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 twelve (12) 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), 2002[1]

(2) Securities and Exchange Commission Rules and Regulations (Amendment), 2003[2]

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), 2005[3]

(4) Securities and Exchange Commission Rules and Regulations (Amendment), 2006 (1)[4]

(5) Securities and Exchange Commission Rules and Regulations (Amendment), 2006 (2)[5]

NB: These Rules and Regulations have been amended severally since 2008 till date. The under listed Rules and Regulations (with date of the amendments) are the amendments/new rules incorporated into the Rule book for ease of reference:

2008

1. Custodian of Securities – (Rule 27) **(APRIL 28, 2008)**
2. Regulation of Custodian of Securities (Rule 207A) **(APRIL 28, 2008)**
3. Code of Conduct for Custodian of Securities **(APRIL 28, 2008)**
4. Depositories and Participants Regulation (Rule 26) **(APRIL 28, 2008)**
5. Regulation of Depositories and related parties (Rule 207B) **(APRIL 28, 2008)**
6. Code of conduct for participants **(APRIL 28, 2008)**
7. Regulation of Securities Clearing and Settlement (Rule 207C) **(APRIL28, 2008)**
8. Rules on Shares Buyback-Rules relating to acquisition of own share by companies (Rule 109B) **(SEPTEMBER 11, 2008)**
9. Rules on Market Makers (Rule 31C) **(SEPTEMBER 11, 2008)**
10. Market Makers (Part E4- Rule 182C) **(SEPTEMBER 11, 2008)**

2009

11. Rules on Book building (New Rule 78C) **(MARCH 12, 2009)**
12. Discontinuance of Periodic renewal of Registration by Operators **(JULY 10,2009)**
13. Qualifications of sponsored individuals (Rule 16(4) **(AUGUST 31,2009)**
14. Registration of Sub-Brokers (Corporate and Individual) (Rule 32) **(AUGUST 31,2009)**
15. Regulation of Sub-Brokers (Part E3) **(AUGUST 31,2009)**

2010

16. Approval of Appointment of Directors of Market Operators (New Rule15A) **(MARCH 24,2010)**
17. Rules on Bonus issue (New Rule 40D) **(MARCH 24,2010)**
18. Validity period of accounts (New Rule 40B)(i)(iv)(h) **(MARCH 24,2010)**
19. Reduction in documentation filed with SEC by Operators. Rule 40(3) **(MARCH 24,2010)**
20. Conditions for approval of IPO and listing by introduction(New Rule 50) **(MARCH 24,2010)**
21. Filing of Registration Statement (Rule 50(1) & (2) **(MARCH 24,2010)**
22. Declaration by the issuer on full disclosure (New Rule 50 (3) **(MARCH 24,2010)**
23. Condition for approval of subsequent Public Offer (New Rule 50A) **(MARCH 24,2010)**
24. Incorporating forecast and oversubscription in the Offer documents(New Rule 56(XV)**(MARCH 24,2010)**
25. All Parties Meeting (New Rule 59B) **(MARCH 24,2010)**
26. Pre-Offer waiting period (Fixed price Offers)(New Rule 59C) **(MARCH 24,2010)**
27. Extension of Offer Period (New Rule 60(d) **(MARCH 24,2010)**

---

3. Hereinafter referred to as SECRR(A) 2005.
4. Hereinafter referred to as SECRR(A) 2006 (1).
5. Hereinafter referred to as SECRR(A) 2006 (2).

28. Opening of Interest yielding accounts for offer proceeds (Rule 64(1)) **(MARCH 24,2010)**
29. Absorption of over-subscription (Rule 64(4)(a)(iii) **(MARCH 24,2010)**
30. Interest on Return Monies (new Rule 64(7) **(MARCH 24,2010)**
31. Basis of allotment (Rule 69(2) **(MARCH 24,2010)**
32. Subscription level for Issue not underwritten (Rule 70(6)(ii) **(MARCH 24,2010)**
33. Listing of securities after allotment clearance (New Rule 71(ii) **(MARCH 24,2010)**
34. Cost of issue (Rule 73) **(MARCH 24,2010)**
35. Amount to be underwritten (Rule 75) **(MARCH 24,2010)**
36. Underwriting of Rights issues (New Rule 75A) **(MARCH 24,2010)**
37. Underwriting capacity/commitment (Rule 76) **(MARCH 24,2010)**
38. Conditions for Approval of Offer(Private Placement) (Rule 90) **(MARCH 24,2010)**
39. Advertisement of Private Placement (New Rule 90(2) **(MARCH 24,2010)**
40. Know your Customer (Rule 100) **(MARCH 24,2010)**
41. Issue and handling of certificates (Rule 200) **(MARCH 24,2010)**
42. Depository receipts of Nigerian entities (New Rule 226(3)) **(MARCH 24,2010)**
43. Harmonization of Rule 109B(vi) with Section 161(a) of CAMA 1990 **(MARCH 24,2010)**
44. Issuance of Corporate bonds (New Rule 307A) **(MARCH 24,2010)**
45. Reduction of SEC fees for the registration of bond Issuance **(MARCH 24,2010)**
46. Rule on Money Market fund (Rule 249A) **(MARCH 24,2010)**
47. Amendments to Schedule 1,Part C, Item 5,6 & 7(Provision that empowers SEC to charge 0.25% of gross income of CIS schemes was deleted) **(MARCH 24,2010)**
48. Regulations of Mergers (Rule 227) **(MARCH 24,2010)**
49. Clearance of scheme Documents(New Rule 232(c) **(MARCH 24,2010)**
50. Power to order the Break up of Company(New Rule 234(C) **(MARCH 24,2010)**
51. Method of Calculations of Annual Turnover or Assets to be applied in relation to Merger thresholds (New Schedule X) **(MARCH 24,2010)**
52. Rules on Procedure of APC of SEC (Schedule VII) **(MARCH 24,2010)**
53. Vending agreement (Amendment to Rule 78B) **(JANUARY 27,2011)**
54. Regulations of Public Companies (Part B4 Rule 97A) **(MARCH 24,2010)**
55. Guidelines for the monitoring of unclaimed dividends by public companies **(MARCH 24,2010)**
56. Rule on Inter-Dealer broker (New Rule 24A) **(MAY 21,2010)**
57. **Code of conduct for Council Members (New Rule 116)**
58. Rule on Margin Lending **(OCTOBER 8, 2010)**
59. Guide lines on Anti Money Laundering/Combating Financing of Terrorism (AML/CFT) compliance manual **(JULY 28, 2010)**

2011

60. Vending agreement (amendment to Rule 78B) **(JANUARY 27,2011)**
61. Negotiated Settlement **(JANUARY 27,2011)**
62. Conditions to grant waiver on bonds that are not backed by an irrevocable letter of authority. **(JANUARY 27,2011)**
63. Custodial Services for registered collective investment schemes **(JANUARY 27,2011)**
64. Securities lending and borrowing. **(JANUARY 27,2011)**
65. Islamic Fund Management. **(JANUARY 27,2011)**
66. Exchange Traded Funds (ETF) **(JANUARY 27,2011)**
67. Payment of dividends **(JANUARY 27,2011)**
68. Investment in unlisted equities **(JANUARY 27,2011)**
69. Rules on Appointment of Independent Lead Issuing Houses **(JANUARY 27,2011)**
70. Appointment of Chief Executive and Principal Officers of Securities Exchanges (New Rule 115)
71. Amendment of Rule 193 –Functions of Registrars (New Rule 193 (2) **(JANUARY 27,2011)**

72. Rule on Internal Restructuring of Companies (New Rule 230(b) (**JANUARY 27,2011)**
73. Penalty for Underpayment of SEC fees- Schedule II **(JANUARY 27,2011)**
74. Rule relating to Securities ownership (Amendment to Rule 109A) (**JANUARY 27,2011)**
75. Code of Corporate Governance **(1st APRIL 2011)**
76. Rules on Book building (Rule 78C) **(SEPTEMBER 12, 2011)**
77. Rules on Corporate Bonds (Rule 307A) **(SEPTEMBER 12, 2011)**
78. Rules on Debt – Equity conversion (Rule 40E) **(SEPTEMBER 12, 2011)**
79. Rules on Fund of Funds and Feeder Funds (Rule 282A) **(SEPTEMBER 12, 2011)**
80. Rules on Registration of National Association of Securities (Rule 23(1)(xiv) **(SEPTEMBER 12, 2011)**
81. Rules on Registration of Rating Agency (Rule 38(1) **(SEPTEMBER 12, 2011)**
82. Rules on Shelf Registration (Rule 40C (3)(a) **(SEPTEMBER 12, 2011)**
83. Rules on Contents of a prospectus (Rule 56A) **(SEPTEMBER 12, 2011)**
84. Rules on Contents of a prospectus-deletion of "profit forecast" (Rule 56(1)(viii)**(SEPTEMBER 12, 2011)**
85. Rules on Regulation of public companies (Rule 97(2)(5) –Part B4) **(SEPTEMBER 12, 2011)**
86. Rules on Functions of Registrars-dispatch of annual reports, etc(Rule 193(6) **(SEPTEMBER 12, 2011)**
87. Functions of reporting accountants (report on the profit forecast of the Issuer) - deleted (Rule 206 (2)(a - g)) **(SEPTEMBER 12, 2011)**
88. Rule on Profit forecast -deleted (Rule 206 (4)(b) **(SEPTEMBER 12, 2011)**

2012

89. Guide lines on Anti Money Laundering/Combating Financing of Terrorism (AML/CFT) compliance manual. **(JANUARY 12, 2012)**
90. Rules on Market Makers. **(APRIL 11, 2012)**

Pursuant to the provision of section 258 and **313** and all other powers conferred upon it under the Investments and Securities Act (I.S.A.) of **2007**, the Commission hereby makes the following Rules and Regulations:

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

ARRANGEMENT OF RULES

PART A

A1. Rules of General Application

RULE

A6. Post-registration Compliance Requirements by Capital Market Operators

PART B

Regulation of Distribution of Public Securities

B1. Public Offer

PART D

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

D1. Stock Exchanges

D2. Capital Trade Points

Rules 119 – 131 and 135 – 142 shall apply.

D3. National Association of Securities Dealers

Rules 132 – 142 shall apply.

D4. Commodity and Futures Exchange

D5. Clearing and Settlement Agencies

PART E

Regulation of Capital Market Operators

E1. General

PART G

Regulation of Mergers, Take-overs and Acquisitions

G1. Mergers, Acquisitions and Combinations

G2. Take-overs

PART H

Regulation of Collective Investment Schemes

H1. Unit Trust

PART I

Regulation of Solicitation and Use of Proxies

PART J

Regulation of Establishment of Investors Protection Fund

PART K

Regulation of Borrowing by States, Local Governments and other Government Agencies

PART L

Miscellaneous Rules

L1. Inspection of Documents

SCHEDULES

SCHEDULE I

Registration Fees, Minimum Capital Requirements, Securities and others

SCHEDULE II

Penalties/Fines

SCHEDULE III

Forms

SCHEDULE IV

Information, Returns and Reports Required to be Filed by Public Companies, Capital Market Operators and other Self-regulatory Organisations

SCHEDULE V

Report on Securities and Use of Proceeds

SCHEDULE VI

Basis of Computation of Bid and Offer Prices for Collective Investment Schemes

SCHEDULE VII

Rules of Procedure of S.E.C. Administrative Proceedings Committee

SCHEDULE VIII

Important Information about Procedures for opening a New Account

SCHEDULE IX

Code of Conduct for Capital Market Operators and their Employees

SCHEDULE X

Method of calculation of annual turnover or assets to be applied in relation to merger thresholds

SCHEDULE XI

ANTI-MONEY LAUNDERING/COMBATING FINANCING OF TERRORISM (AML/CFT) COMPLIANCE MANUAL FOR CAPITAL MARKET OPERATORS 2010

SCHEDULE XII

CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES

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

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, **2007**, unless the context otherwise requires

"Act" means Investments and Securities Act, **2007**;

"beneficial owner" of a security shall include

(*a*) any person who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise has or shares

(i) voting power which includes power to vote or to direct the voting of such security; and/or

(ii) investment power which includes the power to dispose, or to direct the disposition, of such security;

(*b*) any person who directly or indirectly creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirement to notify the Commission of any direct or indirect ownership of more than 5% of any class of securities;

(*c*) subject to the provisions of paragraph (*b*) above, where that person has the right to acquire beneficial ownership of such security, as defined in paragraph (*a*) above at any time within sixty days including but not limited to any right to acquire—

(i) through the exercise of any option-or right;

(ii) through the conversion of security or;

(iii) pursuant to the power to revoke a trust, discretion account, or similar arrangement, any securities not outstanding which are subject to such options, 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 pledge of securities pursuant to a *bona fide* pledge agreement shall not be deemed to be the beneficial owner of such pledged securities merely because there has been a default under such an agreement, except during such time as the event of default shall remain incurred for more than thirty (30) days or at any time before a default is cured if the power acquired by the pledge pursuant to the default enables him to change or influence control of the issuer;

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

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

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;

"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 or any amendment thereto, any statement, report, Prospectus, consents, undertakings, document or memorandum accompanying such application or incorporated therein by reference;

"Rules and Regulations" refer to all the Rules and Regulations made by the Commission pursuant to the Act including the forms for registration, reports and the related instructions thereto;

"securities exchange" 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 headquarters 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 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. A <u>NEGOTIATED SETTLEMENT</u>

1. Any person notified that a proceeding is or may be instituted against him or any party to a proceeding already instituted, may, at any time, propose in writing to the Commission a request for a negotiated settlement with the Commission.

2. Procedure:

a. **A notification of a request for negotiated settlement shall state that it is made pursuant to this rule;**
b. **It shall recite or incorporate as part of the request the provisions of sub section C(iv) of this rule;**
c. **The notification shall be signed by the person making the request and not by his/her Counsel;**
d. **In the case of a body corporate, notification shall be signed by the Managing Director or Secretary and not by counsel to the company.**

Provided that settlement shall not be available in respect of insider trading, accounting fraud, market manipulation and any party who had previously utilized the negotiated settlement.

3. **Consideration of request for negotiated settlement:**

a. **Upon the receipt of request for a negotiated settlement, any proceedings against the erring party shall be suspended and the notification shall be forwarded to the appropriate department of the Commission for consideration.**

b. **In considering the request for negotiated settlement regard shall be had to the submission of the party making the request and a settlement conference shall be convened where the party shall give reasons to warrant the grant of a negotiated settlement.**
c. **The appropriate department of the Commission shall present its findings on the request for a negotiated settlement to the Commission within 5 working days, from the date of the conclusion of the settlement conference.**

d. **By submitting to a negotiated settlement, the party making the request shall, subject to the acceptance of the request, waive:**
   i. **Its right to initiate further hearing pursuant to the statutory provisions under which the proceedings are to be or have been instituted;**
   ii. **The filing of proposed findings of facts and conclusion of law;**
   iii. **All post hearing procedures;**
   iv. **Judicial review by any court.**
   v. **Some provisions of the Rules and Regulations or other requirements of law as may be construed to prevent any member of staff of the Commission from participating in the preparation of, or advising the Commission as to, any order, opinion, finding or fact, or conclusion of law to be entered pursuant to the request; and,**
   vi. **any right to claim of bias or prejudgment by the Commission based on the consideration of or discussion concerning settlement of all or any part of the proceedings.**

   e. **Where the request for negotiated settlement is rejected, the party making the request shall be notified by the Commission within 5 working days of receipt of rejection from the appropriate department and the request for settlement shall be deemed withdrawn.**

   f. **The rejected request shall not constitute part of the record**

   g. **in any proceeding against the party making the request.**

   h. **The acceptance of the negotiated settlement shall occur only upon the issuance of findings and decisions by the Commission.**

i. **The Commission shall not accept a partial fulfilment of a settlement and until a request is fully settled by the party making the offer, the event for which the request was made shall continue to run against the party and the Commission may continue its instituted proceedings against the party.**

[SECRR(A) January 27th ,2011]

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 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 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 15A. Approval of appointment of Directors of Capital Market Operation

i. *Executive* Directors of Market Operators shall be approved by the Commission prior to their appointment;

ii. **A Director of a Market Operator shall have the minimum qualifications as specified in rule 16 of these Rules and Regulations.**

[SECRR(A) August 31,2009]

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) "Where **an** individual is sponsored by a Sub-Broker, such **a person** shall **be an Associate Member of the** Chartered Institute of Stockbrokers (CIS) **or have any of the qualifications specified in one (1) above or such other professional qualifications as acceptable to the Commission.**

[SECRR(A) August 31,2009]

(5) 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 CAC;

(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 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 and registered in the name of the company;

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

(*c*) 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;

(vi) 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 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.]

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

Rule 19. 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 20. Suspension/Cancellation of registration

(1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the Rules and Regulations, the code of conduct for capital market operators or fails to do any of the following:

(*a*) furnish any information relating to its activities as required by the Commission or furnishes information which is false and misleading in any material particular;

(*b*) submit periodic returns or reports as required by the Commission;

(*c*) co-operate in any enquiry or inspection conducted by the Commission;

(*d*) update its systems and procedures as recommended by the Commission;

(*e*) resolve the complaints of clients or fails to give a satisfactory reply to the Commission in this regard;

(*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 **10** 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 **2** 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 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 ₦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 Company Secretary.

(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 ₦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 Company Secretary. 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 ₦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.

24A. Registration of Interbroker Dealer

<u>Definition of Terms</u>

"**Inter Dealer Broker" (IDB)**	means: a brokerage firm operating in the Bonds or OTC Derivatives Market, which acts as an Intermediary between major dealers in the Capital Market (brokers and Market Makers)
"IDB authorized user"	means: an authorized user who is registered only to act as a matched principal or name give-up inter- dealer broker to facilitate transactions in securities between:- a) authorized users: or b)authorized users and their clients, as approved by the relevant Market Association;
"IDB authorized user services"	means: the services an IDB authorized user offers to facilitate transactions in securities;
"Matched Principal"	means: an IDB authorized user that does not disclose to the market the identities of the parties to a trade facilitated by that IDB authorized user;
"Name Give-up"	means: an IDB authorized user that discloses the identity of each party to the other when the trade price is agreed.

Registration Requirements

(1) An application for registration as Inter-Dealer Broker shall be filed with the Commission on the appropriate SEC form and shall be accompanied with:

(a) A minimum of two sets of completed Form SEC 2 to be filed by the sponsored individuals;

(b) A copy of Certificate of Incorporation certified by the Company Secretary;

(c) A copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission (CAC) which among others shall include the power to act as Inter-Dealer Broker;

(d) A copy of the CAC form stating the particulars of Directors certified by the CAC;

(e) A copy of the latest audited accounts or audited statement of affairs for companies in operation for less than one year;

(f) Profile of the company covering among others, brief history of the company, organizational structure, shareholding, principal officers, and its operational manual. etc;

(g) Sworn undertaking to comply with the provisions of the ISA, the Rules and Regulations made pursuant thereto and to render such returns and keep such proper records as may be specified by the Commission from time to time;

(h) Evidence of minimum paid up share capital of N50 Million;

(i) Evidence of payment to the Commission of N5, 000.00 application fee and N100, 000.00 registration fee.

(j) Evidence of a trading platform in compliance with the minimum requirement as specified by the Commission from time to time.

(k) Evidence of a minimum of two (2) sponsored individuals who shall comply with the relevant rules on qualification of sponsored individuals.

(l) Evidence of payment of N1,000.00 (one thousand naira only for each officer being sponsored)

(2) An Inter-Dealer Broker shall for the purpose of registration comply with the provisions of Rule 43-45 of the Rules and Regulations.

(3) An Inter-Dealer Broker shall convey any change in information, which affects the status of the company to the Commission as required by Rule 49 of these Rules and Regulations.

(4) The Commission shall within sixty (60) days after the filing of an application pursuant to the Act and these Rules and Regulations, make known its decision to either grant, or after appropriate notice and opportunity for hearing deny registration, unless the application is withdrawn by the applicant.

(5) A notice under sub-rule (4) of this Rule shall contain the reasons and grounds upon which the Commission is considering not to register and shall stipulate the time (not being less than fourteen (14) days from the receipt of the notice) within which representations may be made to the Commission in respect thereof. The notice shall stipulate the time and place of the hearing referred to in sub-rule (4).

An authorized Inter Dealer Broker shall provide to the Commission the register of its authorized users.

(7) Granting of IDB authorized user registration.

