (e) file a notification of the completion or otherwise of the exercise within three (3) months of the court's order;
- (f) file summary reports of the Scheme in respect of the following—
 - (1) arrangement relating to employees of the acquired company;
 - (2) settlement of shareholders;
 - (3) utilisation of monies injected into the company, if any.

[SECRR(A) 2005, s. 56.]

G2. Take-overs

Rule 235. Take-over bids

(1) (a) Where a person or group of persons acquire(s) or wishes to acquire shares in a target 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 national daily newspapers.

Rule 236. 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 at the shares at the offeree 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 his 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.

Rule 237. 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 14 days prior to the expiration of the authority and such renewal shall be for a period of not more than 3 months.

Rule 238. 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 despatched.

(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 30 days after the service of the notice in (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.

Rule 238A. 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) 5 years audited financial statement of the company (or if less than 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.

[SECRR(A) 2002, s. 25.]

PART H

Regulation of Collective Investment Schemes

Rule 239. Definitions

H1. Unit Trust

Rule 240. Application for authorisation of unit trust scheme

An application for authorisation 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.

Rule 241. Requirements as to form of Prospectus

(1) The information required in a prospectus to be used, or used in the offering for sales, or sale of units of a proposed unit trust scheme or an authorised trust scheme shall follow the order provided in rules 245 and 247 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 necessary to keep such 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.

Rule 242. Broadcast of Prospectus

Every Prospectus consisting of a radio or television broadcast shall be reduced to writing and two copies of such Prospectus shall be filed with the Commission at least 10 working days before it is broadcast or otherwise issued to the public.

Rule 243. 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 INVESTMENTS AND SECURITIES ACT, 1999 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 Investments and Securities Act, 1999 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 management company 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.”

Rule 244. 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 final meeting.

Rule 245. Contents of Prospectus

Every Prospectus shall contain the information required by the Act and shall in addition state the following information—

- (i) 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;
- (ii) the following statements shall appear in bold character on the cover page—
 - (a) “You are advised to read and understand the contents of the Prospectus. If in doubt, please consult your stockbroker, solicitor, banker or an independent investment adviser”;
 - (b) “This Prospectus has been seen and approved by the directors of the management company 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”;
- (iii) 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;
- (iv) a corporate directory of the manager which shall include details on—
 - (a) directors and principal officers of the manager;
 - (b) names of the Investment Committee members specifying the independent members;
 - (c) e-mail and website address (if any) of the fund manager;

- (d) 3 to 5 years financial summary. Where the manager is a new company, it shall furnish a statement of affairs;
- (v) the offer stating the requirements of rule 243, the times of opening and closing of the offer, the names of the trustees;
 - (vi) names and addresses of the directors, the managers and other parties to the issue;
 - (vii) history and prospects of the Scheme;
 - (viii) objective of the Fund;
 - (ix) offer price;
 - (x) management and advisory services;
 - (xi) yield of the Fund;
 - (xii) preliminary charges;
 - (xiii) investment policy of the Fund, including investment outlets;
- [SECRR(A) 2006 (1), s. 40.]
- (xiv) dividends, distribution and re-investment options;
 - (xv) redemption policies;
 - (xvi) a forecast of income of the Fund for the next three years;
 - (xvii) statement as to consents of professionals to the offer;
 - (xviii) statement as to consents of professionals to the offer;
 - (xix) duration of the Scheme and conditions relating to its termination, and modification of its Trust Deed;
 - (xx) the period not exceeding 90 days of launching the Scheme during which subscription at the offer price would be valid;
 - (xxi) application forms;

- (xxii) for ease of understanding, the Prospectus may include the use of charts, diagrams/flowcharts in the presentation of information;
- (xxiii) 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”;
- (xxiv) 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 amortised over a maximum period of 5 years;
- (xxv) detailed information about the trustee;
- (xxvi) detailed information of the Fund with respect to the following—
 - (a) where the fund invests in foreign securities—
 - (i) asset allocation of the Fund (by asset category) and principal foreign market where investment will take place;
 - (ii) the Fund’s policies and strategies relating to investment in foreign securities if not already covered in (i) above;
 - (iii) the investment management experience or track record of the management company or any delegate thereof, in relation to the Fund’s investment in foreign companies; and
 - (iv) other relevant information (e.g. cost to be borne by the Fund);
- (xxvii) a profile of the Fund including 3 to 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.

[SECRR(A) 2005, s. 57.]

Rule 246. Requirements as to form, number, etc., of Trust Deed

(1) Every Trust Deed filed pursuant to the provisions of the Investments and Securities Act, 1999 shall be printed or typewritten and properly bound on the left side in such a manner as to leave the reading matter legible.

(2) Two copies of such Trust Deed shall be filed with the Commission together with a completed application for authorisation of the Scheme.

(3) The Trust Deed shall state on the outside front cover page in bold face capital letters the following information—

- (i) the date of the trust deed;
- (ii) the name of the management company;
- (iii) the name of the trustee company;
- (iv) the name of the Scheme constituted by the Trust Deed;
- (v) 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.

[SECRR(A) 2005, s. 58.]

Rule 247. 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 managers 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;
[SECRR(A) 2006 (1), s. 41.]
- (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) an annual management fee plus other expenses not exceeding 5% of net asset value of the Fund;
[SECRR(A) 2006 (1), s. 41.]
- (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;
[SECRR(A) 2006 (1), s. 41.]
- (l) an annual management fee not exceeding 1.5% net asset value of the Fund;
- (m) appointment of auditor;
- (n) prohibition of the management company, trustee 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 any of their affiliates own each beneficiary more than $\frac{1}{2}$ of 1 percent of the securities of such company and together more than 5 percent of the securities of that particular company;
- (p) duties and responsibilities of the managers and trustees;
- (q) remunerations of trustees;
- (r) removal and retirement of managers and trustees;
- (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, 1990;
- (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 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 finalised;
- (y) provision prohibiting the fund manager from investing in its in-house, trustee's or their associates' instruments;
- (z) provision that promoters of unit trust schemes shall subscribe to a minimum of 10% of initial issue;
- (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 condi-

tions of the Trust Deed not later than 10 working days after the breach;

- (bb) 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;
- (cc) a statement that all Unit Trust Schemes shall have an Investment Committee.