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

b. Notwithstanding anything to the contrary contained in the Rules, an IDB authorized user shall not be permitted to render, or offer to render, its services to any member of the Market Association prior to such IDB authorized user having obtained membership of the prescribed Market Association;

(8) Obligations of an IDB authorized user:

An IDB authorized user shall:

a. enter into written agreements with members of a Market Association who receive its services, and the agreement shall stipulate all the material terms of the services which the IDB authorized user offers to any particular Market Association member. Such agreements shall be submitted to the Commission for approval.

b. Ensure transparency in its services;

c. Publish on the screen (or disclose where services are not screen based):
   i. Identity of the security;
   ii. Price for the transaction, and;
   iii. Size of the resultant transaction.

d. Maintain records of all telephone transaction for a period of at least 90 days;

e. Not trade with another IDB authorized user.

f. Report any suspicion of market abuse to the Commission.

g. hold fidelity cover for fraud, misappropriation by a director, officer, trader or other person involved in the management or administration of trading, that the IDB authorized user deems appropriate.

h. comply with the reporting requirements stipulated by the Rules for trades facilitated by that IDB authorized user;

i. comply with the settlement requirements stipulated by the Rules for trades facilitated by that IDB authorized user;

j. ensure that for all trades being facilitated by that IDB authorized user, the trade information is displayed in the manner stipulated by the Rules;

k. provide a description, as stipulated by the Rules , to the Commission of the services it offers to authorized users, which information may be published by the Commission;

l. notify the Commission immediately of any change of Auditors.

(9) Restrictions on an IDB authorized user:

(a) An IDB authorized user shall not intentionally take any proprietary or trading position in any securities trading, provided that any positions taken unintentionally shall be closed out immediately.

(b) A matched principal IDB authorized user shall always keep the identity of its authorized users using its services anonymous; Provided that their identity shall be disclosed to the Commission as and when required.

(c) A name give-up IDB authorized user shall keep the identity of the authorized users using its services anonymous until the counterparty to the trade has accepted all remaining terms of the trade.

(d) An IDB authorized user shall appoint a compliance officer who shall be registered with the Commission.

(10) Access to services offered by an IDB authorized user

(a) An IDB authorized user may only offer IDB authorized user services to:

i. The relevant market association's members; and

ii. Clients disclosed to and approved by the relevant market association.

(b) An IDB authorized user shall:

i. Maintain a list of the parties to whom it shall offer its services;

ii. Not offer its services to parties not included on the list; and

iii. Provide the list to the Commission, which at all times shall be current.

(11) Registration and functions of officers of an IDB authorized user

An IDB authorized user's compliance officer shall:

i. Be an employee of the IDB authorized user;

ii. Be of good character and high business integrity;

iii. Comply with the minimum educational requirements as provided in Rule 16 of these Rules and Regulations.

iv. Ensure compliance by the IDB authorized user concerned, with the ISA, these Rules and Regulations, the Code of Corporate Governance and any directive by the Commission.

v. Ensure compliance by the IDB authorized user with the financial requirements stipulated by the Rules and Regulations.

vi. Ensure that the required returns are submitted to the Commission as stipulated by the Rules and Regulations.

vii. Be independent and report to the Commission any apparent breaches by the IDB authorized user, its officers, and employees.

viii. Take steps to rectify a breach or to eliminate any error regarding any trade facilitated by the IDB authorized user, if requested to do so by the Commission.

ix. Notify the Commission in writing of any change in the particulars of an officer as provided for by these rules within 5 working days of registration of the changes with the appropriate authority**;**

x. Notify the Commission in writing if any of its officers, traders and employees have been found guilty of any improper conduct by any exchange, current or previous employer, professional association, including the relevant market association, or by a court or has been censured by a supervisory or regulatory authority;

xi. Submit a monthly compliance report to the Commission.

(12) Data

(a) All data specified by the Commission relating to trades facilitated by an IDB authorized user shall only be distributed in accordance with the requirements as set out in these Rules from time to time;

(b) An IDB authorized user shall not show any price or trade related information to parties who are not included in the list of members of the Trade Association unless approved by the Commission.

(c) An IDB authorized user shall ensure that trades facilitated by it are reported correctly and timeously to ensure the integrity of the data flow to the Commission.

(d) The Commission may, from time to time request details of a bid or offer that was placed on the screen and the details of the related trade from the IDB authorized user.

(13) Penalty

Failure to comply with the provisions of this part of these Rules and Regulations shall render the IDB authorized user liable to a penalty as may be stipulated by the Commission.

[SECRR(A) May 21,2010]

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 Company Secretary;

(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 ₦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 and participants

Registration requirements

A. <u>DEPOSITORY</u>

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

(i) Copy of certificate of incorporation certified by the Corporate Affairs Commission (CAC);

(ii) Two copies of the Memorandum and Articles of Association certified by the CAC, which shall include among other powers, the power to act as a depository;

(iii) Certified copy of CAC Form showing names and particulars of the directors of the company;

(iv) Copy of the latest audited accounts or statement of affairs for companies in operation for less than one year;

(v) a set of duly completed designated forms to be filed by a minimum of 3 sponsored individuals;

(vi) Two copies of existing or draft rules and regulations;

(vii) Sworn undertaking to promptly furnish the Commission with copies of any amendment to the rules of the depository;

(viii) Information relating to the following facilities:

(a) computerization/back up

(b) telephone and other electronic facilities

(c) settlement procedure;

(ix) Information relating to internal control measures in relation to dematerialized certificates and the strong room;

(x) Software maintenance agreement;

(xi) Fidelity bond of a value not less than 25% of paid up capital;

(xii) Sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;

(xiii) Sworn undertaking to comply with and enforce compliance by its participants with the provisions of the Act and these Rules and Regulations;

(xiv) Information as to the organization of the company including the organizational and shareholding structure, members of the Board/Council, principal officers as well as rules and procedures;

(xv) Evidence of minimum paid up capital of N5 billion;

(xvi) Any other document or information that may be required by the Commission from time to time;

Eligibility

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

(i) a financial institution licensed by the appropriate regulatory agency;

(ii) a recognized Securities Exchange registered by the Commission;

(iii) a body corporate engaged in the provision of financial services where not less than 75% of the equity capital is held by any of the institutions mentioned in (i) and (ii) above.

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

4. Ownership Structure

(i) An individual acting alone or in partnership shall at all times hold not more than 35% of the equity capital of a depository.

(ii) A participant at all times hold not more than 5% of the equity capital of the depository.

(B) **Registration Requirements of Participants**

Definition of participant

(1) **An application for the registration of a Participant shall be made to the Commission in the designated form by each depository on which the applicant proposes to act as a Participant and shall be accompanied by the following:**

(i) a copy of certificate of incorporation by the Corporate Affairs Commission;

(ii) copy of the Memorandum and Articles of Association by the CAC;

(iii) latest copy of audited accounts or audited Statement of Affairs by the Auditors for companies in operation for less than one year;

(iv) a set of duly completed designated forms to be filed by A minimum of 3 sponsored individuals;

(v) information relating to the following facilities:

a. computerization/back up

b. telephone and other electronic facilities

(vi) information relating to internal control measures in relation to dematerialized certificates and the strong room;

(vii) software maintenance agreement;

(viii) fidelity bond of a value not less than 25% of paid up capital;

(ix) sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;

(x) sworn undertaking to comply with and enforce compliance by its staff/beneficial owners with the provisions of the Act and these Rules and Regulations;

(xi) information as to the organization of the company including the organizational and shareholding structure, members of the Board/Council, principal officers as well as internal controls;

(xii) an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions;

(xiii) demonstrate an ability to settle trade on a delivery versus payment basis;

(xiv) any other document that may be required by the Commission from time to time.

(2) An application for registration as Participant shall be forwarded to the Commission by the sponsoring depository in the designated form not later than thirty days after receipt from the applicant together with the depository's recommendations and the participant complies with the eligibility criteria including adequate infrastructure as provided in these Rules and Regulations and the rules of the depository.

(3) <u>Eligibility</u>

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

(i) a bank duly licensed by the CBN;

(ii) a custodian of securities registered by the Commission;

(iii) **a clearing corporation of a recognized Securities Exchange;**

(iv) **a stockbroker registered by the Commission with a minimum of N2 billion, provided that where a stockbroker seeks to act as a participant in more than one depository, it shall comply with the above requirements separately for each such depository;**

(v) **a non-banking finance company with a minimum paid up capital of not less than N2 billion;**

(vi) **a registrar and share transfer agent registered by the Commission with a minimum paid up capital of N2 billion.**

Rule 27. Registration of custodian of securities

Registration requirements

(1) **An application for registration as a custodian of securities shall be filed in the designated form and shall be accompanied by:**

(i) **a sets of duly completed designated forms to be filed by a minimum of 3 sponsored individual;**

(ii) **copy of certificate of incorporation certified by the CAC;**

(iii) **copy of Memorandum and Articles of Association certified by the CAC which shall include, among others, power to act as custodian of securities;**

(iv) **copy of CAC form containing names and particulars of directors and certified by the CAC;**

(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, its promoters and management;**

(vii) **fidelity bond of a value not less than 25% of paid up capital;**

(viii) **sworn undertaking to keep proper records and render returns;**

(ix) **sworn undertaking to abide by the provisions of the Act and these Rules in the discharge of its functions as custodian of securities;**

(x) **specimen custodian agreement to be signed with its client;**

(xi) **an operational manual, specifying the systems and procedures to be followed for the effective and efficient discharge of its functions, management and mitigation of custody risks, and the independence of its operations from its other business, if any;**

any other document that may be required by the Commission from time to time.

<u>Additional requirements for registration</u>

(2) An Applicant for registration as Custodian of Securities shall meet the following additional requirements:

(a) necessary infrastructure, including vaults for safe custody of securities and information technology capability required to effectively discharge its functions;

(b) have in its employment persons with the required qualifications as specified under Rule 16.

(c) be an entity duly licenced to carry out banking functions

(d) any other requirement as may be specified by the Commission from time to time.

(3) A person who is carrying on business as custodian of securities before the coming into effect of these Rules shall make an application to the Commission for registration within a period of three months.

(4) (a) A person referred to in Sub-Rule (3) who fails to make an application for registration within the period specified shall cease to carry on any activity as custodian of securities;

(b) Such a person shall be subject to the directives of the Commission with regard to the transfer of records, documents or securities relating to its activities as custodian of securities in addition to any penalty that may be imposed

Exemption

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

Denial/withdrawal or registration

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

(a) cease to carry on any activity as custodian of securities;

(b) be subject to the directives of the Commission with regard to the transfer of records, documents or securities that may be in its custody or control relating to its activity as custodian of securities;

(c) comply with withdrawal requirements prescribed in Rule 20A of these Rules;

(d) Rule 29(3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of custodian of securities.

[SECRR(A) April 28,2008]

A4. Registration of Capital Market Operators

Rule 28.

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

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;

(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 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. 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

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 31C Market Makers

Definition.

1. **Any entity desirous of performing the function of a market maker in the capital market shall file an application for registration with the Commission in the appropriate SEC form.**

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

3. **Market making system**
   The market making system shall be a "Quote Driven Electronic Market".

4. **Eligibility – the Market Maker:**
   i. **shall be a company duly registered with the Corporate Affairs Commission.**
   ii. **shall have a minimum paid up capital of N2 billion. The market maker shall at all times maintain sufficient liquid assets to cover its current indebtedness.**
   iii. **shall clearly state in its Memorandum and Articles of Association that it can deal in securities in the capital market.**

iv. shall convey any change in information, which affects the status of the company to the Commission as required by Rule 49 of these rules and regulations.

5. Registration requirements

Any entity desirous of being registered as a market maker must comply with the following rules and regulations; The Market Maker:

i. must be registered as a member of a self regulatory organization (SRO) as required by the provision of Rule 42 [(1), (2), (3) and (4)] of the rules and regulations.
ii. must comply with the code of conduct of capital market operators as provided under Rule 43(1) and (2) of the rules and regulations.
iii. shall, for the purpose of registration, comply with the provisions of Rule 44 of these rules and regulations.
iv. shall maintain a Fidelity Bond in line with the provisions of Rule 45.

[SECRR(A) September 11,2009]

Rule 32. Registration of sub-brokers

Registration requirements

A. <u>Corporate Sub-Broker</u>

(1) **An application for registration as Corporate Sub-Broker shall be filed on Form SEC 3 as contained in Schedule III to these Rules and Regulations and accompanied by –**

(i) **2 sets of completed Form SEC 2 to be filed by the sponsored individual;**

(ii) **a copy of the Certificate of Incorporation certified by the Corporate Affairs Commission (CAC). Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;**

(iii) **a copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission which among others shall include powers to act as a Sub-Broker;**

(iv) **a copy of the CAC Form containing particulars of Directors certified by the CAC;**

(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, organizational structure, shareholding structure, principal officers, etc;**

(vii) **Fidelity Bond representing 20% of paid-up capital;**

(viii) **sworn undertaking to keep proper records and render returns;**

(ix) **a copy of the agreement signed between the sponsoring Broker/Dealer firm and Sub-Broker;**

(x) **evidence of minimum paid-up capital of N1 million;**

(xi) **Sworn undertaking to comply with the provisions of the Act and the Rules and Regulations as may be required from time to time by the Commission;**

(xii) **A recommendation letter from the sponsoring Broker/Dealer firm;**

(xiii) **Evidence of compliance with Rule 16(4);**

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

B. <u>Individual Sub-Broker</u>

(1) An application for registration as an individual Sub-Broker shall be filed on Form SEC 2 as provided in Schedule III of these Rules and Regulations and shall be accompanies by the following:

(i) Certified copy of certificate of registration of business name (where applicable);
(ii) Evidence of minimum net worth of N500,000;
(iii) Sworn undertaking to comply with the provisions of the Act and the Rules and Regulations as may be required from time to time by the Commission;
(iv) Evidence of compliance with Rule 16(4);
(v) Sworn undertaking to keep proper records and render returns.

(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) August 31,2009]

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, **2007** 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*) (*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.]

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. Methods/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.

(j) **Bookbuilding**

[SECRR(A) March 12,2009]

(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;

(h) **The latest audited accounts shall not be more than nine months old for corporate bodies or twelve months old for states, local governments and Federal Government agencies and Supranational bodies.**

[SECRR(A) March 24,2010]

(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 debt~~s~~ 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 ₦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 the issuer had already filed such documents with SEC (e.g. Memart or certificate of incorporation or certificate of increase in share capital, etc.) such issuer need not file the documents in subsequent transactions provided, there is an undertaking that there is no change in the document already filed with the Commission.**
[SECRR(A) March 24,2010]

(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 Commission for registration within 48 hours of the signing of the Prospectus. Where a party will not be available to sign the Prospectus, he shall execute a 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**

(1) ***Definition***

Shelf Registration is a filing undertaken by issuers intending to access the market in the near future. It permits issuers to disclose certain information in a core disclosure document that is updated on a regular basis.

(2) ***Scope of Securities***

Shelf Registration shall be applicable to all types of registrable securities as defined in section **273** of the Investments and Securities Act, **2007**.**(3)*****Eligibility for use of the Shelf Registration***

(*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 securities 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.

(4) ***Transaction requirement***

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

(5) ***Requirement for Shelf Prospectus and Supplementary Shelf Prospectus***

(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.

(6) ***Contents of Shelf Prospectus and Supplementary Shelf Prospectus***

(*a*) A shelf prospectus shall—

(i) comply with the general form and contents of a prospectus as set out in sections **71** to **87** of the Investments and Securities Act **2007** and rules **53** to **58** 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.

(7) ***General Duty of Disclosure in Shelf Prospectus and Supplementary Shelf Prospectus***

(*a*) For the purpose of determining whether a shelf prospectus or supplementary shelf prospectus contains any statement or information which is false or misleading, or from which there is a material omission, regard shall be had to whether the shelf prospectus and supplementary shelf prospectus contain all such information that investors and their professional advisers would reasonably require, and expect to find in the shelf and supplementary shelf prospectus, for the purpose of making an informed assessment of—

(i) financial position and prospects of the issuer;

(ii) the rights if any, attaching to the securities; and

(iii) the merits of investing in the securities and the extent of the risk involved in doing so.

(*b*) The information that investors and their professional advisers would reasonably require and reasonably to find in the shelf prospectus and supplementary shelf prospectus under paragraph (*a*) is information—

(i) which is known to all or any of the parties to the issue of shelf prospectus and supplementary shelf prospectus, or

(ii) which any of the persons referred to in subparagraph (i) would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(*c*) Without prejudice to the generality of sub-rule (6) (*a*) or (*b*) above, in determining the information that is required to be included in a shelf prospectus and supplementary shelf prospectus under these rules, regard shall be had to—

(i) the nature of the securities and business of the issuer of the securities;

(ii) the persons likely to consider acquiring such securities;

(iii) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors may reasonably be expected to consult; and

(iv) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase of securities is to be made are the holders of securities in the company, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of a recognized Securities Exchange or otherwise.

(8) ***Issuing of Shelf Prospectus***

Upon the registration of the shelf prospectus by the Commission, the issuer is allowed to issue the shelf prospectus, provided that—

(*a*) securities are only to be issued upon the registration of a supplementary shelf prospectus by the Commission; and

(*b*) the form of application which would facilitate the issue of, offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase of securities on the basis of the shelf registration is attached to the supplementary shelf prospectus and not the shelf prospectus.

(9) ***Delivery of Shelf Documents to the Public***

All shelf documents shall be made accessible to the public at the offices of the Issuer and Commission and by publishing same on the websites of the Commission and the Issuer.

(10) *Fees for Shelf Registration*

All Issuers of a shelf prospectus shall pay a filing fee of ₦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.]

40D. Registration of Bonus Issue

1. **Definition**

   "Bonus" means the proportionate issuance of new shares to the existing shareholders of a company, at no cost to the shareholders by the capitalization of accumulated reserves from the profits earned in previous years.

2. **Registration Requirements**

   An application for registration of bonus issue by public companies shall be made in the designated form within one month of the approval by the shareholders and shall be accompanied by the following:

   (i) a copy each of the Board and Shareholders resolutions authorizing the issue and certified by the Company Secretary;

   (ii) a copy of the audited accounts of the company showing provisions for the bonus;

   (iii) a copy of the certificate of increase in share capital certified by the CAC or by the issuer's Company Secretary, where applicable;

   (iv) evidence of payment of registration and filing fees *to* the Commission;

   (v) a copy of the Certificate of Incorporation certified by the issuer's company secretary, where the document has not been previously filed with the Commission;

   (vi) a copy of the Memorandum and Articles of Association certified by the CAC, where the document has not been previously filed with the Commission or where the previously filed copy had been amended.

3. **The Commission shall register bonus issues within 7 working days of receipt of the application, provided the applicant has complied with all registration requirements.**

4. **The company shall forward the Commissions' approval together with the bonus share certificates (*where applicable*) to the Registrar within 1 (one) working day of receipt of the approval.**

5. **The registrar shall forward the required data to CSCS within five working days and the CSCS shall credit shareholders account within 2 working days.**

6. **Bonus issue*s* shall be distributed as follows:**

   (i) credited to the shareholders account at the securities depository within 5 working days of approval by the Commission;

   (ii) where the shareholder requests in writing for a physical certificate, or did not provide the Registrar with his clearing house number or the company is a public unlisted compan*y,* the certificate shall be dispatched within one month of approval by the Commission.

   Failure to credit a shareholders' account or dispatch the certificate within the specified period shall attract a penalty of N100,000 in the first instance and thereafter N5,000 per day for the period of default, *payable by the defaulting party*.

   [SECRR(A) March 24,2010]

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 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) 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 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 leverage fund where permitted by the Trust Deed;

(ix) representing the interest of the Scheme in both the national and global markets;

(x) complying with the provisions of the Investments and Securities Act, **2007**, 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 addresses 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, **2007** requires the Commission to register the Community Savings Schemes (ESUSU, Adashe 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 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) A broker or dealer shall be a member of an association of securities dealers to effect transactions in an over-the-counter market.

(3) Where the broker or dealer effects transactions on any exchange and over-the-counter market, the appropriate Self-regulatory Organisation shall be the exchange(s**)** and the Association of the relevant OTC.

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 securities in the company's portfolio, provided however that the minimum amount of the bond shall be as prescribed by the Commission from time to time.

(4) Every registered corporate body shall—

(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. Condition for approval of Initial Public Offer and Listing by Introduction

A company may be eligible to undertake an Initial Public Offer (IPO) of pure equity or convertibles or listing by introduction only if it meets the following conditions:

i. It has a three (3) year financial track record;
ii. It has a track record of distributable profits excluding extra-ordinary profits for at least two out of the immediately preceding three (3) years;
iii. **It has positive shareholders funds.**

[SECRR(A) March 24,2010]

(1) 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.]

provided that the Commission shall be at liberty to reject the filing of any registration statement which does not conform with the requirements of the Act and the Rules and Regulations.

(2) The time interval between the initial filing of documents and the time approval is given by the Commission shall be not more than 6 (six) week.

(3) Declaration by the issuer on full disclosure
The Issuer shall make a sworn declaration that it has fully disclosed all material facts in the offer document and the declaration shall be signed by the Chief Executive Officer, the Company Secretary and the Chief Financial Officer of the issuer".

[SECRR(A) March 24,2010]

Rule 50A. Condition for Approval of Subsequent public offer

Subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds".

[SECRR(A) March 24,2010]

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 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, **2007** 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, **2007** 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 under the Trustee Investment Act (Cap. **T22**), Laws of the Federation of Nigeria, **2004**.

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,**2007** and shall in addition state the following information:

(i) the front cover shall state the name of the issuer, the issuing house(s), 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, purpose of the offer, profits, prospect and future developments of the company, and any other material information;

(vii) five year historical financial information stating 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) **a revised forecast in the event of oversubscription and absorption of 15% of the offer *shall be disclosed in the offer document'***
[SECRR(A) March 24,2010]

(xvi) 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) *vís-à-vís* the company/group;

(*b*) **"experts"** means experts as defined in section **315** of the I.S.A., **2007 ;**

(*c*) **"related party"** shall bear the same meaning as related company as defined in section **315** of the I.S.A., **2007.**

[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 Details Address	Status: Owned/ Leased	Description Age and Tenure	Purpose/ Use	Book Value	Market value (where assets have 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 report. Any other benefits i.e. share options given to directors shall also be disclosed in both the financial statements and the Prospectus;

(iii) share options shall be disclosed and be expensed in the company's books to avoid the practice of falsely recognising same as profit.

(*b*) Off-balance sheet items:

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

(*c*) Narratives:

The Prospectus and annual report shall include adequate narratives to guide investors particularly relating to accounts and other technical issues.

[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 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, **2007** 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, **2007** 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 persons 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. Originals 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, registered capital market operators and other professionals whose opinions and activities directly impact on capital market transactions.

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

Rule 59B.

where there is more than one Issuing House for a public offer, the Lead Issuing House shall not be a subsidiary, affiliate or a related company of the Issuer.

[SECRR(A) January 27,2011]

Rule 59C. All Parties Meeting

There shall be at least two all parties meetings before the opening of the offer and SEC reserves the right to review the minutes of such meetings.

Rule 59D. Pre-Offer waiting Period (Fixed price offers)

There shall be at least one week pre-offer period before the opening of the offer. For the purpose of this rule, it shall be the period from the date of the execution of offer documents to the date an offer opens.

[SECRR(A) March 24,2010]

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 the offer period under (*b*) above, shall be made to the Commission at least 5 working days before the date of closure of the issue as stated in the offer document. No offer under (*a*) shall continue beyond the closing date unless prior written approval of the Commission is obtained.

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

(d) Before an extension is granted, the issuer's latest audited accounts shall remain valid throughout the extension period. The new closing date shall be the reference date for the purpose of computing any penalty for late submission of an allotment proposal

(e) Where an extension is granted, penalty shall not be charged.

[SECRR(A) March 24,2010]

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*) application~~s~~ 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 **with the receiving banker**(the lead issuing house if any) shall ensure that all proceeds of an issue are deposited in a separate interest yielding account.

[SECRR(A) March 24,2010]

(*a*) The Chief Executive Officer of the issuing house and any sponsored individual shall be the signatories to the account. The issuing house shall notify the Commission of any change in the signatories.

[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 funds 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 **absorbed** is not more than **1**5% of the **offer size**. [SECRR(A) 2006 (1), s. 19. **[SECRR(A) March 24,2010**]

(*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.

(7) If return monies are not dispatched in compliance with Rule 64 (4), accrued interest shall be paid to the unsuccessful applicants at a rate not below CBN MPR + 5%.

[SECRR(A) March 24,2010]

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) details regarding the return of surplus monies;

(*d*) details and any evidence of despatch of share certificates;

(*e*) status of listing of the securities at the Exchange;

(*f*) details and evidence of payment of net proceeds of issue to the issuer;

(*g*) analysis of total costs incurred during the course of the offer;

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

(*h*) 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, a minimum modified pro-rating approach shall be adopted. This entails that all subscribers in the public offer**

shall be allotted the minimum subscription units as specified in the offer documents, and then the residual balance shall be pro-rated i.e. all subscriber*s* would be allotted equal proportion of *the* amount *applied for.* Where the minimum subscription cannot accommodate all the subscribers, the minimum to be allotted shall be reduced so as to accommodate all the subscribers.

In the case of a rights issue, the allotment for the renounced shares shall be pro-rated.
[SECRR(A) March 24,2010]

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 less than 50% **subscribed** , the issue shall be aborted by the issuer.
[SECRR(A) 2005, s. 33.] **[SECRR(A) March 24,2010]**

(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 Commission. 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

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

(i) [SECRR(A) 2006 (1), s. 22.]**Securities shall be listed not later than 30 days after the allotment clearance (where applicable)**
[SECRR(A) March 24,2010]

Rule 72. . . . . . .

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

Rule 73. **Cost of issue**

The total cost of issue shall not exceed **4.3%** of the gross total proceeds, **excluding indemnity fee**, from the issue or such percentage as the Commission may prescribe from time to time.

[SECRR(A) 2006 (1), s. 24.] **[SECRR(A) March 24,2010**]

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

Underwriting of public issues

(1) **Underwriting of public issues shall be at the discretion of the issuer".**

[SECRR(A) March 24,2010]

(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, **2007** and the Commission's Rules and Regulations made thereunder.

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

Rule 75A. Underwriting of Rights issues

(a) A rights issue may be underwritten at the discretion of the Issuer subject to the prior consent of its shareholders;

(b) Shareholders shall pass a special resolution that in the event of an under-subscription, their pre-emptive rights be waived to enable the underwriter take up any unsubscribed shares. [SECRR(A) March 24,2010]

Rule 76. Amount to be underwritten

The level of underwriting commitment **by a single underwriter** at any time shall not be more than **three** times (**3) its shareholders fund for equity offering, and four times (4) for fixed income securities**.

[SECRR(A) March 24,2010]

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) **Terms of** 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 law~~s~~;

(xiv) arbitration.

[SECRR(A) 2005, s. 36.]

(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, **2007** and the Commission's Rules and Regulations made thereunder.

[SECRR(A) 2005, s. 36.]

Rule 78C. **Bookbuilding**

1. A public company may offer securities by way of book building process, but with the prior approval of the Commission.

2. Definitions:

"Book building" shall mean a process of price and demand discovery by which an issuing house/book runner, attempts to determine at what price a public offer should be made, based on demand from qualified institutional and high net worth investors.

"Qualified Institutional Investor" shall mean a purchaser of securities that is financially sophisticated.

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

i. Fund Managers

ii. Pension Fund Administrators

iii. Insurance Companies

iv. Investment/Unit Trusts

v. Multilateral and Bilateral Institutions

vi. Registered and/or Verifiable Private Equity (PE) funds

vii. Registered and/or Verifiable Hedge funds

viii. Market Makers

ix. Staff Schemes

x. Trustees/Custodians

xi. Stock broking firms

xii Any other category as the Commission may determine from time to time.

"Staff Schemes" means any scheme set up by an entity for the purpose of investing in securities on behalf of its employees.

"High Net Worth Investor" shall mean an individual with net worth of at least 300 million Naira, excluding automobiles, homes and furniture.

"Red Herring" shall mean a preliminary prospectus released by an issuing house or book runner of a new issue to qualified institutional/high net worth investor.

"Book Runner" shall mean a registered issuing house.

3. In the book building process for equities, a minimum of 20% of the offer shall be reserved for retail investors.

4. In the event of an under subscription by retail investors, the unsubscribed portion may be taken up by the qualified institutional/high net worth investors. Any unsubscribed portion thereafter shall be taken up by the underwriters.

5. For fixed income securities, 100 percent shall be offered to Qualified institutional/High networth investors.

6. Conditions for approval of offer:

i. **The resolution of the company authorizing the book building process shall be an ordinary resolution as defined in the Companies and Allied Matters Act, and shall be filed with the Commission.**

ii. **The option of book building in the issuance of securities shall be available to all public companies.**

iii. **The issuer shall appoint registered issuing houses as book-runners and their names shall be mentioned in the prospectus.**

iv. **There shall be no more than one lead book runner who shall be primarily responsible for building the book.**

v. **The securities available to the public shall be separately identified as securities for retail investors.**

vi. **The red herring prospectus containing all information except the information regarding the price at which the securities are offered and the volume of securities, shall be filed with the Commission.**

vii. **The total size or value of the offer shall be disclosed in the red herring prospectus.**

viii. **Upon approval by the Commission of the red herring prospectus, it shall be circulated by the book runner to the qualified institutional/high net worth investors, inviting offer for subscription to the securities.**

ix. **The red herring prospectus to be circulated shall be issued with an invitation letter, which shall indicate the price range within which the securities are to be offered for subscription.**

x. **The book-runner on the receipt of the orders shall maintain a record of the name and number of securities ordered and the price at which the qualified institutional/high-net-worth investor is willing to subscribe to securities under the portion reserved for them.**

xi. **All other issuing houses/book runners shall maintain a record of the orders received by them.**

xii. **The issuing houses/book runners shall aggregate the orders so received on a daily basis and make available to the lead book-runner the aggregate amount of the orders received during the book building period.**

xiii. **At the end of the two weeks book building period, the book runners and the issuer shall determine the price at which the securities shall be offered based on the aggregation of orders received.**

xiv. **The market clearing price so determined shall also apply to the retail investors' portion.**

xv. **On the determination of the issue price, the prospectus shall be amended/updated and filed with the Commission along with Form SEC 6 within 48 hours.**

xvi. **The allotment of shares to qualified institutional/high net worth investors shall be made on the date of signing of the executed offer documents.**

xvii. **Two different accounts shall be opened for the subscription monies, one for the qualified institutional/high net worth investors and the other for the retail investors.**

xviii. **Upon the allotment, the issue proceeds in respect of the book-building portion shall be remitted to the issuer within 24 hours.**

xix. **The executed offer documents and evidence of qualification of high networth investors shall be filed with the Commission within two (2) working days of the Completion Board Meeting.**

xx. **The book-runner and other intermediaries associated with the book-building process shall maintain records for the book-building process.**

xxi. **The allotment in respect of Book-building shall be filed with the Commission within two (2) working days of the Completion Board Meeting.**

xxii. **The offer to retail investors shall open after the completion Board Meeting and shall remain open for a period not exceeding 10 working days.**

xxiii. **An allotment proposal in respect of the public offer for retail investors shall be filed with the Commission for clearance not later than 10 working days after the close of the offer. In the event of oversubscription, the allotment should be in line with Rule 69 (2).**

xxiv. **In the event of over-subscription and for the purposes of this rule, the issuer can only absorb not more than 15% of the value of the offer.**

xxv. **For the purposes of this rule, underwriting shall be on a 100 percent standby basis.**

[SECRR(A) March 12,2009]

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 formally with the Registrar with the endorsed stock/share transfer form having also been noted by the Exchange(s) and a stock-broking firm duly named as transferee.

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

(1) 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.

(viii) All subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds.

[SECRR(A) March 24,2010]

(2) Private Placements shall not be advertised, mentioned and/or discussed in the print and electronic media.

Approval of a private placement may be suspended or withdrawn for violation of this rule. Any Capital Market Operator engaged in an advisory role on the private placement may also be sanctioned.

[SECRR(A) 2006 (1), s. 28.] **[SECRR(A) March 24,2010]**

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 representative 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.]

B4: <u>REGULATION OF PUBLIC COMPANIES</u>

(2) **(a) Pursuant to Section 60 – 65 of ISA 2007, every public company whose securities are required to be registered shall file with the Commission on a periodic or annual basis and on a specified format its audited financial statement and other returns as may be prescribed by the Commission from time to time.**

(b) Every public company shall appoint a compliance officer who in conjunction with the Chief Financial Officer shall ensure compliance with all regulatory requirements of the Commission.

(2) ANNUAL REPORT

The *A*nnual Report to be filed with the Commission shall in all material facts comply with the provisions of Statement of Accounting Standard (SAS) 2 on information to be disclosed in Financial Statements issued by the Nigerian Accounting Standards Board (NASB).It shall also make disclosures of its unclaimed dividend fund with respect to bank balance, investments and earned

income by way of notes to the audited accounts and other periodic reports filed with the Commission.

(i) The *A*nnual *R*eports shall be filed with the Commission, not later than 90 days after the financial year end in line with the provisions of CAMA;

(ii) the Chief Executive Officer and Chief Financial Officer or Officers or Persons performing similar functions in a public company shall in filing the annual account, attach a duly signed certification letter to the matters specified in section 60(2) of the Act;

(iii) The Auditor to the public company shall be registered by the Commission in line with Section 62 of the Act;

(iv) The Auditor of a public company shall in his audit report to the company issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the company;

(v) Any company who fails to file its annual report with the Commission as in 4(2)(i) above shall be liable to a fine of N1million and the sum of N25,000.00 for everyday the default continues.

(3) RULE ON EARNINGS FORECAST

Pursuant to Section 64, all public quoted companies shall release its earnings forecast to the relevant Securities Exchange, the Commission and the investing public 20 days *prior to* the commencement of a quarter.

I. The forecast shall be in line with the company's policy, Securities Exchange listing requirements and the rules of the Commission;

II. Underlying assumptions that formed the bases of the forecast shall also be disclosed;

III. The forecast shall be certified by the Chief Executive Officer and Chief Financial Officer or officers or persons performing similar functions in the company;

IV. All public companies shall notify the relevant Securities Exchanges, the Commission and the investing public as soon as it is known that the forecast will not be realized and the reasons for the non-realisation shall be stated.

(4) QUARTERLY REPORT

Public quoted companies shall not later than 30 days from the end of each quarter file with the Commission and simultaneously with the relevant securities Exchanges and the investing public a quarterly report prepared in accordance with Statement of Accounting Standards (SAS) 30 and IAS 34.

(i) The quarterly report shall contain the following by way of notes:

(a) Accounting policy changes;
(b) Seasonality or cyclicality of operations;
(c) Unusual items;
(d) Changes in estimates;
(e) Issuance, repurchase, and repayment of debts and equity securities;
(f) Dividends;
(g) Items of segment information (for those entities required by SAS 24 and IAS 14 to report segment information annually);
(h) Significant events after the end of the interim period;

(i) Business combinations;
(j) Long term investments;
(k) Restructuring and reversals of restructuring provisions;
(l) Discontinuing operations;
(m) Correction of prior errors;
(n) Write-down of inventory to net realizable value;
(o) Impairment loss of property, plant, equipment, intangible or other; assets, and reversal of such impairment loss;
(p) Litigation settlements;
(q) Any debt default or any breach of a debt covenant that has not been corrected subsequently;
(r) Related party transactions;
(s) Acquisitions and disposals of property, plant and equipment;
(t) Commitments to purchase property, plant and equipment.

(ii) The Chief Executive Officer and Chief Financial Officer or officers or persons performing similar functions in a public company shall in filing the quarterly Report attach a duly signed certification letter.

(iii) Publication of Interim Financial Statement.
All public companies shall publish their "signed" quarterly balance sheet, income statement and cash flow statements in at least one National daily newspaper. However, the accounting policies, notes and other relevant information shall be posted on the company's website which address shall be disclosed in the newspaper publication. The publication shall be signed by the officers mentioned in(ii)above.

(iv) Any company which fails to file quarterly report with the Commission shall be liable to a fine of N1million and the sum of N25,000.00 for everyday the default continues.

(5) HALF YEARLY RETURNS

(i) Public companies shall file half yearly returns with the Commission in the prescribed manner and shall contain the following:

(a) General information;
(b) Corporate Governance issues;
(c) Financial Reporting;
(d) Unclaimed dividends;
(e) Audit Committee;
(f) Undertaking by the Company Secretary, Chief Internal Auditor, Financial Controller, Managing Director, Board Chairman and Chairman of Audit Committee certifying the reliability of the information in the format provided.

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

(ii) UNCLAIMED DIVIDEND
All public companies shall file with the Commission in the prescribed form a report of unclaimed dividends on half *a* yearly basis in accordance with the following guidelines:

(iv) AUDIT COMMITTEE
Every public company shall establish an Audit Committee with written term of reference. The Committee shall be independent in carrying out its terms of reference.
The audit Committee shall maintain records of attendance and deliberations of its meeting and interactions.

The Audit Committee of every public company shall review the company's financial statements prior to approval by the Board of the company and present the report at the Annual General Meeting.

(v) Any company which fails to file its half yearly returns with the Commission shall be liable to a fine of N1million and the sum of N25,000.00 for everyday the default continues.

(6) RISK MANAGEMENT BY PUBLIC COMPANIES

All public companies shall:

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

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

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

[SECRR(A) March 24,2010]

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;

(vii) Bank Account details [SECRR(A) March 24,2010]

(vii**i**) Signature;

(**ix**) Any form of identification including, Drivers license, International passport or National identity card;

(x) Employer's name and address or vocation and place of business;

(x**i**) Purpose and reason for opening the account or establishing the relationship;

(xii) Sources of wealth or income and expected origin of the funds to be used during the relationship;

(xiii) Place of domicile;

(xiv) 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.

(c) Account opening documents and mandate form shall be completed electronically or otherwise in triplicate, with copies held by the following:

a) Stockbroker;
b) Central Securities Clearing System (CSCS);
c) Investor.

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

[SECRR(A) March 24,2010]

(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) (A) 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.

(B) Other acts that constitute suspicious transactions include, but are not limited to:

(i) transactions with unusual frequency;

(ii) frequent deposit of cash with an operator in sums marginally below the threshold specified by law;

(iii) transactions by or on behalf of clients without evidence or capacity to own such funds;

(iv) **transactions involving under aged persons, and clients with irregular signatures and/or regular change of address;**

(v) **transactions inexplicable in commercial terms and deviating from conventional business norms, practices and habitual patterns;**

(vi) **transactions that obscure the real identities of the parties involved;**

(vii). **Inter-member transfer of specific stock from a client to another stock broking firm for sale without any previous buying instruction from client etc.**

[SECRR(A) March 24,2010]

(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.]

(9) A capital market operator shall comply with the Anti-Money Laundering/Combating Financing of Terrorism(AML/CFT) guidelines provided in Schedule XI.

[SECRR(A) July 28,2010]

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 waiving 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.

Rule 105A. Rules on Securities Lending and Borrowing

Definitions.
In this part of these Rules

"Approved Intermediary" means a company duly registered as Market Maker or Custodian by the Commission through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

"Borrower" means a person who borrows the securities under these Rules and Regulations through an approved intermediary.

"Collateral" means securities, cash, combination of securities or letter of credit delivered by the borrower to the lender to support a loan to securities.

"Commission" means the Securities and Exchange Commission of Nigeria established under the Investments & Securities Act.

"Corporate Benefits" shall include dividends (gross) rights, bonus, redemption benefits, interests, or any other right or benefit accruing on the securities lent.

***"Custodian"* means Custodian as defined in the Act.**

"Lender" means a person who deposits with an approved intermediary for purpose of lending under these regulations, securities registered in his name or in the name of any other person duly authorized on his behalf.

"Margin" means the amount of cash and or approved securities deposited as security by a client as a percentage of the current market value of the securities held in a margin account.

"Margin Call" means a notice issued in writing by a lender to his/her client requiring the client to provide additional deposit in order to maintain the margin.

"Mark to Market" means the practice of revaluing securities and financial instruments using current prices.

"Market Maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner any dealer who with respect to a security, holds himself out (by entering quotations in an inter dealer communication system or otherwise) as being willing to buy and sell such security for his own account on a regular continuous basis.