[SECRR(A) 2005, s. 59.]

Rule 248. 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 manager/trustee shall be clearly indicated in the portion 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.

[SECRR(A) 2005, s. 60.]

Rule 249. 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.

H2. Real Estate Investment Schemes

Rule 250.

Real Estate Investment Scheme (REIS) may be constituted as a—

- (i) company; or
- (ii) trust.

[SECRR(A) 2006 (2), s. 10.]

(A) *Company*

Rule 251.

A company authorised to carry on business of Real Estate Investment shall meet the following requirements before its securities can be registered by the Commission,

it shall furnish the Commission with—

- (i) 2 copies of certificate of incorporation certified by the C.A.C.;
- (ii) 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;
- (iii) 2 copies of the particulars of directors certified by C.A.C.;
- (iv) 2 copies each of the draft prospectus and abridged prospectus;
- (v) evidence that the authorized share capital is not below the aggregate of the issued capital of the company and the proposed public offer;
- (vi) evidence of appointment of a property manager registered with the Commission.

[SECRR(A) 2006 (2), s. 11.]

Rule 252. 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 invest-

ment scheme shall follow the order provided in rule 255 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.

[SECRR(A) 2006 (2), s. 12.]

Rule 253. 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 Investments and Securities Act 1999, and the Rules and Regulations made thereunder for the purpose of giving infor-

mation 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.

[SECRR(A) 2006 (2), s. 13.]

Rule 254. 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.

[SECRR(A) 2006 (2), s. 14.]

Rule 255. Contents of a Prospectus

Every prospectus shall contain the information required by the Act and shall, in addition, state the following information—

- (i) 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 ₦1 billion and subsequent offers not less than ₦500 million;
- (ii) 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;
- (iii) the offer, stating the requirements of rule 253, the times of opening and closing the offer;
- (iv) names and addresses of the directors;
- (v) corporate directory of Issuer, Valuer(s), Issuing House, Registrar, Underwriter, Solicitor to the issue, Reporting Accountant and property manager;
- (vi) history and prospects of the scheme;
- (vii) objective of the scheme;
- (viii) dividends, distribution or reinvestment options;
- (ix) statement as to consents of professionals to the offer;
- (x) the warning statements 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;
- (xi) 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, net lettable area and number of car parks;
- (xii) 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;

- (xiii) brief description of the property manager including its experience in real estate/property management, total property under management, number of years in property management industry and staff strength;
- (xiv) the inclusion of a photograph in the prospectus will be permitted on the condition that the photograph is not more than six months old as at the date of the prospectus and the depicted real estate is wholly-owned or approved by the Commission to be wholly acquired;
- (xv) 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;
- (xvi) applications forms.

[SECRR(A) 2006 (2), s. 15.]

Rule 256. Underwriting

(1) All public issues of Real Estate Investment Scheme shall be firmly underwritten to the extent provided in rule 257. There shall be no standby underwriting.

(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 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 5 working days;
- (b) a maximum period of 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 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 Investments and Securities Act 1999 and the Commission's Rules and Regulations made thereunder.

[SECRR(A) 2006 (2), s. 16.]

Rule 257. Amount to be underwritten

(1) 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 at any time shall not be more than $2\frac{1}{2}$ times the paid-up share capital and reserves of the underwriter in the aggregate.

[SECRR(A) 2006 (2), s. 17.]

Rule 258. 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.

[SECRR(A) 2006 (2), s. 18.]

Rule 259. Time Amount Underwritten is made Available

The underwriter(s) shall make the amount underwritten available to the issuer on the day the offer opens.

[SECRR(A) 2006 (2), s. 19.]

Rule 260. Minimum Level of Subscription

(1) The public issue of a Real Estate Investment Scheme shall be cleared for allotment by the Commission only if it is subscribed by at least 25% apart from the percentage underwritten.

(2) The Issuing House shall notify the Commission of the level of subscription within six 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 daily national newspapers, details of the decision to abort the offer not later than 5 working days after the Commissions' directive that the issue be aborted.

(4) The Receiving banker shall forward return monies to the Registrar, within 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 5 working days after the Commissions' directive that the issue be aborted.

[SECRR(A) 2006 (2), s. 20.]

Rule 261. Investment Outlets

(1) The following requirements shall apply in the case of listed real estate investment company—

At least 75% of the company'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.

(2) The level of development activity by the company shall not exceed 20% of the portfolios' gross asset value.

(3) The company shall hold on to any development made for a minimum of two years before disposing of it.

(4) In the case of unlisted real estate investment company, the following shall apply—

At least 70% of the company's assets shall be in real estate or real estate related assets. A maximum of 10% of company's assets shall be in liquid assets at all times and the remaining 20% may be invested in other assets.

(5) The provisions of subsections (2) and (3) of this section shall apply in the case of unlisted real estate investment company.

(6) The assets of Real Estate Investment companies, whether listed or unlisted, shall not be invested outside Nigeria.

[SECRR(A) 2006 (2), s. 21.]

Rule 262. Valuation Report

A valuation report of the company's real estate shall be filed with the Commission every two years by a real estate valuer registered with the Commission.

[SECRR(A) 2006 (2), s. 22.]

Rule 263. Quarterly Report

A quarterly Report on the performance of the scheme shall be filed by the company with the Commission.

[SECRR(A) 2006 (2), s. 23.]

Rule 264. Insurance

The company's real estate assets shall be insured.

[SECRR(A) 2006 (2), s. 24.]

Rule 265. 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.

[SECRR(A) 2006 (2), s. 25.]

(B) *Trust*

Rule 266. Application for Registration of Real Estate Investment Trust

An application for registration of the Trust shall be filed with the Commission.