GENERAL REQUIREMENTS
In every transaction for securities lending:

a) The lender shall enter into an agreement with the approved intermediary for depositing the securities for the purpose of lending through the approved intermediary in accordance with these

Rules and the borrower shall enter into a separate agreement with the approved intermediary for the purpose of borrowing of securities. There shall be no direct agreement between the lender and the borrower for lending and borrowing of securities.

b) The agreement between the lender and the approved intermediary shall provide that when the lender has deposited the securities with the approved intermediary under these Rules, the beneficial interest shall continue to remain in the lender and all the corporate benefits shall accrue to the lender.

c) The lender shall deposit only those securities registered in his name or in the name of any other person duly authorized on his behalf with the approved intermediary for purpose of lending.

d) For equities, only securities of quoted companies shall qualify for lending and borrowing purposes.

e) The lending of securities under these Rules, through approved intermediary and the return of the equivalent securities of the same type and class by the borrower shall not be treated as disposal of the securities.

f) The approved intermediary shall issue a receipt to the lender acknowledging the deposit of the securities by the lender.

g) The approved intermediary shall unless otherwise provided in the agreement with the lender, guarantee the return of the equivalent securities of the same type and class to the lender along with the corporate benefits accrued on them during the tenure of the borrowing. Where the borrower fails to return the securities or corporate benefits the approved intermediary shall be liable for making good the loss caused to the lender.

h) The approved intermediary may retain the securities deposited by the lender in its custody as a trustee on behalf of the lender. The approved intermediary shall in accordance with the terms of the agreement entered into with the lender, be entitled to lend the securities deposited by the lender to a borrower from time to time.

i) Under these Rules, the title of the securities lent to the borrower shall be temporarily vested in the borrower and the borrower shall be entitled to deal with or dispose of the securities borrowed in any manner whatsoever.

j) The agreement between the borrower and the approved intermediary shall inter alia provide that the borrower shall have an obligation to return, the equivalent number of securities of the same type and class borrowed, to the approved intermediary within the time specified in the agreement along with all the corporate benefits which have accrued thereon during the period of borrowing.

k) The agreement between the borrower and the approved intermediary shall also provide for the following terms and conditions:

i. The period of depositing/lending securities;

ii. Charges or fees for depositing/lending and borrowing;

iii. Collateral securities for borrowing;

iv. Provisions for the return including premature return of the securities deposited or lent;

v. Mechanism for resolution of disputes through arbitration;

vi. Where relevant, confirmation that an agent has appropriated prior authority from the beneficial owners, or a party suitably authorized by the beneficial owners, for the securities to be lent;

vii. The absolute transfer of title to securities and collateral (including any securities transferred through substitution or mark to market adjustment to collateral);

viii. Daily marking to market of transactions;

ix. Acceptable forms of collateral and margin percentages;

x. Arrangements for delivery of collateral and for the maintenance of margin whenever the mark to market reveals a material change of value;

xi. The treatment of dividend payments and other rights in respect of securities and collateral including, for example, the timing of any payments;

xii. Arrangements for dealing with corporate actions;
xiii. Procedures for calling stock and arrangements if called stock cannot be delivered;
xiv. Clear specification of the events of default and the consequential rights and obligations of the counterparties;
xv. Fully set-off of claims between the counterparties in the event of default;
xvi. The governing law shall be Nigerian law.

l) The borrower shall not be entitled to discharge his liabilities of returning the equivalent securities through payment in cash or kind.
m) The approved intermediary shall be entitled to receive form the borrower collateral security and fees for lending securities.
n) The borrower shall deposit the collateral securities with the approved intermediary in the form of cash, government securities or other securities as maybe agreed upon with the approved intermediary for the purpose of ensuring the return of the securities.
o) When the approved intermediary returns the securities to the lender, the approved intermediary shall issue a receipt to the lender.
p) The approved intermediary shall maintain a complete record of the securities deposited by the lender, securities lent to the borrower, the securities received from the borrower and securities returned to the lender by the approved intermediary.
q) In the event of the failure of the borrower to return the securities in terms of the agreement, the borrower shall be in default and the approved intermediary shall have the right to liquidate the collateral deposited with it, in order to purchase from the market the equivalent securities of the same class and type for purpose of returning the equivalent securities to the lender. The approved intermediary shall be entitled to take any action as deemed appropriate against the defaulting borrower to make good its loss.
r) The approved intermediary shall notify defaults by any borrower to the Commission, the relevant Securities Exchanges and the relevant authorities for initiation of appropriate action against the defaulter.

CRITERIA FOR ELIGIBILITY AS APPROVED INTERMEDIARY

a) Any person desirous of acting as an approved intermediary shall make an application to the Commission in the appropriate form.
b) No person shall act as an approved intermediary unless a certificate of registration has been obtained from the Commission.

OBLIGATIONS AND RESPONSIBILITIES OF APPROVED INTERMEDIARY

An approved intermediary shall comply with the following obligations and responsibilities:

a) The approved intermediary shall abide by the Rules issued by the Commission from time to time with respect to its activities of securities lending and borrowing.
b) The approved intermediary shall comply with the criteria for eligibility as specified by the Rules.
c) The approved intermediary shall specify in the respective agreement the fees payable by the parties to the transaction.
d) The approved intermediary shall specify the value and type of collateral acceptable for the purpose of securities lending as well as the method of the valuation of securities.
e) The approved intermediary shall issue a receipt acknowledging the deposit of the securities by the lender. The receipt shall include the complete details of securities deposited such as name of security, quantity, face value and certificate number along with the date when the lender becomes the registered holder of the security. Similarly, when securities are returned to the lender by the

approved intermediary, it shall issue a receipt containing the above details to enable the lender to use the same proof of continuity of his holdings.

f) The approved intermediary shall maintain a complete record of the securities deposited by the lender, securities lent to the borrower, the securities received from the borrower and the securities returned to the lender by the approved intermediary. The records of the approved intermediary shall be opened for inspection by the Commission or any other person duly authorized by the Commission for this purpose.

g) The approved intermediary shall maintain and make available to the Commission and a Securities Exchange such information, documents, returns and reports as may be specified from time to time.

h) The approved intermediary shall abide by the Code of Conduct as may be prescribed by the Commission from time to time.

i) Nothing in these Rules shall exempt the approved intermediary from any obligations placed on it by any Law, Rules and Regulations and guidelines.

[SECRR(A) January 27,2011]

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 on an annual basis, file with the Commission, the Company and a Securities Exchange, information on beneficial owners of 5% or more of the Company's shares;

(ii) Information on any transaction that brings beneficial ownership of shares in the company to 5% or more shall be filed by the registrar with the Commission, the company and the Securities Exchange;

(iii) Any subsequent transaction by holder in (i) above shall also be filed with the Commission on Form S.E.C. 6B and the company.

(iv) Information in (ii) and (iii) above shall be filed within 5 days of the change in ownership.

[SECRR(A) January 27,2011]

Rule 109B. Rules relating to Share Buy-back

(1) These Rules shall apply to **Publicly quoted companies**.

(2) Every company acquiring its own shares shall file an application with the Commission for the approval of such acquisition accompanied with detailed information about the transaction including the company's latest audited financial statements.

(3) Every company acquiring its own shares shall comply with the following:

(i) ;**The aggregate number of shares to be brought back shall not exceed 15% of its existing issued and paid-up equity capital in any given financial year.**

(ii) an undertaking that no voting rights shall be exercised by the company or its nominee or trustee in respect of the acquired shares;

(iii) the company and/or the directors shall file details of the directors' shareholding before and after the acquisition.

(iv) The resolution of the company authorizing the share buy-back shall be a special resolution as provided in the Companies and Allied Matters Act (CAMA).

(v) The notice of the general meeting to authorize the share buy-back shall be published in at least two national daily newspapers and evidence of the publication shall be filed with the Commission.

(vi) shares shall only be purchased out of the profit of the company which would otherwise be available for dividends, or the proceeds of a fresh issue of shares made for the purpose of the purchase. These shall be reflected in the latest audited accounts which shall not be more than 9 months.

[SECRR(A) March 24,2010]

(vii) The buy-back shall be either through the Open Market or through Self-Tenders Offer.

(viii) The residual debt equity ratio shall not exceed 2:1 after the buy-back, the equity for this purpose is the shareholders funds;

(ix) The buy-back shall be a direct purchase made only by the company and the beneficiary shall be the Company.

(x) The shares bought back shall be cancelled in accordance with the procedures set out in CAMA.

(xi) The maximum time allowed for the completion of the buy-back process shall not be more than twelve (12) months from the date of the shareholders resolution;

(xii) A declaration of solvency shall be filed with the Commission by the Board of Directors of the company that they believe that the Company would remain solvent in the foreseeable future;

(xiii) The buy-back shall not be made if the company is illiquid (i.e. a Company defaulting in payments of its obligations including dividend payment). A letter from the Auditors on the going concern status of the Company shall be filed with the Commission.

(xiv) For open market buy-back, the price of the shares to be bought back shall be at the current market price and for self-tenders offer, the price shall be determined by the Board of Directors and shall not be more than 5% above the average calculated market price over the last 5 days.

(xv) **The Company shall make a public announcement in at least two national daily newspapers, at least 5 days to the commencement of the program, disclosing relevant information to the public, such as proposed size, nature, duration and the potential impact on the Company's financial position. A similar announcement shall also be made at the conclusion of the exercise.**

(xvi) **The Company and the financial adviser shall file a monthly report not later than 5 working days after the end of each month indicating the number of shares bought, the total amount paid, minimum and maximum price, and the number of shares cancelled.**

(xvii) **Redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;**

(xviii) **Any two buy-back programs shall be separated by a minimum period of 365 days after the end of the preceding buy-back even where they are of different classes.**

(xix) **The source of funding the buy back shall be disclosed.**

(xx) **After any buy-back, the shareholders funds of the company shall not fall below any legally prescribed minimum for the line of business.**

(xxi) **For the purpose of the buy-back through open market, the Company shall not use more than two stock broking companies for each programme. The stock broking firm shall not be a subsidiary of the company.**

[SECRR(A) September 11,2008]

(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 315 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 Executive 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 modification of such security or the issuance of additional shares or amounts.

(3) If a class of security is issuable in two or more series with different terms, each series shall be deemed a separate class for the purposes of these Rules and Regulations.

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 125 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 therefore.

(2) During the continuance of the period of suspension an exchange shall notify the Commission of any change in the reasons for the suspension/further suspension.

(3) The issuer of a suspended security may appeal to the Commission for a review.

(4) Upon the restoration to trading of any security suspended under this Regulation, the Exchange shall notify the Commission of the effective date.

(5) Suspension of trading shall not terminate the listing of any security.

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 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/dealers which regularly disseminates quotations of identified brokers /dealers but shall not include a quotation sheet prepared and distributed by a broker or dealer in the regular course of his business

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

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

(2) It shall constitute an attempt to include the purchase or sale of a security in a fictitious quotation within the meaning of rule 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 dealings that assist in the maintenance of fair and orderly market, and that the Exchange may suspend or cancel the license of the dealing member if the Exchange of any substantial or continued failure by a dealing member to engage in such dealings;

(*c*) include procedures for the effective and systematic surveillance of the activities of dealing members.

(2) Every exchange shall file with the Commission copies of the rules relating to the provisions of paragraphs (*a*) and (*b*) of 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 members 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; and

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

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

(*c*) ledger accounts (or other records) 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, 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 therefore; 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 1**39(2)** 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 **139(2),** 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 **139** 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 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.

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 member~~s~~ from client, or reimbursement of monies expended by the member~~s~~ on behalf of the client, monies drawn on the clients' authority, monies properly requested for payment in connection with any physical deliveries of futures transactions on the Exchange or any other market.

(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 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 quarterly and annual returns of their operations 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 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 discretionary 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 circumstances 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 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 commodity option on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order;

(*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 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% percent 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 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 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 , 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. 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 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 statements 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 178B: Margin Lending

DEFINITIONS

In these Rules unless the context otherwise requires:

(a) "Bank" means any bank duly licensed by CBN and operating under the provisions of Bank and Other Financial Institutions Act Cap. B3 L.F.N. 2004.

(b) **"BOFIA" means Bank and Other Financial Institutions Act Cap. B3 L.F.N. 2004.**

(c) **"Broker" means a market operator registered as such by SEC and licensed by any recognized securities exchange to transact securities on the floors of the Exchange for the account of others.**

(d) **"Cash Accounts" means a brokerage account in which the customer is required to pay the full amount due by the settlement date for securities purchased.**

(e) **"CBN" means the Central Bank of Nigeria established under the Central Bank of Nigeria Act, 2007.**

(f) **"Client" or "Customer" means any person who borrows money pursuant to a margin agreement to buy securities in accordance with the Rules and Regulations issued by CBN *and* SEC for the purpose of margin trading from time to time.**

(g) **"Dealer" means a person engaged in the business of buying and selling of securities for his own account;**

(h) **"Debit Balance" (DB) means the amount owed by the account holder to the market operator. It changes with additional purchases or sales in the Margin Account.**

(i) **"DMO" means Debt Management Office established under the Debt Management Office (Establishment) Act No 18, 2003.**

(j) **"Equity" means the Long Market Value minus the Debit Balance.**

(k) **"Fiduciary Margin Accounts" means Margin Accounts held and managed on behalf of a beneficiary by a fiduciary.**

(l) **"Fiduciary" means a person other than the owner of the security who is legally appointed and authorized to act on behalf of the owner. This includes but is not limited to people who perform the following roles: Trustee, Custodian, Guardian, Executor, Administrator, and Receiver.**

(m) **"Free Float" means the number of shares outstanding *and* available to be traded on a securities exchange.**

(n) **"Hypothecation" means the pledging of assets or securities as collateral to secure a margin facility.**

(o) **"ISA" means the Investments and Securities Act No.29, 2007.**

(p) **"Joint Tenants with Rights of Survivorship account" means that if one party dies, the survivor retains the entire account.**

(q) **"Long Market Value" (LMV) means the current market *value* of all securities in the Margin Account, calculated on a daily basis.**

(r) **"Loan Value" means the complement of CBN Reg. C multiplied by the Long Market Value.**

(s) **"Maintenance Margin" means the minimum amount of equity that**

must be maintained by a Client in a Margin Account;

(t) **"Margin" means the amount of cash and/ or approved securities deposited as security by a Client as a percentage of the current market value of the securities held in a Margin Account.**

(u) **"Margin Account" means an account maintained with a lender, (Bank or Broker) which records transactions on margin trade.**

(v) **"Margin Agreement" means the written document that details the terms and conditions governing a Margin Account including the Hypothecation of securities, the value of the equity the Customer must maintain in the margin account and the interest rate on margin loans.**

(w) **"Margin Call or CBN Regulation C Call" means a notice issued in writing by a lender to his/her client requiring the client to provide additional deposit in order to maintain the margin.**

(x) **"Margin Financing" means financing the Client for the purpose of margin trading.**

(y) **"Margin Trading" means the buying and selling of securities by the Broker for themselves or for their Clients through Margin Financing.**

(z) **"Margin List" means a list of CBN and SEC approved Securities that may be bought or sold in a Margin Account published by *CBN and* SEC on a monthly basis.**

(aa) **"Net Capital" is as defined by CBN and SEC;**

(bb) **"Net worth" means shareholders funds computed by deducting total outside liabilities from total assets.**

(cc) **"Prudent Man Rule" refers to the discretion given to a fiduciary to manage another's affairs and invest another's money with such skill and care as a person of ordinary prudence and intelligence would use in managing his or her own affairs or investments.**

(dd) **"Re-hypothecation" means when already pledged securities (Customer to Broker) are re-pledged (Broker to Bank) to secure a facility to fund several margin transactions for different Customers of the same Broker**

(ee) **"Related Party" means**

- **(i)** **In relation to a company, anybody corporate which is that company's subsidiary, holding company or a subsidiary of that company's holding company.**
- **(ii)** **In relation to a person, any immediate member of that persons family, companies over which the person or an immediate member of the person's family has control or significant influence and companies where the person or an immediate member of that person's family is a key management personnel.**

(ff) **"Restricted Account" means a Margin Account that has fallen below the CBN Reg. C requirement. Sales and Purchase can still be performed in a Restricted Account.**

(gg) **"Same Day Substitution" means a purchase and sale of securities of the same value on the same day in a Margin Account which does not require additional deposit.**

(hh) **"SEC" means the Securities and Exchange Commission established by The Investments and Securities Act No 29, 2007.**

(ii) **"Securities" in this rule means shares of listed companies deposited as margin and which are quoted on a Securities Exchange.**

(jj) **"Securities Exchange" is as defined by the ISA.**

(kk) **"Single Limit" means the margin loan limit allowed to a single investor.**

(ll) **"Sophisticated Investor" means any investor that has a net worth, in excess of two hundred and fifty million Naira in securities, cash or real estate assets or earns annually the sum of twenty five million Naira whichever comes first. However he or she must have been actively investing for a minimum period of three years.**

(mm) **"Special Memorandum Account (SMA)/Excess Equity" means the Margin Account equity minus the CBN Reg. C requirement.**

(nn) **"Standby Margin Loan" means a loan approved by a bank to a Broker but has not been drawn down by the Broker, therefore does not incur charges.**

(oo) **"Tenancy-in-Common account" means, if one party in the joint account dies, that person's portion of the account reverts to his or her estate, and not to the partner in the account.**

(pp) **"Trustee" in this rule means a person having legal title to securities and holding such securities in trust for the benefit of another person or entity and owes a fiduciary duty to that beneficiary.**

PREAMBLE

MARGIN ACCOUNT

When a Broker firm extends credit to a Customer engaging in securities transaction, the transaction must be executed in a margin account. In addition when a Customer opens a margin account with a broker, the Customer is required to sign a Margin Agreement. When a Bank extends credit to a Broker to support the purchase of securities or the facility is used for the purposes of onward lending to the Customers of the Broker in question for purchase of securities, that transaction must be carried out in a Margin Account. The Broker must sign a Margin Loan Agreement with the Bank. For the purposes of this Margin Rule book and guide lines as stated in all sections of this document including the introduction, Margin rules apply to all transactions that are carried out in the Capital or Financial Markets where credit is sought and used to purchase securities.

GENERAL RULES GOVERNING MARGIN LOANS (Regulation A)

The Margin Lending Rules and Guidelines cover the types of securities that qualify as marginable securities as well as the profile of investors that may participate in Margin Trading. Investors are advised to check the Margin List prior to entering into a margin arrangement with a Broker or a Bank.

1. REQUIREMENTS OF A MARGIN AGREEMENT:

A Margin Agreement between the Broker *and* Bank *or* Broker *and* Customer shall amongst other things provide for the following:

(i) consent of the Customer to pledge his securities to the Broker as collateral for the loan the Broker may extend to the Customer.

(ii) consent of the Broker to pledge to a Bank *a* combination of securities from several Customers who have approved margin accounts opened and operating within its operations for the purposes of obtaining a margin loan from the Bank for onward lending to its Customers.

(iii) consent of the Customer to grant to the Broker permission to re-hypothecate (pledge) the securities at a bank in order to use the securities as collateral for a loan. The amount of securities that the broker may use is limited.

(iv) consent of the Customer that the Broker may re-hypothecate the Customer's securities with those of other bona fide Customers as collateral for a Bank loan.

(v) That Securities belonging to Customers trading in Cash accounts and whereby Customers have not signed any margin agreements with the Broker may not be used as collateral for getting a Margin Loan from a Bank.

(vi) That a Bank extending a loan to a Broker shall request to sight the margin loan agreements of the Customers whose securities are being hypothecated.

(vii) That the Broker grants the Bank permission to sell the pledged securities if the margin requirements or equity maintenance requirements are not met after the mandatory time required by these margin rules has lapsed.

(viii) That the Broker or Bank shall send its Customers a statement of the amount of interest that will be charged on a Margin Account. The statement shall contain the following:-

1. **the method by which interest will be computed,**
2. **the conditions under which interest charges will be imposed,**
3. **the method of determining the debit balances on which interest will be charged.**

(ix) A written statement shall be sent to all Customers to whom credit is extended on a monthly basis.

(x) **The Central Securities Clearing System (CSCS) will ensure a technological link for all securities that are hypothecated or placed on lien for the purposes of Margin Trading. In addition the CSCS will report to the SEC on a monthly basis a comprehensive list of hypothecated securities and the Brokerage houses to which those securities belong.**

CATEGORIES OF MARGIN ACCOUNTS

All operators in the financial market who wish to operate Margin Accounts for Customers, maintain Fiduciary Margin Accounts or trade for their own account shall open either:

(a) **Bank Margin Account, which is restricted to institutions or body corporate that are registered by SEC to act as Capital Market Operators, and Sophisticated Investors or;**

(b) **Brokerage Margin Account, with a Broker. These accounts are open to all categories of investors and may include members of the general public.**

RULES FOR OPENING AND MAINTAINING MARGIN ACCOUNTS (regulation B)

(a) **Opening Margin Accounts:**

Banks and Brokers shall comply with the respective Know-Your-Customer ("KYC") requirements of the CBN and SEC prior to entering into a margin arrangement.

(b) **Credit Judgment**

When opening a Margin Account, the Bank or Broker shall make its credit judgment without regard to the Customer's other assets or security positions held in connection with unrelated transactions.