[SECRR(A) 2006 (2), s. 26.]

Rule 267. 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 270 and 272 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.

[SECRR(A) 2006 (2), s. 27.]

Rule 268. 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 SE-
CURITIES AND EXCHANGE COMMISSION. THE

INVESTMENTS AND SECURITIES ACT 1999 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 OMISION 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 Investments and Securities Act 1999 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.

[SECRR(A) 2006 (2), s. 28.]

Rule 269. 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 final meeting.

[SECRR(A) 2006 (2), s. 29.]

Rule 270. Contents of a Prospectus

Every prospectus shall contain the information required by the Act and shall, in addition, state the following information—

- (i) 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. Provided that initial public offer shall not be less than ₦1 billion and subsequent offer shall not be less than ₦500 million;
- (ii) the following statements shall appear in bold character on the cover page;

You are advised to read and understand the contents of the prospectus. If in doubt, please consult your Stockbroker, Solicitor, Banker or an Independent Investment Adviser;

- (iii) 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 section or subsection begins;
- (iv) a corporate directory of the Manager which shall include details on—
 - (a) Directors and principal officers;
 - (b) Names of the investment committee members specifying the independent members;
 - (c) e-mail and website address (if any);
 - (d) 3–5 years financial summary. Where the manager is a new company, it shall furnish a statement of affairs;
- (v) corporate directory of valuer(s), Issuing House, Registrar, Underwriter (in case of close - ended trust) Solicitor to the issue, Reporting accountant, Trustee, Rating agency, and property manager;
- (vi) the offer stating the requirements of rule 268, the times of opening and closing of the offer;
- (vii) history and prospects of the scheme;
- (viii) 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;
- (ix) offer price;
- (x) management and advisory services;
- (xi) 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”;
- (xii) investment policy of the Scheme;
- (xiii) dividends, distribution and reinvestment options;

- (xiv) redemption policies (in case of open- ended trust);
- (xv) statement as to consents of professionals to the offer;
- (xvi) duration of the scheme and conditions relating to its termination, and modification of its Trust Deed;
- (xvii) for ease of understanding, the prospectus may include the use of charts, diagrams/flowcharts in the presentation of information;
- (xviii) a breakdown of the fees stating clearly that the management fee would be based on the net asset value of the scheme. It shall also state that the initial expense shall be borne by unit holders and amortised over a maximum period of 5 years;
- (xix) 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—
 - (a) the schemes' specific peculiar risks. The strategy for managing those risks shall also be disclosed;
 - (b) 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 advise of the Manager borrow on behalf of unit holders up to 15% of the Schemes net assets;
 - (c) 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, net lettable area and number of car parks;

- (d) 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;
- (xx) The prospectus shall contain a key data section with the following warning 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.
- (xxi) 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 shall be disclosed;
- (xxii) information about the property manager including its experience in real estate/property management, total property under management, number of years in property management industry and staff strength;
- (xxiii) the inclusion of a photograph in the prospectus will be permitted on the condition that the photograph is not more than six months old as at the date of the prospectus and the depicted real estate is wholly owned or approved by the Commission to be wholly acquired;
- (xxiv) 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, re-valuation surplus/deficit, net book value and any other relevant information;
- (xxv) application forms.

Rule 271. 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 on the left side in such a manner as to leave the reading matter legible.

(2) Two 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—

- (i) date of the Trust Deed;
- (ii) name of the management company;
- (iii) name of the trustee company;
- (iv) name of the Scheme constituted by the Trust Deed;
- (v) 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.

[SECRR(A) 2006 (2), s. 31.]

Rule 272. Contents of Trust Deed

Every Trust Deed in which are expressed the trust of real estate investment scheme shall contain, among other things, the following information—

- (i) definition of terms used in the Trust Deed;
- (ii) constitution of the trust;
- (iii) issue of units provided that the initial value of units offered shall not be less than ₦1 billion and any subsequent issue shall not be less than ₦500 million;
- (iv) in case of open-ended trusts, redemption of units by the fund managers at prices calculated in the manner prescribed under these Rules and Regulations, and for set-

tlement in respect thereof to be effected not later than five working days following the transaction;

- (v) investment policy; a statement that the scheme shall have an Investment Committee;
- (vi) registration of holders of units;
- (vii) mode of execution and issuance of unit certificate;
- (viii) a provision stating that the underlying assets of the scheme shall rest in the Trustee, or subject to any prescribed conditions, in a nominee approved by the Commission;
- (ix) in case of open-ended trust, prohibition or restriction of issue by and on behalf of the manager, of any advertisements, circular or any statement with respect to any 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;
- (x) an annual management fee plus other expenses not exceeding 5% of net asset value of the fund;
- (xi) in addition to (x) 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;
- (xii) appointment of auditor;
- (xiii) annual auditing of the scheme;
- (xiv) prohibition of the management company, Trustee and their affiliates from dealing as principals in the sale of underlying assets to the trust scheme;
- (xv) 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 own each

beneficiary more than $\frac{1}{2}$ of 1 per cent of the securities of such company and together more than 5 per cent of the securities of the particular company;

- (xvi) duties and responsibilities of the Managers and Trustees;
- (xvii) remuneration of Trustees;
- (xviii) 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;
- (xix) duration and termination of the trust;
- (xx) notices and meetings of unit holders;
- (xxi) affirmation of the separate incorporation of the Trustees and the management company under the Companies and Allied Matters Act, 1990;
- (xxii) 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;
- (xxiii) 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;
- (xxiv) provision restricting the Fund Manager's absolute powers to invest the scheme's fund by requiring Trustee's consent before investments are finalized;
- (xxv) provision prohibiting Fund Manager from investing in its in-house, trustees' or their associates instruments;
- (xxvi) provision that promoters of real estate investment scheme shall subscribe to a minimum of 10% of initial issue;

- (xxvii) 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 10 working days after the breach.