(c) **Documents required for opening the Margin Account:**

(i) **A duly executed margin agreement which must state that the Customer agrees to abide by the Rules and Regulations of the CBN, the SEC and a Securities Exchange.**

(ii) **A valid means of Identification such as National Identity Card, a Driver's License or International Passport for Individuals; a certified true copy of the Certificate of Incorporation, Particulars of the Shareholders, and a Board resolution authorizing the opening of the Margin Account for corporate bodies; and a Certificate of Registration of Business Name and Particulars of Partners including each partners name, address, citizenship, signatures and a copy of the Partnership Agreement for firms. A Copy of these documents shall remain in the file at the firm operating the account at all times.**

(iii) **If the account holder is a corporate body then the**

identification of the authorized personnel mandated to operate the account shall be submitted.

d. The margin agreement shall contain two separate sections:

a. the credit agreement, and;

b. the hypothecation agreement.

e. Margin Credit Agreement. By signing the credit agreement, a Customer acknowledges borrowing funds from the Broker or Bank and acknowledges responsibility for the payment of interest and repayment of the principal loan amount.

f. The Credit agreement shall contain, amongst others, provisions which authorize/restrict the broker to :–

(i) Extend margin trading and margin facilities to its Client up to the limit approved by CBN Regulation "C".

(ii) Choose stocks only from the *CBN and* SEC approved "Margin List".

(iii) Sell not more than the prescribed amount in the event of a margin call.

(iv) State the approved period within which to make a margin call.

(v) Indicate that the account holder has a period of 24 hours from the date a call is made to respond to the margin call.

g. Hypothecation Agreement. The hypothecation agreement shall state that the Customer hypothecates (pledges) his or her securities to the brokerage firm or Bank and gives the firm in question the right to re-hypothecate the securities to secure the loan at a different Bank or Financial Institution. The firm shall pledge an amount equal to 140% of the cash deposit made by the Customer.

h. If a Customer wishes to open a Fiduciary Margin account, the Broker is required to obtain documentary evidence of proper legal authority prior to opening the account.

4 TYPES OF MARGIN ACCOUNTS

A. Individual Account.

(i) An individual Margin Account is a Margin Account opened in favour of an individual in accordance with CBN and SEC rules and guidelines on Margin Lending.

(ii) **An individual may only operate Margin Accounts at a Brokerage firm. Individuals who wish to operate Margin Accounts at a Bank must be "Sophisticated Investors".**

B. Joint Margin Account.

(i) **A joint Margin Account is a Margin Account opened in favour of two or more individuals or entities with a legal personality.**

(ii) **When opening a joint Margin Account, whether a tenancy-in-common or Joint Tenants with rights of survivorship accounts, information shall be obtained from both parties in the Margin Account.**

(iii) **Documents and cheques to be signed must be endorsed by both parties.**

C. Corporate Margin Account.

(i) **A Corporate Margin Account is Margin Account opened in favour of a corporate body.**

(ii) **In order to be able to open a corporate Margin Account, the Company's Memorandum and Articles of Association or other constitutional documents of the corporate body shall specify that the corporate body is authorized to open investment accounts and or carry out the investments.**

(iii) **The board resolution authorizing the opening of the Margin Accounts shall list those individuals authorized to act and take investment decisions on behalf of the company.**

D Partnership Margin Account.

(i) **A partnership Margin Account is a Margin Account opened in favour of a group of individuals carrying on business as a partnership.**

(ii) **If the partnership agreement does not specify those partners authorized to execute transactions on behalf of the partnership, the account shall not be opened until such specification has been made by a resolution of the partnership.**

(E) Fiduciary Margin Account.

When opening a fiduciary margin account, a copy of the document authorizing the fiduciary relationship shall be submitted in addition to other documents that may be required. In the case of a trust account, the document shall be a trust agreement.

(F) Discretionary Margin Account.

(i) **A discretionary Margin Account is a Margin Account opened by a Customer in respect of which the Customer authorizes the Broker to make purchases and sales of securities from the account at its Discretion without recourse to the Customer.**

(ii) **When opening a discretionary margin account there shall be a written Power of Attorney which shall be limited or full, signed by the Customer and kept by the Broker**

(iii) **In a discretionary margin account, the Customer shall give an employee of the Broker (usually the account executive or Asset Manager) the authorization to make purchases and sales in the Margin Account without first obtaining the Customer's permission.**

(v) **Limited Power of Attorney only gives the authorized person the right to buy or sell securities in the margin account, while full Power of Attorney allows the person to buy and sell, remove assets and, withdraw funds on behalf of the Customer. Each discretionary Margin Transaction order shall be approved promptly by a principal or Manager of the Broker.**

(vi) **They shall be reviewed frequently to ensure that transactions are not excessive in size or frequency, in view of the financial resources and character of the account, provided that if a Customer notifies a Broker of the name of the security, whether to buy or sell the security, and the number of shares or units to be bought or sold, leaving discretion only as to time and price, this is not considered to be a discretionary order and the rules guiding discretion shall not apply.**

(G) Margin Accounts Requiring Employer Approval and Prohibited

Margin Accounts:

i. **If an employee of a Broker wishes to open a Margin Account with another Broker he shall disclose his intention to his employer.**

ii. **If an employee of a Bank wishes to operate a Margin Account with a Broker, he or she shall obtain approval from his or her Principal or Manager authorizing the account opening. If the employee is working in a Bank that has loaned funds to the Broker within the preceding 24 months, whether or not such loans remain outstanding, the opening of such Margin Accounts are strictly prohibited.**

iii. **If a Broker has never borrowed funds from a particular Bank but intends to do so in the future, it must first close all Margin Accounts owned or operated by employees of that Bank before accepting a loan facility or Margin facility from that Bank.**

OPERATION OF MARGIN ACCOUNTS

A. **Margin accounts shall be operated in a manner that conforms to industry best practices and the rules and regulations of SEC regarding the Broker to Customer, and the CBN regarding the**

Bank to Broker or Bank to Individual Sophisticated Investors.

B. Transfer of Margin Accounts

(i) If a Customer wishes to transfer a Margin account from one Broker (the resident firm) to another Broker (the target firm), the Customer must give written instructions to both the resident firm and the target firm provided that such transfer instructions shall not be deemed to have been validly issued "unless and until" all outstanding obligations of the resident firm have been fully discharged.

(ii) Both member firms are required to coordinate their activities in order to expedite the transfer and then the normal Securities Exchange requirements for transfer of accounts shall apply.

C. Closure of Margin Accounts.

The following process shall apply in relation to the closure of Margin Accounts:

(i) Upon notification of the death of a Customer, the registered representative shall :

a. flag the account to reflect the status;

b. subject to sighting of the death certificate, cancel all open margin transactions; without prejudice to the discretion of the Broker to take appropriate actions in the event of margin calls;

c. close the Margin Account upon receipt of a valid instruction from a duly appointed Executor/Administrator.

(ii) Upon receipt of an order of court of competent jurisdiction adjudging the individual Customer to be bankrupt; the broker shall act on the duly authenticated instruction of the Trustee in bankruptcy.

(iii) A customer may close a Margin account at his or her own discretion provided that all debit balances are paid off.

(D) Margin Account Statements.

All activities in a Customer's Margin Account shall be listed in the Customer's account statement. A Broker is required to forward quarterly statements for inactive accounts (accounts that have had no trading activity for three consecutive months) and monthly statements for active accounts to the Clients. The account statement shall list all current long positions, debits and credits, and account balances. The Bank or Brokerage Firm's Customer Statement shall contain the following:

i. The total amount of margin facility granted.
ii. The Securities Purchased.
iii. The accrued interest.
iv. The Long Market Value (as at the date of the Statement).

v. **The Debit Balance (as at the date of the Statement).**
vi. **The Equity (as at the date of the Statement).**
vii. **The Excess Equity (Special Memorandum Account or amount that can be withdrawn as at the date of the statement).**
viii. **Buying Power of the Account.**
ix. **Number of CBN Regulation C calls the account has received within the period.**

Restricted Accounts shall bear a red stripe along the top border of the statement.

(E) Mail Retention for Margin Account Holders.
For Customers with mail retention instruction, the broker shall nevertheless endeavor to communicate margin call immediately to such Clients.

(F) Customer Confirmations.

(i) A confirmation of every Margin transaction shall be sent to the Customer by the broker.

(ii) The confirmation shall be sent out electronically or in hard copy. All confirmations shall contain the following Information:

a. **Trade date.**
b. **Settlement date.**
c. **The type of transaction (purchase or sale).**
d. **Description of the Security.**
e. **Amount of the Security.**
f. **Execution price.**
g. **The capacity in which the firm acted (i.e agent as Broker or principal as a Dealer or a related party).**
h. **The total amount due.**
i. **The debit balance of the margin facility.**
j. **Commission charged.**
k. **The time of execution.**

MARGIN LENDING BY BROKERS TO CUSTOMERS

a) **A Customer purchasing securities may pay in full or borrow a portion of the purchase price from the Broker.**

(c) **In order to cover the loan to the Customer, the Broker shall have a Standby Margin Loan from a Bank that operates in the Clearing system of the Capital Market. The loan extended by the Bank to the Broker to support the onward lending to Customers shall also be treated as a margin loan and the same rules apply.**

(d) **A Stand by Margin Loan shall only accrue interest and charges when an amount has been drawn there from by a Customer for the purpose of purchasing securities on margin.**

(e) **It shall be unlawful for a Bank or a Broker to grant a margin facility for the purchase of the securities of a company in which it has substantial interest.**

DEALER MARGIN TRADING ACCOUNTS

(i) If a Dealer is trading for its own account and wants to make some purchases on margin it shall do so in a separate Margin Account designated for that purpose and that account shall comply with these Rules and Regulations as if it were a routine Customer.

(ii) A Dealer shall:

a. Not comingle Assets of its own Margin account with the assets of its Customers;
b. Comply with all reporting requirements regarding its own account to the relevant authorities;
c. Not re-hypothecate the securities of its Customers to support trading for its own account;
d. Comply with accounting procedures and have the relevant documentation regarding corporate accounts.

7B BANK MARGIN ACCOUNTS

(i) If a Bank is trading for its own account and wants to make some purchases on margin it shall do so in a separate Margin Account designated for that purpose and that account shall comply with these Rules and Regulations as if it were a routine Customer.

(ii) A bank shall:

a. Not comingle Assets of its own Margin account with the assets of its Customers;

b. Comply with all reporting requirements regarding its own account to the relevant authorities;

c. Not re-hypothecate the securities of its Customers support trading for its own account;

d. Comply with account opening procedures and have the relevant documentations regarding corporate accounts.

CENTRAL BANK OF NIGERIA REGULATION C (REG.C)
For Margin loans and margin lending, the margin requirement shall be 50% of the total purchase price of the securities or group of securities or as may be stipulated by the Central Bank of Nigeria from time to time.

CENTRAL BANK OF NIGERIA (CBN) REGULATION C CALL

A. A Margin Call or a Reg. C call shall be initiated by a Bank or Broker (as the case may be) to a Customer, when a transaction effected in a Margin Account does not meet, or falls below, the minimum initial requirement of 50% of total purchase price . A Margin Call shall be satisfied within twenty four hours of the settlement date.

B. The additional required Margin may be satisfied by a transfer from the Special Memorandum Account or by a deposit of cash, marginable securities, or any combination thereof.

C. If any margin deficiency is not met in full within the required time, the Bank or Broker shall liquidate securities sufficient to meet the Margin Call or eliminate any margin deficiency existing on the day such liquidation is required. No action need be taken by the Bank or Broker if the margin deficiency is ₦1000 (one thousand Naira) or less.

D. Securities in a margin account shall be held as collateral to support the purchases made on margin. The Bank or Broker shall have recourse only to those Securities held in the margin account and can ask the Customer to provide additional deposit of cash, marginable securities or any combination thereof, to meet a Reg. C Call.

E. Collateral used to support margin accounts shall be sold by the Broker or Bank in any lawful manner in accordance with all existing rules:

(i) If the account holder has failed to meet CBN Reg. C Call;
(ii) In order to meet an equity maintenance requirement;

Provided that there shall be no recourse to the Customer for additional liability if the Broker or Bank refuses to sell collateral held in margin to meet a Margin Call.

F. The amount of margin financing that a Bank or brokerage firm may lend to any single Client shall be determined by SEC and CBN on a quarterly basis.

G. In determining the total amount of margin facilities given to any single Client, the term "single Client" may include the following:

(i) In the case of an individual, the margin facilities shall be deemed to include the margin facilities granted to the individual, and the accounts over which the individual exercises control.

(ii) In addition, an individual is deemed to exercise "control" over a company if the individual or the individual's spouse, severally or jointly:-

a. Holds, directly or indirectly, at least 50.1% of the shares of that company;

b. Has the power to appoint, or cause to be appointed, a majority of the directors;

c. **Has the power to make, or cause to be made, decisions in respect of the business or administration of that company, and to give effect to such decisions, or cause them to be given effect to.**

(iii) **Where such single Client is a company, any margin facilities extended to the company, its subsidiaries and associated companies shall be deemed to be margin facility extended to such a single Client.**

10 COMPONENTS OF THE MARGIN ACCOUNT

A Customer purchasing securities on margin shall establish a long margin account which shall comprise of the following:

a) Long Market Value (LMV);
(b) Debit Balance (DB);
(c) Equity (EQ).

LOAN VALUE (LOANS GIVEN AGAINST SECURITIES)

All Marginable securities shall have a loan value which is expected to cover all future lending against securities and represents the maximum percentage of a Portfolio's current market value that a brokerage firm or Bank can lend to a Customer. The loan value is equal to the complement of the CBN Regulation C requirement which is presently 50%.

THE DEBIT BALANCE

The Debit balance represents the amount owed to the Brokerage firm or Bank. A change in the current market price shall have no effect on a Customer's debit balance.

DETERMINATION OF EXCESS EQUITY

To determine the excess equity in a margin account, subtract the Reg C requirement (based on the current market value of the securities) from the equity in the account.

SPECIAL MEMORANDUM ACCOUNT (SMA)

A. **Excess funds in a margin account shall be recorded in a Special Memorandum Account or Section. These funds may be used to offset a debit balance when a margin call has been made on the account. The Broker or Bank is required to apply the funds from the SMA to offset margin calls first before resorting to selling securities. Funds credited to a Customer's SMA shall include:**

i. **Dividends on stock owned in the account;**

ii. **Interest on bonds owned in the account;**

iii. **Voluntary cash deposits made by the Customer; and**

iv. **Proceeds from the sale of securities in the account.**

B. Decreases in market value shall not affect SMA. However, the SMA shall be debited if the Customer withdraws cash or purchases securities from that account.

RESTRICTED ACCOUNT

An account shall become restricted when the Equity falls below the CBN Reg. C requirement.

PURCHASE IN A RESTRICTED ACCOUNT

A. Where an account is restricted, the Customer can make additional purchases in the account after meeting the CBN Reg. C requirement on the purchase.

B. Any additional funds deposited in a restricted account shall be used to bring down the Customer's debt balance.

SALES IN A RESTRICTED ACCOUNT

Upon the sale of securities in a restricted account, the proceeds shall be used to reduce the debit balance without the Customer's consent until the CBN Reg. C requirement has been met. Thereafter, any sale proceeds shall be credited to the SMA and may be withdrawn by the Customer.

SAME DAY SUBSTITUTION IN A RESTRICTED ACCOUNT

A. **Where the value of securities purchased and sold on the same day in a restricted account are the same, there would be no additional deposit required.**

B. **Where the purchase is greater than the sale, the Customer would need to deposit the CBN margin requirement on the difference.**

C. **Where the sale is for a greater amount than the purchase, SMA shall be credited with the balance of the net sale proceeds provided the Reg. C requirement has been met.**

MARGIN MAINTENANCE REQUIRMENTS FOR BROKER AND BANK REQUIREMENTS FOR MARGIN ACCOUNTS

A. In addition to the requirements set by the CBN Regulation C and the SEC, margin accounts are subject to the industry requirements of a Securities Exchange, and the Bankers Committee etc, which shall set internal standards and rules to cover both initial transactions and the equity maintenance requirements of all margin accounts.

B. Brokers and Banks may establish their own internal margin maintenance requirements however those standards must not fall below the rules stated in this section. Internal guide lines of Banks

and Brokers can increase the maintenance level for equity in a margin account but they cannot reduce it.

C. Customers must maintain a minimum equity of 25% of the Long Market Value (LMV) of the margin account. This means that equity must not fall below 25% of the current market value of the securities in the account. If the account equity falls below 25% of the LMV then the account owner will be issued a "maintenance call". The maintenance call will be issued for the difference between the approved maintenance equity level and the current equity level. When a maintenance call is made the call shall be met immediately by depositing cash or fully paid up marginable securities.

D. Initial Requirement for purchases in a Margin account shall not be less than One million naira. If the Customer starts with a lower amount then that first deposit will not qualify for margin lending and it will be treated as a cash transaction.

E. Brokerage firms and Banks may increase the initial deposit requirement but cannot reduce it. Initial requirements set by internal rules of Brokers or Banks shall not exceed ten million naira.

MARGIN REQUIREMENTS FOR EXEMPT SECURITIES

A. NIGERIAN GOVERNMENT BONDS
The CBN in consultation with the DMO and SEC shall determine the margin requirement for each issuance of Nigerian Government Bonds at the time of issuance.

B. STATE GOVERNMENT, LOCAL GOVERNMENT AND OTHER GOVERNMENT AGENCY BONDS
The CBN in consultation with SEC shall determine the margin requirement for State, Local Government and other Government agencies Bonds.

MARGINABLE SECURITIES

(i) Marginable securities are securities that have been approved by CBN and SEC to be traded on margin in compliance with these Rules and Regulations. The CBN and SEC shall determine, approve, and SEC shall publish the approved list of marginable securities, "The Margin List", every month.

(ii) The Compliance Officers of a Securities Exchange, Banks and Brokers shall ensure that securities that are traded in a margin account for which a margin facility has been extended are securities that are contained on the approved margin list.

CRITERIA FOR DETERMINING MARGINABLE SECURITIES

A. The criteria for determining marginable securities shall include:

i. **The three month average trading volume, which shall demonstrate active trading in the security in relation to float. A security not traded during the first two months out of the last three months shall not be approved as a marginable security, even if there is heavy trading in the third and last month.**

ii. **The last ten days average trading volume, shall demonstrate an active demand for the security over the last ten days not determined by release of quarterly results.**

iii. **Only companies that have been trading for at least 12 months shall be included in the margin list**

iv. **Market capitalization as well as the share price of the securities shall be used by CBN and SEC in determining Marginable securities.**

B. ***Exclusion from the List of Marginable Securities***
The following are excluded from the list of marginable securities

i. **Securities of unlisted Companies;**

ii. **Securities of Companies that have been listed on a securities exchange for less than 12 months;**

iii. **Securities offered through Initial Public Offerings;**

iv. **Securities offered through a private placement by a listed company;**

v. **All banking securities;**

vi. **Securities that have not traded actively for the last three months;**

vii. **Securities of a company that have ceased to exist or filed for bankruptcy;**

Provided that, SEC in consultation with CBN, may add to, omit or remove from the margin list securities or companies if in its judgment such action is necessary or appropriate in the public interest.

"it shall be unlawful for any issuer to make, or cause to be made any representation to the effect that the inclusion of a security on the list of Marginable Securities is evidence that the SEC or the CBN has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the SEC or CBN in connection with the list or securities on the list shall be an unlawful representation."

INVESTOR ELIGIBILITY
Trading on margin and operating a margin account require a minimum level of sophistication on the part of the investor. In this regard and due to the level of understanding required by the investor for owning and operating a margin

account, these accounts will be restricted to only knowledgeable investors.

A. Individual Investors:
An individual investor shall satisfy the following conditions before he/she will be eligible to operate a margin account:

- **i. Shall not have been convicted of a Financial Crime or not have filed for Bankruptcy.**
- **ii. Shall open his/her margin accounts at a Brokerage firm while a "Sophisticated Investor" shall be eligible to open a margin account at a Bank.**
- **iii. Shall declare if there is a "third party" relationship in the ownership of the margin account. (Margin Accounts opened for Minors or in cases where there is a Trustee relationship, the Trustee or Custodian shall meet the rules for eligibility).**

Provided that a bank which accepts securities as asset collateral in a normal loan in the normal course of business with an individual Customer has not engaged in margin lending.