[SECRR(A) 2006 (2), s. 32.]

Rule 273. 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 Internal Revenue Department.

(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.

[SECRR(A) 2006 (2), s. 33.]

Rule 274. Underwriting

(1) All public issues of units of close-ended real estate investment fund shall be firmly underwritten to the extent provided in rule 275.

(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 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 5 working days;
- (b) a maximum period of 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 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 Investments and Securities Act, 1999 and the Commissions Rules and Regulations made thereunder.

[SECRR(A) 2006 (2), s. 34.]

Rule 275. Amount to be Underwritten

(1) The amount or percentage of the issue underwritten by any underwriter in a close-ended trust shall not be less than 35% of the number of units issued for subscription.

(2) The level of underwriting commitment at any time shall not be more than $2\frac{1}{2}$ times the paid up share capital and reserves of the underwriter in the aggregate.

[SECRR(A) 2006 (2), s. 35.]

Rule 276. 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.

[SECRR(A) 2006 (2), s. 36.]

Rule 277. Time Amount Underwritten is made available

In all cases of firm underwriting commitment, the underwriter shall make the amount underwritten available to the Issuer on the day the offer opens.

[SECRR(A) 2006 (2), s. 37.]

Rule 278. Minimum level of Subscription

(1) The public issue of units of real estate investment scheme shall be cleared for allotment by the Commission only if it is subscribed up to 65%. However, in the case of close-ended scheme, it shall be cleared for allotment only if it is subscribed by at least 25%, apart from the percentage underwritten.

(2) The Issuing House shall notify the Commission of the level of subscription within six weeks after the close of 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 daily national newspapers, details of the decision to abort the offer not later than 5 working days after the Commission's directive that the issue be aborted.

(4) The Receiving banker shall forward return monies to the Registrar, within 2 working days, after the Commission's directive that the issue be aborted.

(5) The Registrar to the issue shall return monies to subscribers to the aborted issue not later than 5 working days after the Commission's directive that the issue be aborted.

[SECRR(A) 2006 (2), s. 38.]

Rule 279. Investment Outlets

(1) For close-ended real estate investment scheme the following requirements shall apply—

- (i) at least 75% of the Funds 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;
- (ii) the level of new development activity by the fund Manager shall not exceed 20% of the Fund's gross asset value;
- (iii) the Manager shall hold on to any development for a minimum of 2 years before disposing of it.

(2) For open-ended real estate investment Scheme, the following shall apply—

- (i) 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;
- (ii) the provisions of paragraphs (ii) and (iii) 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.

[SECRR(A) 2006 (2), s. 39.]

Rule 280A. Rating and Valuation Reports

(1) A rating report by a registered rating company shall be filed with the Commission every two years.

(2) A valuation report of the Schemes' real estate assets shall be filed with the Commission every two years by a real estate valuer appointed by the Fund Manager and registered with the Commission.

[SECRR(A) 2006 (2), s. 40.]

Rule 280B. 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.

[SECRR(A) 2006 (2), s. 41.]

Rule 281. Insurance

The underlying assets of the Scheme shall be insured by the fund Manager.

[SECRR(A) 2006 (2), s. 42.]

H3. Special Funds

Venture Capital Fund

Rule 282. Requirements for authorisation

- (a) An application for authorisation of Venture Capital Fund shall be filed by the manager on Form S.E.C. 6A accompanied with the following—
 - (i) two copies of draft Prospectus;
 - (ii) two copies of draft Trust Deed where no technical agreement is filed;
 - (iii) letters of consents from the prospective parties to the Venture Capital Scheme;
 - (iv) two 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—
 - (a) that the fund provider shall be a limited or non-active partner;
 - (b) that the venture capital company shall be the general partner;

- (c) that the venture capital company shall manage or participate in the management of the business in which the Fund is invested;
 - (d) duties and obligations of all parties to the agreement;
- (v) copy of the Certificate of Incorporation of the manager of the Venture Capital Fund;
- (vi) two copies of the Memorandum and Articles of Association of the manager of the Venture Capital Fund certified by the C.A.C., with a provision authorising the company to manage funds;
- (vii) detailed information about the fund provider;
- (viii) two copies of the technical/management agreement between the venture capitalist and the beneficiary company of the Fund;
- (ix) two 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 C.A.C.;
- (x) two 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 securitisation and valuation issues;
 - (e) nature of the charge on assets (whether floating or fixed);

- (xi) a sworn undertaking to obtain the approval of the National Risk Fund established pursuant to the Venture Capital (Incentives) Act, 1993;
 - (xii) 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;
 - (xiii) authorisation fee of 1% of the Fund;
 - (xix) any other material information.
- (b) 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—
- (i) the name of the proposed Fund;
 - (ii) the name under which the sponsors of the Fund intend to do business;
 - (iii) date of commencement of the Fund;
 - (iv) the name and addresses of the sponsors of the Fund;
 - (v) the general nature of the business in which the Fund will be invested;
 - (vi) investment target of the Fund;
 - (vii) expected yield of the Fund;
 - (viii) sworn undertaking to file monthly reports and returns with the Commission;
 - (ix) registration fee of ₦50,000;
 - (x) any other information required by the Commission from time to time.

Rule 283. 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, securitisation 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:
 - Project of high profitability with great industrial dominance e.g. electronic/information technology.
 - Company led by industry superstar; with proven entrepreneurial experience, leading innovation or technologies marketing head; dynamic with imagination and skill.
 - Project in respect of high, value-added properties resulting in early payback to users.
 - 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 existing strategies*: they plan and time the existing 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—
 - market monopoly;
 - franchise, patent rights;
 - 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 I.S.A., 1999—
 - statements of assets and liabilities for the past five years, if any;
 - statement of profit and loss accounts for the past five years, if any;

- profitability forecast for the three years ahead;
 - cash flow forecast for three years ahead;
- (n) duration of investment before harvest and exit indicating the possible harvest and exit strategies;
- letter of consent that the periodic report will be sent to the Regulatory Authority for monitoring;
- 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 5 years financial status of Venture Capital firm.

PART I

Regulation of Solicitation and Use of Proxies

Rule 284. 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 authorisations, 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—

- (a) any request for proxy whether or not accompanied by or included in a proxy form;
- (b) any request to execute or not to execute, or to revoke a proxy; or
- (c) 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.

Rule 285. Application of Rules

(1) The rules contained in this Regulation apply to every solicitation of a proxy with respect to securities registered pursuant to the Act and the C.A.M.D., 1990 whether or not trading in such securities has been suspended except—

- (a) 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;
- (b) 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 (i) give the name of the issuer, (ii) state the reason for the advertisement and (iii) identify the proposal or proposals to be acted upon by shareholders.

Rule 286. 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 authorise 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 formalise all duly executed powers of attorney, which meet the requirements of this Regulation.

Rule 287. 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.

Rule 288. 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 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.

Rule 289. 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 share holders, 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 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.

Rule 290. 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 10 working days prior to such meeting.

Rule 291. False or misleading statement

(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.

Rule 292. 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 organisations in which such employments are carried on for the past five 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 di-

rectly 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 ₦500,000 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.

The information should state—

- (i) the largest aggregate amount of indebtedness outstanding at any time during such period;
- (ii) the nature of the indebtedness and of the transaction in which it was incurred.

(8) 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.D., 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 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 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, combinations, etc.*

Where action is to be taken with respect to any plan for—

- (i) the merger or combination 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 $33\frac{1}{3}$ 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 organisation 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 J

Regulation of Establishment of Investors Protection Fund

Rules 293 to 305.

PART K

Regulation of Borrowing by States, Local Governments and other Government Agencies

Rule 306. Registration of State, Local Government, etc., bonds/securities

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.

Rule 307.

- (1) Requirements for registration:
 - (i) a copy of the feasibility report on the specific project to be financed;
 - (ii) counterpart copy of original of the irrevocable letter of authority from the Local Government/State Accountant-General or other Government agencies authorising the

Accountant-General of the Federation to deduct the principal and interest amount directly from statutory allocation in case of default;

- (iii) 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;
- (iv) two copies of the resolution of the State/Local Government Legislative Assembly authorising the issue of the bond;
- (v) audited account of the State/Local Government or other Government agencies for preceding 5 years or such number of years in existence (if less than 5 years);
- (vi) two copies each of draft Prospectus and abridged Prospectus;
- (vii) two copies of the State Government *Gazette* or Local Government by-laws containing the instrument authorising the issue of the bond;
- (viii) two copies of underwriting agreement;
- (ix) two copies of Trust Deed;
- (x) two copies of vending agreement;
- (xi) the reporting accountant's report;
- (xii) rating report by a registered rating agency;
- (xiii) a write-up on the issue;
- (xiv) schedule of claims and litigations;
- (xv) bridging loan agreement if any;
- (xvi) material contracts;
- (xvii) letters of consent of the parties to the issue;
- (xviii) any other document or information required by the Commission from time to time.

[SECRR(A) 2005, s. 61.]

(2) The total loans outstanding, including the proposed bond, shall not exceed 50% of the actual revenue of the issuer for the preceding year.

[SECRR(A) 2005, s. 61.]

(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 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 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 months of the allotment of the securities in accordance with rule 200 of these Rules and Regulations.

PART L

Miscellaneous Rules

L1. Inspection of Documents

Rule 308.

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.

Rule 309.

- (a) Any person wishing to inspect any document shall prior to the inspection write a letter or file Form S.E.C. ID no-

tifying the Director-General of his intention to inspect such document;

- (b) Such letter shall state—
 - (i) proposed date and time of inspection;
 - (ii) purpose for inspection;
 - (iii) whether photocopying and certification will be required;
 - (iv) full name and address of applicant;
 - (v) address of registered office, if a corporate body;
 - (vi) occupation of applicant.

Rule 310.

(1) Pursuant to rule 309 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 309 above, the Commission reserves the right to classify certain documents in accordance with the Official Secrets Act, Cap. 335 of the Laws of the Federation, 1990;
- (b) such classified documents shall be exempted from disclosure to/inspection by the public.

Rule 311. Attendance at A.G.M. of Securities Exchanges/other S.R.O.s, public companies, collective investment schemes and court-ordered meetings in mergers and take-overs

- A. i. All public companies, unit trusts/investment trust schemes, Securities Exchanges/other S.R.O.s and merging companies shall officially invite the Commission to their Annual General Meetings (A.G.M.s);

- ii. the notice of such meeting shall reach the Commission not later than 21 days before the date of the meeting;
- iii. the Commission shall send two representatives to the Annual General Meetings of the public companies and unit/investment trust schemes;
- iv. the representative of the Commission may intervene at the meeting to make clarifications on regulatory issues and matters touching on the Act and the Rules and Regulations.

[SECRR(A) 2005, s. 26, SECRR(A) 2005, s. 63.]

- B.
 - i. All issuers of securities shall as a matter of policy invite the Commission to the Completion Board meeting for the signing of offer documents;
 - ii. the notice of such meeting shall reach the Commission not later than three (3) working days before the date of the meeting;

[SECRR(A) 2003, s. 2.]

- iii. the Commission shall send two representatives to the Completion Board meeting for the purpose of monitoring compliance with the rules of the Commission;
- iv. the representative of the Commission may intervene at the meeting to make clarifications on regulatory issues and other matters touching on the Act and the Rules and Regulations.

[SECRR(A) 2002, s. 26, SECRR(A) 2003, s. 2.]

Rule 312. Administrative Proceedings Committee

(1) Pursuant to sections 29 (7) and 259 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 vi-

olate 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 VII to these Rules and Regulations.

[SECRR(A) 2002, s. 27.]

SCHEDULE I

[SECRR(A) 2002, s. 3.]