B. Corporate investors:(Eligibility to operate Margin Accounts)

- **i. Asset managers, investment Advisers, Brokers, Banks, Investment Houses, Financial Advisers, Corporation Treasury Departments, etc shall upon satisfying the requirements prescribed in these rules be eligible to operate a margin account.**
- **ii. All Pension Fund Administrators (PFA) are excluded from owning and operating Margin accounts. Assets of Pension Fund Administrators shall not be pledged, hypothecated or re-hypothecated for the purpose of securing credit to operate a margin account or to carry out purchase of securities on margin.**
- **iii. Banks and Brokers acting on behalf of PFAs are not permitted to Hypothecate securities belonging to a PFA whether separately or in a combined arrangement.**
- **iv. other Corporate investors operating under the Companies and Allied Matters Act are permitted to own and operate margin accounts.**
- **v. A Board resolution giving authority to the Management to open such an account is required. The board resolution shall contain the name of the individual or individuals authorized to make investment decisions regarding the account including monetary and investment limits, where necessary.**
- **vi. Any Corporate Body opening a Margin account directly with a Bank shall be registered with SEC.**

vii. **Margin trading carried out by a brokerage firm on behalf of Customers shall be handled by a firm:**

(a) with a valid registration with the SEC;

(b) in good standing and a valid membership with a Securities Exchange;

(c) which shall fulfil such other conditions as may be prescribed by the SEC from time to time.

viii. **Margin Trading carried out by any Stockbrokerage firm, Investment Adviser, Asset Manager or Bank for its own account only shall:**

(a) Meet all the conditions prescribed in these Rules and regulations.

(b) Meet other conditions of the CBN and other regulatory agencies.

24A. Training/Certification of Market Operators' Personnel in

i. **All investor representatives, Advisers, Asset Managers, Account Managers, Lawyers, Accountants, Financial Consultants, and any other individual that is responsible, licensed or authorized by law to advise individual or corporate investors on investment strategy, Securities Trading or investment in general shall be educated on Margin lending and trading and the Risks associated with it.**

ii. **If the market operator is a Bank, then its shall get a certification from a CBN approved institution for "Margin finance".**

iii. **If the market operator is a Broker then it shall get a certification from a SEC approved institution for "Trading in margin".**

24B. Technology for Margin Trading/*financing*

i. **All market operators that meet the laid down criteria for eligibility for trading in margin must equally meet a minimum requirement for having the right technology.**

ii. **The Technology shall be able to assist the Market Operator with the necessary regulatory reports as well as all standard requirements for client reporting and notification such as account statements, trading confirmation etc.**

iii. **If the Market operator is a Bank then the CBN shall certify that adequate technology is in place at the Bank to justify its margin financing as a lender. All institutions operating under the Bank and Other Financial Institutions Act shall obtain their Technology certification from the CBN.**

iv. **If the market operator is a Broker then the SEC shall certify that adequate technology is in place to justify its trading in margin whether for its own account or on behalf of others. All other market operators operating under the Investments and Securities Act shall get their Technology certification**

from the SEC.

v. **Market operators who will not be managing margin accounts for others or third parties but wish to trade only for their own accounts and have been exempted from certain rules for eligibility notwithstanding the exemption, are required to have the adequate technology to engage in margin trading even though they are only trading for their own account.**

MARGIN TRANSACTION REPORTING

A. All Margin Transactions shall be reported to the CBN by the Bank on a quarterly basis. Any transaction that breaches the Regulation C requirement of the CBN shall be reported on a monthly basis to the CBN. The reporting requirement shall include the following information:

i. The market operator that engaged in margin borrowing;

ii. The securities that were hypothecated;

iii. The securities purchased on the margin facility;

iv. The margin limit;

v. The maintenance requirement communicated to the Margin account holder;

vi. Whether the transaction was a combined transaction for on lending to Customers or whether the transaction was for the account of the market operator;

vii. The value of the transaction;

viii. The total shares traded on margin;

ix. Whether the Margin facility needed Re-hypothecation.

B. Margin Transactions carried out at the Broker level shall be reported to the SEC quarterly. The reporting requirement shall include the following:

i. The name of the investor.

ii. The securities that were hypothecated.
iii. The securities purchased on Margin.

iv. The Margin Limit.

v. The Maintenance requirement communicated to the Margin Account Holder.

vi. **Whether the account is a discretionary account or whether the investor is acting in full authority.**

vii. **The type of Margin Account whether it is a "third party" account such as Custodian Account, Trustee or fully owned by the investor making the decisions.**

viii. **The value of the transaction.**

ix. **The total shares traded.**

x. **Whether the Margin facility needed Re-hypothecation.**

C. If the CBN determines that a Bank has over extended margin facilities to a "Single Client" or to a combination of Clients, it shall direct the Bank to:

i. Reduce the outstanding position of the client or combination of Clients;
ii. Prohibit the Bank from further margin financing;

iii. take any other action as CBN may deem fit.

D. If SEC determines that a Broker has over extended margin to a "Single Client" or to a combination of clients, it shall:

i. Direct the operator to reduce the outstanding position of the Client or combination of Clients.

ii. Prohibit the operator from further trading on margin.

iii. take any other action as it may deem fit.

E. The CSCS must submit to SEC on a monthly basis a comprehensive list of hypothecated securities as well as securities placed on lien. The list must be separated by Brokerage house, Customer and location of securities such as account numbers etc.

F. Full Disclosure;

Where a Bank or broker extends margin facilities to:-

(i) Any of its partners, directors, agents or employees;
(ii) Any firm in which any of its partners, agents or employees is interested as a partner, agent, employee or guarantor;
(iii) Any company in which any of its directors, agents or employees is interested as director, agent, employee or guarantor;
(iii) Any company in which any of its directors, agents or employees hold at least a 5% shareholding.the lender shall provide full disclosure, which shall be included in its quarterly returns to the CBN and SEC.

A. APPOINTMENT OF COMPLIANCE OFFICER

(i) Every Market Operator that owns or operates a Margin account or manages a margin account on behalf of investors or has a margin account in its system, shall appoint a "Margin Compliance Officer" for the purposes of monitoring full and strict compliance with all the rules governing Margin Lending and Margin Trading in Nigeria;

(ii) The Compliance Officer shall be well trained in the Rules and Guidelines on Margin lending and shall attend regular training sessions as organized or supported by the CBN or SEC to maintain a minimum Knowledge requirement in the personnel of the Market Operator;

(iv) The officer shall be certified by the CBN as a "Margin Compliance Officer" if the Institution is a Bank;

(v) The officer shall be certified by SEC as a "Margin Compliance Officer" if the Institution is a Broker.

Exemption:
All Asset managers or Investment Advisers that operate their margin accounts in the house of other market operators such as a Broker are exempted from appointing Margin compliance officer.

B. The Duties of the Margin Compliance Officer

The Margin compliance officer shall be responsible for:

(i). approving Margin accounts of investors whether in the Banks, or with the Brokers.

(ii). all CBN reporting requirements, if it is a Bank.

(iii). all SEC reporting requirements, if it is a Broker.

(iv). all the Securities Exchange or Capital Trade Point reporting Requirements.

(v). recommending and maintaining an Internal Margin Maintenance guide lines for investors within its system.

(vi). educating the other personnel within the system of the Bank or the Broker of the Rules of Margin as well as periodic updates and adjustments as may be made by the CBN or SEC from time to time.

(vii). educating the investors of the risks of margin trading.

C. All Securities Exchanges registered with SEC shall maintain "Principal Margin Compliance Officers" and such officers shall inspect the operations of all Brokers from time to time to ensure that they are in full compliance with the terms and the spirit of these Rules and Regulations. All infractions and violations shall be reported to the CBN if it involves a Bank and to SEC if it involves a Brokerage Firm. Such reports are mandatory irrespective of whether the Securities

Exchange is handling the infraction or violation.

Valuation of Securities used for Collateral in Margin Accounts.

The collateral that a client may deposit into his margin account and the method of valuation thereof shall be limited:

(i) **To the value based on the last price of the securities on the preceding market day at the Exchange for securities quoted on the Securities Exchange.**

(ii) **To the value based on the last done price on the preceding day for Government Securities.**

[SECRR(A)October 8, 2010]

Rule 179. Periodic reports to clients

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

(i) a quarterly report showing all 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 shall ensure that the aggregate worth of all mandates to purchase securities for clients does not exceed 200 percent of paid-up share capital and reserves.

Rule 182A. Broker acting as agent

(1) A broker acting as agent of the transferor shall verify the certificate for such security with the Registrar of the 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 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 available and non-remittance of the proceeds of sale to client shall attract a fine of up to ₦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.]

1. E3. **Regulation of Sub-Broker.Functions**

(a) **A registered Sub-Broker shall have the following functions which shall be carried out only through its sponsoring Broker/Dealer;**

(i) **purchasing of securities;**
(ii) **sale of securities;**
(iii) **receiving payments from clients in any of the transactions mentioned in (i) and (ii) above only by cheques written in favor of the sponsoring Broker/Dealer;**
(iv) **making payments to clients in any of the transactions mentioned in (i) and (ii) above only by cheques drawn by the sponsoring Broker/Dealer;**
(v) **other services ancillary to (i) to (iv) above.**

(b) The Sub-Broker shall not keep the funds of the client in its Custody.

(c) All monies received from or on behalf of clients shall be duly receipted and remitted to the sponsoring Broker/Dealer within 2 (two) working days.

(d) The receipt issued by the Sub-Broker to clients shall bear the names and logos of the Sub-Broker and the sponsoring Broker/Dealer.

(e) All certificates, and warrants received by the Sub-Broker from client's for stock broking transactions, shall be forwarded to the sponsoring Broker/Dealer within 2 (two) working days.

2. Net Capital Requirement

No Sub-Broker shall permit its aggregate indebtedness to exceed 200 percent of its paid-up capital unimpaired by losses.

1. **Records of Transactions with Clients**
A Sub-Broker shall maintain proper and adequate records of transactions for and on behalf of each client. Such records shall include among others:-

(i) Duly executed mandate form
(ii) Deposit receipt for purchase of shares
(iii) Script receipt for certificate deposit
(iv) Clients statement from any recognized and registered depository.

2. **Periodic reports to clients**

(1) Every Sub-Broker shall furnish its clients in any quarter in which there was a transaction with at least;

(i) A quarterly statement of account showing all purchase and sales transactions on behalf of the client.
(ii) A quarterly report detailing the clients' shares portfolio, including the statement of share ownership from the clearing agency.

(2) Notwithstanding sub-rule (1) above, every Sub-Broker shall provide a client on demand, a statement of account showing both credit and debit transactions on behalf of the client.

(3) The Sub-Broker shall comply with Rule 170 of these Rules and Regulations as it relates to filing of Reports with the Commission. The report shall be filed through the sponsoring Broker/ Dealer.

3. **Prohibition of Solicitation of Deposits**

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

4. **Sub-Brokers Commission**
The commission payable to a Sub-Broker for transactions on behalf of the sponsoring Broker/Dealer shall not be less than 35% of the commission earned on the transaction by the sponsoring Broker/Dealer.

5. **Relationship between Sub-Brokers and Broker/Dealers**

(1) **A Sub-Broker shall:**

(i) **co-operate in protecting the interest of the client with regard to dividends, bonus shares or any other rights relating to the client's portfolio;**
(ii) **not fail to carry out the clients instructions;**
(iii) **execute an agreement or contract which would clearly specify the rights and obligations of the Sub-Broker and the Broker/Dealer;**
(iv) **not resort to unfair means of inducing clients from other Broker/Dealers.**

(2) **A Sub-Broker shall not:**

(i) **indulge in insider dealing, dishonorable, disorderly or improper conduct in the course of his business. He shall comply with the provisions of the Rules and Regulations of the Commission;**

(ii) **neglect or fail or refuse to submit to the Commission such books, returns, correspondences, documents and papers or any part thereof as may be required, and shall not make any false or misleading statement on any returns required by the Commission;**

(iii) **indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumors with a view to distorting market equilibrium or making personal gains;**

(iv) **create false market either acting alone or in concert with others, or indulge in any act detrimental to the public interest or which leads to interference with the fair and smooth functions of the market mechanism.**

8. Suspension of Sub-Broker

(1) Any Sub-Broker suspended for a period longer than three months, shall, not later than seven (7) working days from the date of receipt of notice of the suspension, provide the following information to its sponsoring Broker/Dealer and copy the Commission:

(a) names and addresses of its clients;
(b) all share certificates yet to be sent for verification;
(c) schedule of share certificates yet to be verified by the Registrar;
(d) schedule of unexecuted mandates from clients, if any;
(e) all clients dividend warrants or share certificates yet to be delivered;
(f) transaction account statements.

(2) The Commission may take such other steps as may be appropriate including the imposition of such penalties as provided for in the Rules and Regulations.

(3) The Commission may, where it deems fit, appoint an individual or a body to oversee the affairs of a suspended or ailing Sub-Broker in the interest of the general investing public.

[SECRR(A)August 31, 2009]

E4. Market Makers

Rule 182C. Functions

1. A registered marker maker shall perform the following functions;

i) be a specialist in designated securities and shall hold itself out (by entering quotation in an inter-dealer communications system or otherwise) as being willing to buy and sell the designated securities for its own account on a regular or continuous basis.

(ii) promote continuous liquidity in the market at all times.

iii) serve as a source of market information for the designated securities for which at all times, it stands ready.

iv) facilitate a smooth trading atmosphere and engender market stability as well as promote price discovery.

2. The market maker may in addition to sub-rule (1) above, carry out other functions, such as underwriting; but it shall not combine market making functions with stockbroking.

3. Obligations of market makers

A market maker shall comply with the following:

- **i) stabilize the market by ensuring continuous liquidity, by synchronizing buy and sell transactions;**
- **ii) operate within the established transaction spread (i.e. bid/offer spread) which shall be a maximum limit of 3% and subject to review from time to time;**
- **iii) have the capacity for continuous 2-way quotes in the relevant stocks throughout the trading session in a minimum quote size of 100,000 units of shares.**
- **iv) have the capacity to deliver and settle transactions within the prescribed settlement cycle (i.e. T+3 settlement cycle for securities)**
- **v) have the capacity to lend and borrow the designated securities at any time, with a view to ensuring stability in the market.**
- **vi) have enough buffer funds at all times.**

4 Infrastructure

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

[SECRR(A)September 11, 2008]

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.

Rule189. 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*) 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 furnish 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 accounts 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) 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 stockholders where applicable;

(ix) any other function ancillary to all the above.

(2) **a Registrar shall not maintain the register of its subsidiary, associate or holding company, or any person that has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control over it.**

[SECRR(A) January 27,2011]

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

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

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

(7)

(i) **A broker shall upon receipt of a share certificate for verification from an investor on whom he has conducted a due diligence in accordance with Rule 100, forward the certificate to the Registrar within 24 hours;**

(ii) **The Registrar shall within 10 working days from the day of receipt of a share certificate from the Broker, verify the signature of the shareholder or determine that the signature of the shareholder requires his bankers' confirmation;**

(iii) **The Broker shall confirm the verification status of all certificates lodged with the Registrar after 10 days**;

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

[SECRR(A)March 24, 2010.]

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 204A. 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.]

Rule 204B. Rules On Payment Of Dividends

1. **A separate interest yielding escrow account shall be opened pursuant to these Rules and Regulations by a company within 24hours of the approval of dividends at a general meeting (for final dividends) or a board meeting (for interim dividends) and evidence of such opening forwarded to the Commission and the company within 24 hours of the account being opened.**

2. **The total dividend declared by the company shall be paid en-bloc into the said account within 24hours after the opening of the account and evidence of such payment forwarded to the Commission and the Registrar within 24hours .**

3. **The Registrar shall be responsible for effecting dividend payment either by way of electronic transfer or by issuance and distribution of dividend warrant to the beneficiaries within the time limit prescribed in Rule 204(a)(5) of these Rules and Regulations.**

4. **The Registrar shall forward a monthly statement of account certified by the bank to the Commission.**

5. **Failure to open and fully fund the account by the Company in compliance with rule 204b (2) shall attract a penalty of N1 million per day and a further penalty of 5% above the MPR on the amount declared.**

6. **In the event of failure to effect dividend payment either by electronic transfer or dispatch of dividend warrant to beneficiaries within the time stipulated by these Rules and Regulations, the Registrar shall be liable to a penalty of N1,000,000.00 for every day of default.**

[SECRR(A) January 27,2011]

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, **2007** 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

A : REGULATION OF CUSTODIAN OF SECURITIES

Definitions:

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

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

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

"Custodian of securities" means a person who has custody, as a bailee, of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities.
For the purpose of this Rule, Custodian of securities shall also include persons having custody of dematerialized and other securities on behalf of its clients.

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

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

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

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

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

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

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

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

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

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

(2) Functions

Registered Custodian of Securities shall have the following functions, amongst others:

i. maintaining accounts of securities of a client;

ii. collecting the benefits, entitlement or rights accruing to the client in respect of securities;

iii. keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client;

iv. maintaining and reconciling records of the services referred to in sub-clauses (i) to (iii) above;

v. Settlement of investment obligations;

vi. ensuring compliance with fund-specific and other contractual obligations with clients.

Code of conduct

(3) A custodian of securities shall abide by the Code of Conduct as set out in Schedule IX to these Rules and Regulations.

Related functions

(4) (i) Besides custody of securities, a custodian of securities shall not carry on any activity other than activities relating to rendering of financial services;

(ii) Where a custodian of securities is carrying on any activity besides that of custody of securities and transactions incidental thereto, then;

(a) all activities relating to its business as custodian of securities shall be separate and segregated from all other activities;

(b) its officers and employees engaged in providing custodial services shall not be engaged in any other activity carried on by it.

Internal Controls

(5) (a) A custodian of securities shall have adequate internal control measures to prevent any manipulation of records and documents, including audits for securities and rights or entitlements arising from the securities held by it on behalf of its client.

(b) A custodian of securities shall have appropriate safekeeping measures to ensure that such securities are protected from theft and other hazards.

Monitoring, review, evaluating and inspecting systems and controls

(6) (a) A custodian of securities shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the custodian's internal controls.

(b) The custodian of securities shall cause to be inspected annually the mechanism referred to in (a) above, by an expert, and forward the report to the Commission within three months from the date of inspection.

(c) An expert for the purpose of thus sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

Prohibition of assignment

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

Separate custody account

(8) A custodian of securities shall

(a) open a separate custody account in its record for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client or with the proprietary assets of the Custodian;

(b) separately identify in its records, investments held as collateral from the assets of the custodian and from other investments held in custody;

(c) provide its clients at agreed intervals, with a record of their individual entitlements to investments and separately identify any investments which have been lent or which are held as collateral and are not available to be delivered.

Agreement with the client

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

(a) title

(b) acceptance or release of securities from the custody account;

(c) acceptance or release of monies from the custody account;

(d) receipt of rights or entitlements relating to securities of the client;

(e) the manner of registration of securities in respect of each client;

(f) details of the insurance (if any) to be provided for by the custodian of securities;

(g) arbitration clause;

(h) fees;

(i) reporting obligations of the custodian;

(j) manner in which securities under custody can be used as collateral;.

(k) treatment of non market related losses in relation to custody assets;

(l) a statement that the terms and conditions of the agreement are in conformity with the provisions of the Investment and Securities Act, and the Commission's Rules and Regulations made thereunder;

(m) other matters relevant and/or material to the custody contract.

Maintenance of records and documents and furnishing of information

(10) (i) A custodian of securities shall maintain details of the following records:

(a) securities received and released on behalf of each client;

(b) monies received and released on behalf of each client;

(c) rights or entitlements of each client arising from the securities held on behalf of the client;

(d) registration of securities in respect of each client;

(e) ledger for each client;

(f) **instructions received from clients and communication with clients;**

(g) **reports submitted to the Commission;**

(h) **securities used as collateral;**

(i) **such other documents and/or reports that the Commission may require from time to time.**

(ii) **A custodian of securities shall notify the Commission of the place where the assets/records and documents referred to in (i) above are maintained.**

Preservation of Records

(11) **Without prejudice to the provisions of any enactment and these Rules, a custodian of securities shall preserve the records and documents maintained under sub-rule (10) for a minimum period of seven years from the date of last entry.**

Disclaimer of Liability

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

Responsibility for Shortfall in Investment

(13) **A Custodian of securities shall be responsible for irreconcilable shortfalls in the quantity of investments identified on a reconciliation of customers' investments.**

Use of Nominees

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

(a) **the nominee acts only in accordance with its clients' instructions;**

(b) **each nominee is dedicated to the holding and to activities relating to the holding of investments;**

(c) **it accepts responsibility in writing to its clients for any of the nominees used, to the same extent as for its own action; and**

(d) **any report on compliance by the Custodian with rules and regulations relating to clients' assets covers the nominee(s) as well.**

Safe Keeping of Documents

(15) **A Custodian or Sub-custodian of securities shall ensure that:**

(a) **documents of or evidencing title are kept, or arrangement are made for them to be kept safe, until dispatched either to the client or in accordance with the clients' instructions;**

(b) **it, or the appointed Sub-custodian acts only on instructions given in accordance with the agreed procedures;**

(c) **where custodial records are kept electronically, take precautions necessary to ensure that continuity in record keeping is not lost or destroyed and that sufficient back up of records is available outside the principal place of business of the custodian.**

B: REGULATION OF DEPOSITORIES AND RELATED PARTIES

B1: Regulation Of Depository

(1) **Definition**

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

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

A central securities depository shall:

a) **enforce its rules, provisions of the Investments and Securities Act and the Rules and Regulations made thereunder;**

b) **supervise compliance by participants with the depository rules;**

c) **hold all securities of the same kind deposited with it by a participant collectively in a separate central securities depository;**

d) **maintain a central securities account with due regard to the interests of the participant and its clients;**

e) **notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;**

f) **balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer:**

- **i)** **in respect of each kind of certificated security, not less than once every six months;**
- **ii)** **in respect of each kind of uncertifcated security:**
  - **a)** **if that aggregate has not changed, not less than once every month.**
  - **b)** **if that aggregate has changed, on the business day after such change;**

g) **administer and maintain a record of uncertificated securities deposited with it;**

h) **be entitled to access the records of uncertificated securities administered and maintained by its participants;**

i) **disclose to participants and issuers the fees and charges required by it for its services;**

j) **on request disclose to –**

- **i)** **the Commission information about the securities held by a participant in a central securities account;**

ii) an issuer information about the securities issued by that issuer and held by participants in central securities account;

k) if a participant ceases to be a participant, notify the Commission thereof as soon as possible;

l) conduct its business in a prudent manner and with due regard to the right of the participants, clients and issuers.