Registration Fees, Minimum Capital Requirements, Securities and others

PART A

Registration Fees

A1. Market Operators

		<i>Initial</i>		<i>Renewal</i>	
		₱	k	₱	k
1.	Application Form	5,000.00			
2.	Broker/Dealer	20,000.00		20,000.00	
3.	Broker	20,000.00		20,000.00	
4.	Dealer	20,000.00		20,000.00	
5.	Corporate sub-broker	20,000.00		20,000.00	
6.	Individual sub-broker	5,000.00		5,000.00	
7.	Underwriter	30,000.00		30,000.00	
8.	Issuing house	50,000.00		50,000.00	
9.	Registrar	20,000.00		20,000.00	

10.	Portfolio Manager	20,000.00	20,000.00
11.	Capital Market Fund Manager/ Venture Capital Fund manager	20,000.00	20,000.00
12.	Insurance companies acting as underwriter in Public issues	30,000.00	30,000.00
13.	Corporate investment adviser	20,000.00	20,000.00
14.	Individual investment adviser	5,000.00	5,000.00
15.	Commodities broker	20,000.00	20,000.00
16.	Sponsored individual	1,000.00	1,000.00
17.	Banker to an issue	20,000.00	20,000.00
18.	Trustee	20,000.00	20,000.00
19.	Rating agency	20,000.00	20,000.00
20.	Capital Market Consultant (corporate)	20,000.00	20,000.00
21.	Capital Market Consultant (partnership)	20,000.00	20,000.00
22.	Capital Market Consultant (individual)	5,000.00	5,000.00
23.	Venture Capital Company	50,000.00	50,000.00

A2. Market Facilities

		₦ k	₦ k
1.	Securities Exchanges and branches	100,000.00	100,000.00
2.	Commodities Exchanges and branches	100,000.00	100,000.00

3.	National Association of Securities Dealers and other S.R.O.s	100,000.00	100,000.00
4.	Capital trade points	25,000.00	25,000.00
5.	Clearing, settlement, depository and custodial agencies	100,000.00	100,000.00

PART B

Minimum Capital Requirement

1.	Broker/dealer	70 million
2.	Broker	40 million
3.	Dealer	30 million
4.	Corporate sub-broker	5 million
5.	Individual sub-broker (net worth)	500,000.00
6.	Underwriter	100 million
7.	Issuing house (non-bank)	150 million
8.	Registrar	50 million
9.	Portfolio manager	20 million
10.	Capital market fund manager/Venture Capital Fund manager	20 million
11.	Corporate investment adviser	5 million
12.	Individual investment adviser (net worth)	500,000.00
13.	Commodities broker	40 million
14.	Stock Exchange	500 million
15.	Commodity Exchange	500 million
16.	Clearing, settlement and custodial agency	500 million

17.	Capital trade point	20 million
18.	Capital Market Consultant (corporate)	5 million
19.	Capital Market Consultant (partnership) (net worth)	2 million
20.	Capital Market Consultant (individual) (net worth)	500,000.00
21.	Trustee	40 million
22.	Rating Agency	20 million
23.	Venture Capital Company	20 million

PART C

Securities

- (1) Collective Investment Scheme other than Community Savings, Esusu, etc., flat rate of ₦35,000.00
- (2) Filing fee for registration of securities flat rate of ₦10,000.00
- (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) 0.5%
 - ii. Secondary market transaction 0.1%
- (5) Authorisation fee for units of the fund of unit trust scheme:
- First ₦10 million 0.1%
 - Next ₦10 million 0.075%
 - Above ₦20 million and up to ₦40 million 0.050%
 - Any sum thereafter 0.025%
 - Annual supervision fee 0.25% gross income of the fund
- (6) Registration of real estate investment funds
- First ₦50 million 0.1%
 - Next ₦50 million 0.075%
 - Above ₦100 million and up to ₦200 million 0.050%
 - Any sum thereafter 0.025%
 - Annual supervision fee 0.025% gross income of the fund
- (7) Registration of Venture Capital funds
- First ₦100 million 0.1%
 - Next ₦100 million and up to ₦400 million 0.075%
 - Above ₦400 million and up to ₦900 million 0.050%
 - Any sum thereafter 0.025%

Annual supervision fee	0.25% gross income of the fund
(8) Processing fee for schemes of merger/acquisition and take-over	
Filing fee for pre-merger notice	₦ 50,000.00
First ₦ 500 million share capital	1%
Next ₦ 500 million share capital	0.75%
Any sum thereafter	0.50%
(9) Registration of existing securities (for public companies whose securities are not yet registered)	
First ₦ 500 million (of paid-up share capital)	1%
Next ₦ 500 million	0.75%
Any sum thereafter	0.50%

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 ~~₦~~5,000.00
3. Fees for inspection, copying and certifying records kept by S.E.C.:
 - (a) Inspection of any document ~~₦~~500.00
 - (b) Certification of any document—

(1) first page	₦100.00
(2) every subsequent page	₦25.00
(c) Photocopying (each page)	₦10.00

Note: These fees are subject to review by the Commission from time to time.

SCHEDULE II

[SECRR(A) 2005.]

Penalties/Fines

Renewal of Registration

Late filing fee:

First two weeks – corporate body	₦2,000.00
Sponsored individuals	₦1,000.00 each
Every subsequent day the default subsists: corporate body	₦1,000.00 per day
Sponsored individual	₦500.00 per day
Late filing of allotment returns	2% above MRR 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	₦50,000.00 flat
Late filing of quarterly/yearly returns	₦2,000.00 per day for the period of default

Non-filing of quarterly/yearly returns	₦ 5,000.00 per day for the period of default
Late remittance of S.E.C. fees on market deals	₦ 1,000.00 per day for the first 30 days and thereafter ₦ 2,000 per day for a period not exceeding 90 days, after which the operator shall be referred for enforcement action
Failure to seek prior approval of the Commission before issuing securities	up to ₦ 5,000.00 per day for the period of default
Failure to attend registration meeting	
(a) Corporate	equivalent amount of registration fee payable 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 the function applied for

Note: These penalties/fines are subject to review by the Commission from time to time.

SCHEDULE III

[SECRR(A) 2005.]

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. 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 Consultants
- 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
- 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 Community Savings Schemes

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. 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. 9A: Renewal of Registration (Corporate Body)

FORM S.E.C. 9B: Renewal of Registration (Sponsored Individual)

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 from Trustee
FORM S.E.C. QR7:	Quarterly Return from Underwriter
FORM S.E.C. QR8:	Quarterly Return by Issuing House on Securities and Use of Issue Proceeds
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

SCHEDULE IV
[SECRR(A) 2005.]

Information, Returns and Reports Required to be Filed by Public Companies, Capital Market Operators and other Self-regulatory Organisations

1. Annual report and accounts of public companies.
2. Continuous reporting of material changes in activities by public companies.
3. Quarterly Report/Return from Capital Market Operators.
4. Annual Report and Accounts by Capital Market Operators.
5. Monthly Return from Capital Market Operators.
6. Miscellaneous Returns by Capital Market Operators.
7. Quarterly Return by Securities Exchanges and other Self-regulatory Organisations.

SCHEDULE V

[SECRR(A) 2005.]

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—
 - (1) legal;
 - (2) accounting;
 - (3) printing and advertising;
 - (4) 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

[SECRR(A) 2005.]

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—

1. Total market value of securities based on the Exchange daily official list as at the date of valuation (lowest market offer price).

Add—

2. Stamp duties;
3. Brokerage fee;
4. S.E.C. fee;
5. Actual cost of investment in unquoted companies;
6. Estimate of capital appreciation for unquoted companies;
7. Uninvested cash;
8. Undistributed income to date less expenses;
9. Total value of money market instrument;
10. Manager's initial charge.

Value per unit = summation of (1) minus (2 - 10) divided by number of units on sale rounding off.

Bid Price—

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 companies.
3. Estimate of capital appreciation for unquoted companies.
4. Uninvested 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.

Value per unit = summation of (1) minus (2 - 6) less (7) minus (9) divided by number of units on sale rounding off.

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

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 quasi-judicial body established pursuant to the Investments and Securities Act 1999 for the purpose of giving opportunity for 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 1999 and the rules and regulations made thereunder or such operators against whom investors have lodged complaint.

Rule 1. Definitions

Unless the context otherwise requires—

“**Commission**” means the Securities and Exchange Commission established by the ISA 1999;

“**Committee**” means the Administrative Proceedings Committee of the Securities and Exchange Commission;

“**Brief**” means the written allegation and/or defence of the parties appearing before the Committee and submitted to it for consideration and determination of the matter;

“**Complainant/Petitioner**” means a person who has filed a complaint or petition before the Committee;

“**Respondent**” 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) Complainant/Petitioner(s);
- (b) the respondent(s);
- (c) any other person required by the Committee to be joined or joined by leave of the Committee.

Rule 3. Forms of Action

- (i) All actions brought before the Committee shall be brought in the true names of the real parties who have interest in the matter.
- (ii) the action shall be filed by a complainant filing a brief before the Committee with details of the allegations or complaint and the full names and address of the respondent with full particulars.
- (iii) the respondent shall be entitled to file a reply brief to the complainant's brief within 10 days of the receipt of same from the Committee.
- (iv) the briefs shall be typewritten or printed or mimeographed and shall be in English Language. The briefs should be verified by an affidavit testifying to the correctness or truth of the statement.

Rule 4. Commencement of Hearing**(i) HEARING NOTICE**

- Upon receipt of the complainant's brief and the respondent's reply brief, a notice of hearing shall be forwarded to the parties by the Committee. The notice shall state the name of the parties, summary of the allegations or complaint, date, time and venue of the hearing.
- (ii) There shall be at least 7 clear days between the date the notice of hearing was despatched and the date of hearing of the matter.

Rule 5. Amendment to Brief

- (i) A party, may, with the leave of the Committee amend his brief and the other party shall have a right to file a reply brief in answer to the amendments made by the other party where briefs have been settled by the parties. A party shall have two days to file a reply to any substantial amendment made.

- (ii) Where no reply brief has been filed by the respondent, the complainant/petitioner may as of right amend his brief.

Rule 6. Counter-Claim, Set Off and Similar Actions

- (i) A party in an action before the Committee shall have a right of counterclaim or set off against the other party.
- (ii) Any counter-claim or set off filed by any party shall be in writing with detailed brief of the particulars of such counter-claim or set off.
- (iii) Copies of the counter-claim or set off shall be served on the other party to the action who shall have a right of reply within two days of service on him.

Rule 7. Venue

Unless otherwise indicated the venue of hearing of the Committee shall be in the premises of the Commission.

Rule 8. Inter-Party Settlement

- (i) During the Pendency of matters before the Committee, parties are at liberty to apply for adjournment to enable them settle the issue amicably amongst themselves.
- (ii) Settlements arrived at through the process in (i) above, shall be made a decision of the Committee by filing same with the Commission and the decision shall be implemented accordingly.
- (iii) This rule shall not apply to matters initiated by the Commission or matters involving fraud, manipulation, insider dealing and any other serious violations to be determined by the Commission from time to time.

Rule 9. Appearance before the Committee

- (i) All parties to matters before the Committee shall have a right of appearance.
- (ii) 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.