(3) Eligible Securities for Dematerialisation

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

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

(ii) Units of mutual funds, rights under collective investment schemes and venture capital funds, commercial papers, certificate of deposit, securitized debt, money market instruments and government securities.

(4) Agreement Between Depository and Issuer

(i) An issuer of securities shall enter into an agreement with a depository to enable an investor dematerialize the securities provided that no agreement shall be required to be entered into where depository itself is the issuer of securities.

(ii) Where the Issuer has appointed a Registrar to the Issue, the depository shall enter into a tripartite agreement with the issuer and the Registrar to the issue in respect of the securities to be held in dematerialized form.

(5) Depository Rules
The depository rules shall, amongst others, provide for:

(a) equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interest of issuers and investors;

(b) arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;

(c) adequate steps to be taken by the securities depository, or a person to whom the securities depository has delegated its investigation and disciplinary functions to investigate and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the investments and Securities Act, the Rules and Regulations made thereunder, and the depository rules and shall require a report on the disciplinary proceedings to be furnished to the Commission within 30 days after the completion of such proceedings;

(d) requirements in respect of a participants' financial soundness and valid financial cover that the participant shall hold in respect of:

(i) the participant's actual and potential liabilities;

(ii) conditional and contingent liabilities to the securities depository; and

(iii) liabilities which existed before, or after a person has ceased to be a participant;

(e) (i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to participants or investors and, if applicable, by participants to investors;

(ii) all notices regarding rights and other benefits accruing to the owners of securities deposited with the securities depository are conveyed to participants and beneficial owners; and

(iii) rights of participants or beneficial owners are not in any way diminished by the fact that securities held by them or on their behalf are collectively in a securities depository;

(f) where a participant agrees, or is otherwise required to:

(i) receive moneys in respect of securities on behalf of beneficial owners from a securities depository or issuer, such monies are paid to the beneficial owners concerned;

(ii) convey to all beneficial owners information regarding rights and other benefits accruing to the securities held on their behalf, such information is in fact conveyed; and

(iii) give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;

(g) a participant, on written request from a client to withdraw securities or an interest in securities held in a securities depository, to deliver a certificate or written instrument evidencing the same number of securities held in a securities depository on behalf of client in the securities depository, as long as client has sufficient unencumbered credit balance of those securities with the participant concerned;

(h) a participant's securities depository accounts not to show a debit balance;

(i) the manner in which a securities depository or a participant shall keep records of clients or owners or beneficial owners of securities and limited or other interests in securities;

(j) the manner in which participants shall give instructions to the securities depository;

(k) the purpose for which the depository may issue directives;

(l) the manner in which a participant shall hold and administer securities;

a declaration that the rules are binding on the securities depository, a participant, an issuer or securities deposited in the depository, their officers, employees and clients.

(6) <u>Systems and Procedures</u>

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

(7) Connectivity

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

(8) Transfer to be effected after payment

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

(9) Withdrawal by participant

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

(10) Evaluation of Systems and Controls

(a) A depository shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls.

(b) The depository shall cause to be inspected annually, the mechanisms referred to in (a) above by an expert and forward the report to the Commission within 3 months from the date of inspection.

(c) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

(11) Measures Against Risks

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

(12) Safety of Records

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

(13) Records to be maintained

(i) A depository shall maintain the following records and documents:

(a) records of securities dematerialized and rematerialized;

(b) the names of the transferor, transferee and dates of transfer of securities;

(c) a register and index of beneficial owners;

(d) details of the holdings of securities of beneficial owners at the end of each day;

(e) records of instruction received from and communication with participants, issuers, registrars and beneficial owners;

(f) **records of approval, notice, entry and cancellation of pledge, or hypothecation;**

(g) **register of participants indicating their details;**

(h) **such other records as may be specified by the Commission for carrying on the activities as a depository.**

(ii) **A depository shall notify the Commission of the place where the records and documents are maintained.**

(iii) **Without prejudice to any enactment and these Rules, a depository shall preserve the records and documents required to be maintained for a minimum period of seven years from the date of last entry in the records or date the document was made.**

(14) **Prohibition of Assignment**

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

B2: Regulation Of Participant

(15) **Definition of Participant**
Participant means a person that holds in custody and administers securities or an interest in securities and that has been accepted as a participant in accordance with the Rules and Regulations of the Depository and registered by the Commission.

(16) **Functions, Duties and Responsibilities of a Participant**
A participant shall:

a) **settle trades on behalf of its clients;**

b) **if securities are deposited with it, deposit them with a central securities depository unless the client expressly directs otherwise in writing;**

c) **maintain a securities account for a client in respect of securities deposited;**

d) **reflect the number or nominal value of each kind of securities deposited in a securities account;**

e) **administer and maintain a record of all securities deposited with it in accordance with depository rules;**

f) **record all securities of the same kind deposited with it in a sub-register if so required by the depository rules;**

g) **disclose to clients the fees and charges required by it for its services;**

h) **notify a client in writing or as otherwise agreed to by the client or an entry made in the client's securities account;**

i) **on request disclose to:**

i. **the Commission information about the securities recorded in a securities account;**
ii. **an issuer information about the securities issued by that issuer and recorded in a securities account;**

j) **have a central securities account with a central securities depository, and may:**

i. deposit securities with or withdraw securities from that central securities depository; or

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

k) exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client; and

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

(17) Agreement by Participant

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

(18) Separate Accounts

(a) Separate accounts shall be opened by every participant in the name of each client and the securities of each client shall be segregated, and shall not be mixed up with the securities of other clients or with the participants' own securities.

(b) A participant shall register the transfer of securities to or from a client's account only on receipt of instructions from the client and thereafter confirm the same to the client in the manner prescribed by the rules of the depository.

(c) Every entry in the client's account shall be supported by electronic instructions or any other mode of instruction received from the client in accordance with the agreement with the client.

(19) Statement of Accounts

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

(20) Transfer or Withdrawal by Client

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

(21) Connectivity

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

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

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

(ii) The participant shall cause to be inspected annually the mechanism referred to in (i) above by an expert and forward the report to the depository within three months from the date of the inspection.

(iii) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the depository.

(23) Reconciliation

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

(24) Returns

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

(25) Records to be Maintained

(a) A participant shall maintain the following records and documents:

i. records of all the transactions entered into with a depository and with a client;

ii. details of securities dematerialized, rematerialized on behalf of clients with whom it has entered into an agreement;

iii. records of instructions received from clients and statements of account provided to clients; and

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

(b) A participant shall make available for the inspection of the depository in which it is a participant, all the records referred to in (a) above. For effective exercise of the inspection, the participant shall allow persons authorized by the depository in which it is a participant, to enter its premises during normal office hours and inspect its records.

(c) A participant shall notify the Commission of the place where the records and documents are maintained.

(d) Without prejudice to any enactment and these Rules, a participant shall preserve the records and documents for a minimum period of 7 years from the date of last entry in the records or date the document was made.

(e) A participant who enters into an agreement with more than one depository shall maintain the records mentioned in (a) above in respect of each depository.

(26) Safety of Records

Where records are kept electronically by the participant, it shall ensure that the integrity of the data processing systems is maintained at all times and take all precautions necessary to ensure that the records are not lost, destroyed and tampered with and shall ensure that sufficient back up of records is available at all times, off site from the participant's office.

(27) Prohibition of Assignment

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

(28) Agreement by Issuer

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

(29) Handling of Share Transfer and Maintenance of Records to be at a Single Point

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

(30) Redress of Grievances

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

(31) Surrender of Certificate of Securities to be dematerialized

(i) A client who has entered into an agreement with a participant, shall inform the participant of the details of the certificate of securities to be dematerilised and shall surrender such certificate to the participant;

(ii) The participant shall:

(a) on receipt of information from the client under (i) above, forward such details of the certificate of securities to the depository and confirm to the depository that an agreement has been entered into between it and the client;

(b) maintain records of beneficial owners whose securities have been surrendered, the number of securities and other details of the certificates of securities received;

(c) within 7 days of the receipt of certificate of securities referred to in (a) above, furnish the issuer with details specified in (b) above along with the certificate of securities;

(iii) The issuer or its agent shall within 15 days of receipt of the certificate of securities from the participant confirm to the depository that the securities comprised in the said certificate have been listed on a stock exchange or exchanges and shall also after due verification immediately cancel the certificate of the depository as the registered owner and shall forward a record of this fact to the depository and to every stock exchange where the securities are listed.

(iv) Immediately upon receipt of information from the issuer under (iii) above, the depository shall enter in its records the name of the person who has surrendered the certificate of security as the client, as well as the name of the participant from whom it has received under Paragraph (ii)(a) above and thereafter send notice thereof to the participant.

(v) The issuer or its agent shall maintain a record of certificates of securities which have been dematerialized.

(32) Reconciliation

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

(33) Connectivity

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

(34) Information

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

(i) closure of register;

(ii) record dates;

(iii) payment of interest or dividend;

(iv) annual general meeting;

(v) redemption of debentures;

(vi) conversion of debentures and;

(vii) such other information at the time and in the manner as may be specified by the depository in its rules or in the agreement with the issuer.

(35) Creation of Pledge or Hypothecation

(i) If a beneficial owner intends to create a pledge on a security owned by him, he shall make an application to the depository through the participant who has his account in respect of such securities.

(ii) The participant shall make a note in its records of the notice of pledge and forward the application to the depository.

(iii) The depository after confirmation from the Pledgee that the securities are available for pledge with the Pledgor, shall within fifteen working days of the receipt of the application create and record the pledge and send notice of it to the participants of the Pledgor and the Pledgee.

(iv) On the receipt of the notice under (iii) above, the participants of the Pledgor and Pledgee shall inform the Pledgor and Pledgee respectively of the creation of the pledge.

(v) The pledge created under (iii) may be cancelled by the depository if the pledgor or pledge makes an application for cancellation through its participant;

Provided that no pledge shall be cancelled by the depository without the concurrence of the pledgee.

(vi) On the cancellation of the pledge, the depository shall notify the participant of the pledgor.

(vii) On the foreclosure of the pledge, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.

(viii) No transfer of securities in respect of which a notice of pledge is in force shall be effected by a participant without the concurrence of the pledgee.

(36) Investment Advice

(i) A depository or a participant or any of their employees shall not render any investment advice about a security in the publicly accessible media, unless a disclosure of interest, including long or short position in the said security has been made, while rendering such advice.

(ii) Where an employee of the depository or participant is rendering such advice, he or she shall disclose the interest of his or her family members and the employer including long or short position in the said securities.

(37) CODE OF CONDUCT

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

C: REGULATIONS OF SECURITIES CLEARING AND SETTLEMENT

Definition

Securities Clearing and Settlement Systems include full set of institutional arrangements for confirmation, clearance and settlement of securities trades.

1. Confirmation of Trade

A Securities Clearing and Settlement Company shall provide in its rules the period for final confirmation of trades.

2. Settlement of Trade

A Securities Clearing and Settlement Company shall provide in its rules the period for final settlement of transactions.

3. Securities Lending

Lending and borrowing of securities shall be provided in the rules of the Securities Clearing and Settlement Company.

4. **Delivery Versus Payment**

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

5. **Operational System and Business Continuity**

A Securities Clearing and Settlement Company shall;

(a) have appropriate systems, controls and procedures that are reliable and secure and have adequate scalable capacity.

(b) have adequate offsite disaster recovery facilities and procedures.

6. **Protection of Customer's Securities**

A Securities Clearing and Settlement Company shall adopt proper accounting and safe keeping procedures to ensure full protection of clients' securities. Adequate management controls and independent audit of information systems shall be maintained.

7. **Evaluation of Systems and controls**

(a) A Securities Clearing and Settlement Company shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls.

(b) **The Securities Clearing and Settlement Company shall cause to be inspected annually, the mechanism referred to in (a) above by an expert and forward the report to the Commission within 3 months from the date of inspection.**

(c) **An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.**

8. **Communication Procedures and Standards**
A Securities Clearing and Settlement Company shall adopt and apply consistent communication procedures and standards relating to securities message, securities identification and participant identification. In the case of cross-border transaction, it shall adopt and apply the international numbering and messaging standard.

[SECRR(A) April 28,2008]

E12. Banker to an Issue/Receiving Banker

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, **2007**.

(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—

"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, institutional 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;

"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 secondary markets or by private placements in Nigeria. Such securities, except those of private companies shall be registered by the Securities and Exchange Commission (S.E.C.) in accordance with the Act and the Rules and Regulations made thereunder.

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 accompanied 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 re-classification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries;

(v) a description, including the amount invested, of the company's 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 newproducts 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, country of incorporation or residence and proportion of voting power held shall be provided.

(*d*) The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the uses of the property, productive capacity and extent of 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 working capital is sufficient for the company's present requirements, or if not, how it proposes to provide the additional working capital needed;

(ii) an evaluation of the sources and amounts of the company's cash flow, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations;

(iii) information on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use;

(iv) information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. It also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes;

(v) information regarding the company's material commitments for capital expenditures as at the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to 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 nature or conditions involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party.

(3) The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transactions in which it was incurred, and the interest rate on the loan.

(*c*) If any of the named experts or 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 independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

(*f*) If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percentage and amount of export sales in the total amount of sales volume.

(*g*) Provide information on any legal or arbitration proceedings, including those relating to bankruptcy, receivership or similar proceedings and those involving any third party which may have, or have had in the recent past, effects on the company's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.

(*h*) Describe the company's policy on dividend distributions.

(*i*) Disclose whether or not any significant change has occurred since the date of the annual financial statements and/or since the date of the most recent interim financial statements, if any, included in the document.

(10) ***The offer and listing:***

(*a*) Indicate the expected price at which the securities will be offered and the method of determining the price.

(*b*) If there is no established market for the securities, the document shall contain information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.

(*c*) If the company's shareholders have pre-emptive purchase rights and where the exercise of right of the pre-emption of shareholders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or

withdrawal and the beneficiaries of such restriction or withdrawal if intended to benefit specific persons.

(*d*) Information regarding the price history of the stock to be offered or listed shall be disclosed as follows—

(i) for the five 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 warrants or rights are exercisable; and any other material terms of such warrants or rights.

(ii) Where convertible securities or stock purchase warrants to be listed or offered are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall include whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in the notice of redemption or call; the expiration or termination date of the warrants; the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and, in the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.

a. ***Plan of distribution:***

(i) The names and addresses of the entities underwriting or guaranteeing the offering shall be listed.

(ii) To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe to more than 5% of the offering.

(iii) Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a *tranche* has been or is being reserved for certain of these, indicate any such *tranche*.

(iv) If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the company or its subsidiaries, provide details of these and any other preferential allocation arrangement.

(v) Indicate whether the amount of the offering could be increased in the event of an over-subscription or any other circumstance and whether their 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" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.

(ix) If any underwriter or other financial adviser has a material relationship with the company, describe the nature and terms of such relationship.

(x) The company shall disclose all stock exchanges and other regulated markets on which the securities to be offered or listed are traded. When an application for admission to any exchange and/or regulated market is being or will be sought, this must be mentioned, without creating the impression that the listing necessarily will be approved. If known, the dates on which the shares will be listed and dealt in should be given.

b. ***Selling shareholder****:*

The following information shall be provided—

i. the name and address of the person or entity offering to sell the shares, the nature of any position, office or other material relationship that the selling shareholder has had within the past three years with the company or any of its predecessors or affiliates;

ii. the number and class of securities being offered by each of the selling shareholders, and the percentage of the existing equity capital. The amount and percentage of the security for each particular type of securities beneficially held by the selling shareholder before and immediately after the offering shall be specified.

c. ***Dilution:***

The following information shall be provided—

i. where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five 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.

(3) GDR issues shall be approved only upon satisfactory account of utilization of proceeds from previous raising.

[SECRR(A) March 24,2010]

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;

"Partnership" means a voluntary relationship existing between two or more persons to carry on business as co-owners and share in the profit and loss.

[SECRR(A) March 24,2010]

"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 ₦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.

(iii) **Partnerships;**

(iv) Any merger, Takeover, Acquisition or Business Transaction undertaken by any Federal Government owned Agency pursuant to statutory powers vested in it, shall in addition be subject to the approval of the Commission.

[SECRR(A) March 24,2010]

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.

(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.

(c) **Though the contemplated merger is likely to restrain competition, one of the parties to the merger has proved that it is failing.**

[SECRR(A) March 24,2010]

Rule 230. Exemptions

(a) 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) **In a small merger, the merging entities shall not be required to notify the Commission of that merger but shall be required to inform the Commission at the conclusion of the merger.**

(b) Notwithstanding (a) above, the following documents shall be forwarded to the Commission:

i. **Shareholders resolution of the companies approving the restructuring;**
ii. **A copy of Certificate of incorporation of the affected companies certified by the company Secretary;**
iii. **CAC forms dealing with particulars of Directors and allotment of shares of the affected companies;**
iv. **"No objection" letter from relevant regulatory authorities(where applicable);**
v. **Information memorandum containing the following information:**
   a. **Directors of the companies;**
   b. **Profile/share capital history of the companies;**
   c. **Shareholding structure of the companies;**
   d. **Directors beneficial interest;**
   e. **Status of the subsidiaries after the restructuring;**
   f. **Status of the shares of the restructured companies;**
   g. **Status of the employees of the restructured companies;**
   h. **Percentage or level of involvement of the combined companies(if they have similar products) in the industry;**
   i. **Any other information or document required by the Commission from time to time.**

[SECRR(A) March 24,2010]

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 merger **notification** for evaluation;

(-2) file an application in the Federal High Court seeking an order to convene a court ordered meeting;

(3) following the resolution of the shareholders at the court ordered meeting, the applicants shall file with the Commission a formal application for approval of the merger.

(4) comply with post-approval requirements.

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

Rule 232A. Requirements for merger notification

The **merger notification** 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*) **a detailed write-up of proposed transaction contained in an information memorandum which shall include the following:**

i. **State the products or services that the merging entities sell or provide in, into or from Nigeria. In addition, identify any products or services that you believe are considered**

by buyers as reasonably interchangeable with, or a substitute for, a product or service provided in, into or from Nigeria by parties to the merger;

ii. For each identified product or service, state the geographic area (s) in Nigeria, in which the merging entities sell;

iii. For each identified product or service, identify and provide contact details *of* the top five producers or providers in each identified geographical area with the largest estimated turnover in value, and their estimated share of the total turnover during the last financial year;

iv. For each identified product or service, state the turnover in each of the identified geographical area during the last financial year;

v. For each identified product or service, identify and provide contact details for the merging entities' five customers in each of the identified geographical area with the largest aggregate purchases in value during the last financial year;

vi. The business relationship among the merging entities in terms of the products or services they sell to one another as well as the value of those products and services sold during the last financial year.

g. The note shall also Indicate whether the merger will involve the following:

i. Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights;

ii. Transfer of shares or other interests.

h. Where a company involved in the merger transaction claims that it is failing, the following documents shall be forwarded:

i. Financial information demonstrating that the firm will be unable to meet its financial obligations in future;

Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.

[SECRR(A) March 24,2010]

(iii) the latest financial statement of the companies;

(iv) certificate of the corporation of the merging companies.