Rule 10. Jurisdiction of the Committee

The Committee shall have jurisdiction in respect of the following among others:

- (i) suspension or cancellation of registration of capital market operators;
- (ii) revocation of the certification of a securities exchange or capital trade point subject to the approval of the Minister of Finance;
- (iii) review of disciplinary actions taken by securities exchanges or capital trade points against their members;
- (iv) suspension or expulsion or other disciplinary actions against members of a Securities Exchange or Capital trade points where they fail to act against the members;
- (v) removal of executive officers of a securities exchange or capital trade points;
- (vi) suspension of registration of securities;
- (vii) Public sale or trading in unregistered securities;
- (viii) dealing in securities or sale of securities to the public by persons not registered by the Commission;
- (ix) unethical and unprofessional practice, manipulations and use of deceptive devices or contrivances in securities transactions;
- (x) denial of registration;
- (xi) non-compliance with orders, guidelines and directives of the Commission;
- (xii) determination of compensation for insider dealing cases;
- (xiii) violations or probable or threatened violation of the provisions of the Investments and Securities Act 1999 and the rules and regulations made thereunder;

- (xiv) any other matter which the Commission may direct it to hear.

Rule 11. Sanctions

The following sanctions may be imposed by the Committee:

- (i) suspension of registration;
- (ii) cancellation of certificate of registration of operators;
- (iii) revocation of registration with the approval of the Minister of Finance;
- (iv) Fines for late filing and non-compliance with the rules and regulations of the Commission;
- (v) nullification and voiding of irregular transactions;
- (vi) censure and warnings;
- (vii) orders such as cease and desist order;
- (viii) disqualification of professionals from practicing before the Commission;
- (ix) imposing conditions for registrations;
- (x) imposing the rate of interest payable to subscribers by Issuing houses for late return of monies;
- (xi) any other sanction which the Commission may prescribe from time to time.

Rule 12. Decisions of the Committee

- (i) every decision of the Committee shall be confirmed by the Commission before it becomes effective. The confirmation shall be made not later than 14 days after the decision was taken by the Committee.
- (ii) Decisions of the Commission shall be communicated in writing to the parties by the Secretary to the Committee within 5 days of the confirmation of the decision by the full Board of the Commission.

Rule 13. Appeals

Any party who is not satisfied with the decision of the Committee as confirmed by the Commission may within 30 days of the re-

ceipt of the decision, appeal to the Investments and Securities Tribunal (IST) after a 14 - day notice of such appeal would have been given to the Commission.

Rule 14. Citation

These rules shall be cited as rules of procedure of the Administrative Proceedings Committee of the Securities and Exchange Commission.

SCHEDULE VIII

*Important Information about Procedures for Opening a
New Account*

To help the government fight the funding of terrorism and money laundering activities, the Money Laundering Prohibition Act 2004 requires all financial and non-financial institutions to obtain, verify and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, occupation and other information that will enable us to identify you. We may also ask to see your drivers' license or other identifying documents.

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 jeopardise 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:

SEC or Commission	– Securities and Exchange Commission;
APC	– Administrative Proceedings Committee of SEC;
Operators/Registered Institutions	– All capital market operators and Individuals registered with the Securities and Exchange Commission;
SRO	– Self-Regulatory Organisation;
His	– 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 behaviour 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 behaviour, 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, misbehaviour 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 judgement 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—

- deposit clients' funds in his personal account or accounts of others or vice versa;
- act as trustee or executor for clients;
- enter into direct or indirect undisclosed arrangements, before or subsequent to transactions, to share in profits or losses;
- 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—

- operate strictly within the Rules and Regulations of the Stock Exchange or other licensing authority with which he is registered;
- willingly and promptly disclose to his superior officer mistakes or errors that may lead to monetary loss to clients;
- not under any circumstance utilise a client's funds other than in strict compliance with the client's instructions and requirements;
- keep proper records and books of account of clients;

- fully disclose any dealing in securities to the firm's management;
- 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;
- operate securities dealing account in accordance with client's instruction.

An employee of a broker/dealer firm shall not—

- 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;
- act in concert with others without reasonable justification to influence price movements of securities in the market;
- on his own or in connivance with others alter or forge share/stock certificates, transaction records and other related documents;
- accept or execute any order not emanating from the beneficial owner of an account or certificate;
- accept or execute any order in which the true identity of the beneficial owner is concealed;
- 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;
- 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

Once an issue is before an issuing house for sponsorship, an employee with unpublished price-sensitive information shall not:

- effect transaction on the security for his own account;
- disclose such information about the issue to other members of staff or professionals who have no reason to access the information.

An employee shall not:

- lodge proceeds from an issue in his account or in the accounts of others;
- engage in fraud, bribery, or attempt to engage in fraud, extortion, fronting for ineligible investors and other dishonourable conduct or behaviour inconsistent with equitable principles of business;
- 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 rumours;
- knowingly submit false information to management or regulatory authorities;
- engage in unbusiness-like conduct or any acts detrimental to the interest and progress of the capital market;
- knowingly connive or recommend persons of dubious character and record for employment by any firm in the securities industry;
- 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.

An employee shall:

- be careful and diligent in giving advice to prospective issuers of securities;
- exhibit care, objectivity and competence in the valuation of securities and general handling of issues before him;

- separate all application monies that come into his possession and promptly lodge all such funds into the designated accounts;
- 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:

- 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;
- maintain proper records of all investment decisions made on behalf of clients;
- send at the end of every quarter statements to clients showing their investment positions during the period;
- disclose to clients when giving investment advice whether the advice is based on facts or opinion;
- 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;
- 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;
- take adequate care and display integrity in the management of investors' funds. A portfolio manager must avoid the mismatch of term commitments;
- not deposit investors' funds in his personal account or the accounts of other persons;

- not employ investors' funds to acquire assets for himself, his companies or others' or otherwise employ the funds in violation of his mandate;
- display impartiality and objectivity in his relationship with his clients;
- 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:

- in all cases of transfer of securities, carefully and properly verify all signatories with specimens lodged with the department;
- properly reflect all changes in address and/or signature in the register;
- 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;
- not delay without reasonable cause and authorisation, the despatch 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 despatch to share/stock holders;
- not on his own or in concert with others, forge, deface, alter or convert any security document;
- 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.

**TO BE SIGNED BY EVERY MARKET OPERATOR AND A
COPY TO BE DEPOSITED WITH THE SECURITIES AND
EXCHANGE COMMISSION (SEC).**