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

(v) **Where a party to a small merger is required by the Commission to notify it of the merger, documents forwarded shall be the same as those required for a merger notification**

(vi) **Extract of Board resolutions of the merging companies authorizing the merger duly certified by a Director and the Company Secretary.**

vii. A copy of the letter appointing the Financial Adviser(s);

viii. Copy of certificate of incorporation certified by the Company Secretary;

ix. CAC Certified True Copy of Particulars of Directors

x. **Letter of no object from company's' Regulators.*(where applicable);***

xi. The audited accounts of the merging entities for the preceding five years or the number of years *any of* the compan*ies* ha*ve* been in operation if less than five years;

xii. Applicable merger notification fee of N50, 000.00 (fifty thousand naira) per merging company (for intermediate and large mergers);

xiii. In the case of an intermediate or large merger a copy of the merger notification shall be forwarded to:

a. any registered trade union that represents a substantial number of its employees; or

b. the employees concerned or representatives of the employees concerned, if there are no such registered trade unions.

xiv. Additional information to be disclosed in the Information Memorandum includes:

a) The actual and potential level of import competition in the relevant industry;
b) The ease of entry into the industry, including tariff and regulatory barriers;
c) The level *and t*rends of concentration and history of collusion in the relevant industry;
d) The degree of countervailing power in the market;
e) The dynamic characteristics of the relevant industry including growth, innovation and product differentiation;
f) The nature and extent of vertical integration in the relevant industry;
g) Whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail;
h) Whether the merger will result in the removal of an effective competitor;
i) Any other information that the Commission may require in respect of the Merger.

xv. Merger applications may be filed by separate financial advisers (registered as an Issuing House) or solicitor for each of the merging companies, provided that in case of a small merger one (1) financial adviser may be used.

Rule 232 B : Lower and Upper Thresholds

(1) The lower threshold shall be below N250,000,000.00 of *either* combined assets or turnover of the merging companies, the intermediate threshold shall be between N250,000,000.00 and N5,000,000,000.00, while the upper threshold shall be above N5,000,000,000. 00.

(2) The determination of the threshold shall be by the combination of assets or turnover or the combination of both turnover and assets in Nigeria.

[SECRR(A) March 24,2010]

Rule 232C: Clearance of Scheme Document

1. Prior to making an application for court ordered meeting in respect of intermediate and large mergers, the following documents should be filed for the review and clearance of the Commission:

i. letters of consent signed by an individual or duly notarized*;*
ii. Financial reports for the preceding five years or the number of years the company has been in existence, (where it has been in existence for less than five years);
iii. Any other document as may be required by the Commission.

[SECRR(A) March 24,2010]

(2). Upon receipt of a favourable response to a -merger notification from the Commission, a formal application for approval of a proposed merger, or any other form of business combination shall be filed with the Commission accompanied by the following—

(*a*) two hard copies and a 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 mergingcompanies.

(*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.]

3. (*a*) The Scheme document shall set out, on top of the front cover page, the following statement to be highlighted in bold letter:

"THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION";

(*b*) immediately after the statement in (*a*) above, the following shall be stated in small letters—

"If you are in doubt as to what action to take, it is recommended that you consult your stockbroker, banker, solicitor, accountant, or any other independent professional adviser";

(*c*) immediately after the statement in (*b*) above the following shall be stated in small letters—

"If you have sold all your shares in (names of the merging companies) please hand over this document and the accompanying proxy forms to the purchaser(s), the stockbroker or bank through whom the shares were sold, for transmission to the purchaser";

(*d*) the Scheme document shall contain, at the bottom of the front cover page, the following statement highlighted in bold letters:

"THE PROPOSALS WHICH ARE THE SUBJECT OF THE SCHEME OF MERGERS (ARRANGEMENT) SET OUT IN THIS DOCUMENT HAVE BEEN CLEARED WITH THE SECURITIES AND EXCHANGE COMMISSION. THE ACTIONS THAT YOU ARE REQUIRED TO TAKE ARE SET OUT ON PAGES (STATE PAGE NUMBERS)".

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

4. Any document required to accompany a formal application which has been previously filed with the Commission may be incorporated by proper reference provided that such documents were filed within 6 months of the present application and is found acceptable by the Commission.

5. Where all requirements have been fulfilled, the Commission shall inform the court, by a statement in writing whether the merger is approved, subject to conditions or prohibited.

[SECRR(A) March 24,2010]

Rule 233. Requirements for formal approval

Rule 234A. Post-approval requirements

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

(*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.]

(4) Treatment of dissenting shareholders;

(5) Submission of gazetted copy of the court sanction;

(6) Evidence of allotment of shares;

(7) Evidence of settlement of severance benefits of employees, *(where applicable).*

Rule 234(B): Post Merger Inspection

Three (3) months after approval by the Commission, a post merger inspection shall be carried out by the Commission to ascertain the level of compliance with the provisions of the scheme documents. Documents to be inspected include:-

i. The Board Minutes book;

ii. Original Certificate of Incorporation of the resultant company (where applicable);
iii. Copy of the amended Memorandum and Articles of Association (where applicable);
iv. Severance benefits of employees of the dissolved companies;
v. Final settlement of shareholders;
vi. Dispatch of share certificates;
vii. Settlement of debts;
viii. Report of shareholders representatives on the merger;
ix. Any other document that may be required by the Commission from time to time.

Rule 234(C): Power to Order the Break up of Company

(1) Where the Commission **determines** that a company constitutes a restraint to competition or creates a monopoly in a particular industry, the Commission shall order the break up of the company.Before the Commission makes a determination to order the break up, it shall:

a. Communicate the basis of its observation to the ***company*** in writing and the ***company*** will be expected to forward their response to the Commission within thirty (30) days of receipt of the letter;
b. Review the company's response and where it is found that competition is restrained, senior officers of the company shall be invited to further defend their position;
c. Communicate the final decision of the Commission to the Company.

(2) The Commission shall forward its decision to the Court for sanctioning.

(3) The following shall be considered as business practices capable of restraining competition and creating monopoly:

i. The entry into agreements with other companies or business undertakings which have as their object or effect the prevention, restriction or distortion of competition in any part of the Nigerian market, and in particular those which:

a. Directly or indirectly fix purchase or selling prices or any other trading conditions;
b. Limit or control production, markets, technical development, or investment;
c. Share markets or sources of supply;
d. Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
e. Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ii. The abuse by companies or business enterprises of dominant positions achieved by them in any part of the Nigerian Market irrespective of how such positions of dominance were achieved. Such abuse may, in particular, consist in:

a. Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b. Limiting production, markets or technical development to the prejudice of consumers;

c. Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

***d.* Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.**

[SECRR(A) March 24,2010]

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. Rules on custodial services for registered collective investment schemes

Definitions

In these Rules, unless the context otherwise requires

"CIS" *means CIS as defined in the ISA.*
"Custodian" *means Custodian as defined in the ISA.*

"Custody of Assets" *means the holding or control of assets belonging to, or on behalf of a CIS, by an entity hereinafter referred to as the custodian, acting in the course of rendering services under these rules.*

1 REQUIREMENTS

***Any* Entity wishing to undertake the functions of a Custodian of a Collective Investment Scheme shall in addition to the general registration requirements stipulated in Rule 27 of these Rules also comply with the under listed requirements. The entity shall:**

a. Be appointed by a Schemes' Fund Manager with the approval of the Commission;

b. **Be a registered Financial Institution(s) with a minimum shareholders' fund of N15billion;**

c. Have the professional and technical capacity to provide Custodial services as contemplated under these Rules. However, where the custodian appoint a representative to act on its behalf such custodian will still be liable.

d. Not have been found liable in the mismanagement of any fund.

e. Have adequately insured Collective Investment Scheme assets in its custody against loss through fire, theft, natural catastrophe and the like, as well as taken out a fidelity guarantee cover;

f. Possess appropriate information and communicationtechnology systems that could adequately cater for online real-time transactions in addition to keeping proper accounting records;

g. Have a system of internal controls which ensures that the assets under its custody are safeguarded and segregated and records would adequately reflect the information they purport to present; and

h. Have satisfied all requirements prescribed by the ISA 2007, and the Rules and Regulations or any such additional requirements as may be prescribed from time to time by the Commission.

2. FUNCTIONS OF THE CUSTODIAN OF COLLECTIVE INVESTMENT SCHEME

A custodian of a Collective Investment Scheme shall:

a. **Provide custody services to the assets of collective investment scheme, hold and deal with such assets strictly in accordance with directives given by a Fund Manager or directors of an investment company in conformity with the Schemes Trust Deed or Memorandum and Articles of Association of the investment company, the ISA and these Rules and Regulations.**

b. **Have its assets separate and distinct from the schemes assets and any other assets under its custody.**

c. **Provide services which shall include custody, transaction processing/settlement,periodic reporting of status of Fund's asset to the Fund Manager, Trustee and the Commission.**

d. **Make appropriate arrangements for the protection of assets held under custody and ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss.**

e. **Carry out monitoring ,oversight, administrative and other functions required in accordance with the terms and conditions of the agreement appointing it as custodian, the deed or other instrument establishing or regulating the scheme, the conditions of its registration and such other requirements as may be laid down by the Commission.**

f. **In the exercise of its functions, duties and responsibilities, the custodian shall act independently of the manager and of the management of the scheme and solely in the interest of the participants in the scheme and of the scheme itself, provided that the custodian shall act upon the instructions of the manager and the manager shall act upon the**

instructions of the custodian to the extent required by the provisions of the agreement between the two entities, the instrument establishing the scheme or other requirements of the Commission.

3. OBLIGATIONS OF THE CUSTODIAN OF A COLLECTIVE INVESTMENT SCHEME

The Custodian shall:

a. **Be liable for any loss or prejudice suffered by the Manager, the scheme or participants in the scheme due to fraud by the custodian, wilful default or negligence including the unjustifiable failure to perform in whole or in part the custodians obligation arising under these regulations, the terms and conditions of the agreement appointing the custodian, the instrument establishing or regulating the scheme, conditions for the authorisation and registration of the scheme or such other requirements as may be laid down by the commission.**

The Custodian shall not be liable for any loss or prejudice suffered by the scheme or participants in the scheme as a result of the acts or omissions of the manager except where and to the extent that the custodian has failed to perform its functions and duties as provided under Rule 239(4).

b. **Open and operate separate custody accounts in the joint name of the Scheme and its Trustees;**

c. **Not create a charge on the assets of a Scheme or loan out the assets of a Scheme;**

d. **Be accountable to the Schemes Manager, Trustee and The Commission;**

e. **Maintain adequate and proper books of accounts and records that include but are not limited to the following services:**

(i) **Custody register: a Custodian shall maintain a collective investment scheme Assets register in the name of each Scheme/Fund to which it acts as Custodian;**

(ii) **Investment register: an investment register shall be maintained to record all investments effected and settled on behalf of the Scheme;**

(iii) **Income Collection register: a Custodian shall maintain a register of income received on a Scheme/Fund's investment,which shall be categorized under income types(i.e.dividends interest etc.).**

f. **Be independent of a Scheme's Fund Manager and Trustee,and not be affiliated to either of the parties;**

g. **Render monthly, quarterly returns/reports on the account of a Scheme/Fund to the Fund Manager and Trustee, and file quarterly returns on their activities in the prescribed format to the Commission;**

h. **Avail the Fund Manager of all relevant records of the Scheme's affairs annually, to facilitate the annual auditing of the Scheme;**

i. **Avail a Scheme's Trustee with all/any information required from time to time;**

j. **Charge a transaction fee to be negotiated with the Fund Manager provided that such fee shall not exceed 0.25% of the value of the asset under custody in line with rule 247 (j);**

k. **Except as may be authourised by the Commission, a person shall not act as a member of the board of directors or similar organ or as an officer responsible for the administration and management of the Manager and at the same time hold a similar position with the Custodian entrusted with the custody of the assets of any scheme managed by the Manager.**

l. **within 5 working days of becoming insolvent, file a report to the Commission, the Scheme Manager and the Trustees of any Schemes under its administration;**

m. **Where, after an examination or otherwise howsoever, the Commission is satisfied that the custodian is in a grave situation or the custodian informs the Commission that:**

(i) it is likely to become unable to meet its obligations under the Act and these rules and regulations;

(ii) it is about to suspend its obligations to any extent; or

(iii) it is insolvent;

The Commission may by order in writing exercise any one or more of the following:

(a) Prohibit the custodian from receiving funds or other assets from the public for a period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the period;

(b) Require the custodian to take any steps or any action or to do or not to do any act or thing whatsoever, in relation to the custodian or its business or its directors or officers which the Commission may consider necessary and which is set out in the order, within such times as may be stipulated therein;

(c) Remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the custodian;

(d) Without prejudice to the provisions of any written law or any limitations contained in the memorandum and articles of association of the custodian, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, and for reasons to be recorded in writing-

(i) remove from office, with effect from such date as may be set out in the order, any director of the custodian; or

(ii) appoint any person or persons to manage the affairs of the custodian in the interim, and provide in the order for the person or persons so appointed to be paid by the custodian such remuneration as may be set out in the order;

(iii) appoint any person to advise the custodian in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the custodian such remuneration as may be set out in the order.

(e) Without prejudice to the provisions of these rules and regulations, an agreement for the custody of assets of a scheme may be terminated by the custodian, the Manager or the Directors of an investment company or by order of the Commission.

Upon the termination of a custody agreement, the Custodian shall convey for no consideration the assets held for the scheme, as instructed by the Manager or the Commission without prejudice to the Custodian's right to payment of any lawfully due fees or expenses in terms of the agreement entered into with the Manager and to any obligations arising in favour of the Manager thereafter.

The termination of the appointment of the Custodian in accordance with the provisions of these rules and regulations shall not come into effect prior to the appointment of another custodian and the conveyance of the assets held in custody by the outgoing custodian to the new custodian.

[SECRR(A) January 27,2011]

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, **2007** 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, **2007** 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, **2007** 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 auditing 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 $^{1}/_{2}$ 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 conditions 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.

Rule 249B. Exchange Traded Funds

Definition

AUTHORISED DEALER AGREEMENT: an agreement entered intobetween the authorized dealer and the Fund Manager setting out the terms and procedures by which the authorized dealer may request the creation and redemption of Units.

AUTHORISED DEALER (BROKER DEALER): a broker dealer registered with the Commission who is a member of a Securities Exchange and is appointed by the Fund Manager.

BUSINESS DAYS: as defined by these Rules.

ETF- EXCHANGE TRADED FUND: an undertaking which could be:

i. a unit trust scheme
ii. an open-ended investment company;
iii. any other such structure as may be approved by the Commission,

that issues unleveraged securities or units listed on a Securities Exchange recognized by tracks the performance of a specified security or other assets which includes but is not limited stocks, basket of assets, indices, commodity prices, foreign currency rates, or any other

appropriate benchmark approved by the Commission from time to time.

CREATION UNIT: the specified number of Units determined by the Fund Manager and clearly disclosed in the Fund's Offer Documents for the creation of ETF Units.

FOREIGN COMPANY: a company incorporated outside Nigeria.

FOREIGN ETF: an ETF whose primary listing is on an Exchange outside Nigeria.

FUND MANAGER: a duly authorized person that administers the affairs of the ETF.

IOPV (INDICATIVE OPTIMUM VALUE: an estimated net asset value ("NAV") of the portfolio securities of the Fund calculated by the Fund Manager according to a methodology which is clearly stipulated in the Offer Documents

LIQUID ASSETS:
(a) cash;
(b) deposits with Banks or other licensed Institution approved to accept deposit;
(c) any other instrument capable of being converted into cash within five (5) Business Days as may be approved by the Trustee/Fund Manager

OFFER DOCUMENTS: a Prospectus/Trust Deed, or Information Memorandum or any document for the offer or placements of Units.

PLACEMENT: the offering of Units to specified Persons.

PORTFOLIO DEPOSIT: deposit of a portfolio of constituent underlying securities together with cash (if applicable) for the purposes of creation and redemption of Units.

REDEMPTION UNIT: the specified number of Units determined by the Fund Manager upon consultation with the Trustee and clearly disclosed in ETF Offer Documents for redemption of the portfolio deposit.

UNIT(S) OR SECURITY(IES): includes a unit, share, debenture, or any other instrument of an ETF granting an entitlement to the investment or relevant income of an ETF.

1. PARTIES TO AN ETF

a. Fund Manager or Portfolio Manager;
b. Trustee and/or Custodian/Depository;
c. Broker Dealer (Authorized Dealer);
d. Auditor;
e. Solicitor;
f. Such other parties as may be necessary from time to time.

2. GENERAL

2.1. An ETF shall be subject to the approval, authorization, and registration of the Commission.

2.2. No person shall deal in the Units of an ETF unless such Units have been registered with the Commission.

2.3. The underlying assets of an ETF shall be held by a custodian/depository on behalf of the Fund.

2.4. The Units and underlying assets of an ETF must:

a. Be sufficiently liquid to satisfy the Commission that there will be proper price formation on the ETF;
b. Have a NAV that is calculated in a transparent manner and published on the website of the ETF;

2.5. An applicant issuer of an ETF must:

a. Provide evidence to the Commission that it has the relevant expertise to issue ETF or has access to such expertise; and
b. Satisfy the Commission that a secondary market in the Units will be established and maintained.

3. AUTHORISED DEALER (BROKER DEALER)

3.1. An ETF shall appoint one or more Authorized Dealers to execute the sale and purchase of Units with retail investors.

3.2. The Fund Manager shall access and ensure that the Authorized Dealer:

a. is duly registered with the Commission as a broker/dealer and is a licensed member of the relevant Exchange;
b. has adequate and appropriate systems and procedures to execute transactions of the Units in a proper and efficient manner;
c. has proper and adequate internal control procedures and satisfactory risk management procedures;
d. possess the necessary expertise and adequate resources to undertake the function of an Authorized Dealer;
e. has executed an "authorized dealer agreement" with the Fund Manager.

4. OFFERING AND LISTING OF UNITS OF AN ETF

a. An ETF may issue/offer Units by any of the following methods:
   i. an offer for subscription to qualified investors;
   ii. such other methods as may be acceptable or prescribed by the Commission from time to time.
b. The Commission has the discretion not to vary or to allow any particular method of offering if it is of the view that the method in question is not in the interest of the investors.
c. An ETF shall comply with the listing requirement of the relevant Exchange.
d. The Fund Manager shall endeavour at all times to notify the Commission of any events that will in the reasonable opinion of the Fund Manager materially affect the acceptability of the underlying security or asset which an ETF is tracking. These events may include but not be limited to a material change in the:
   i. methodology of compiling and calculating the index (if applicable);
   ii. composition of the index due to (for example) the inclusion or deletion of any security;
   iii. weightings of the index constituents (if applicable) due to for example, corporate activities (such as mergers and acquisitions), or significant market movements;
   iv. identity of the party that that sponsors and/or calculates the index (if applicable);
   v. nature of the market of the asset tracked (such as a disruption or cessation in trading of the asset);
   vi. material contracts of the ETF;
   vii. the approved Offer Documents.

e. The Commission reserves the right to withdraw authorization of an ETF where it is no longer meeting its investment objectives.
f. These Rules shall apply to commodity ETF's with necessary modification(s) with respect to the asset class and the application of the relevant rules on commodities trading.

5. LISTING OF FOREIGN ETF

5.1. An ETF shall not be listed on any Exchange in Nigeria without the prior approval of the Commission.

5.2. The Commission may approve the listing of a foreign ETF on an Exchange in Nigeria that complies with this paragraph 5, the relevant rules on cross border securities transactions (F2) and/or any other requirements that may be prescribed by the Commission from time to time.

5.3. A foreign operator applying for the listing of a foreign ETF must confirm:

a. the approval or registration of the ETF by the relevant foreign authority;
b. the name of its primary Exchange;
c. that the said primary Exchange is a member of the World Federation of Exchanges ("WFE");
d. that it has a minimum subscribed Units as may be prescribed by the Commission from time to time;
e. that the Fund Manager of the foreign ETF is in good standing in its country of operation.

5.4. A foreign operator applying for listing of a foreign ETF shall submit to the Commission:

a. Copy of its registration/license by the relevant authority;
b. Evidence of the approval of the foreign ETF by the relevant authority;
c. Copy of the Prospectus/Offer Documents of the foreign ETF approved/cleared by the relevant authority.

5.5. The foreign operator shall ensure that the constitution of the foreign ETF provides for rights of investors which are at least equivalent to the rights provided for under these Rules.

5.6. The foreign operator shall on an annual basis provide the Commission with all regulatory and audit filings submitted to its home regulator and primary Exchange.

5.7. Subject to any other provision of the Rules relating to ETF's and the payment of the relevant fees, the subsequent listing of additional Units of an ETF shall be subject to the Commission's approval.

6. CREATION AND REDEMPTION OF ETF

a. Instructions to create or redeem ETF Units shall be in writing as stipulated in the Offer Documents;
b. Subject to any conditions clearly set out in the Offer Documents, Units may be created and redeemed for in-kind consideration and in Creation Unit sizes or multiples thereof.
c. Participation in the in-kind creation and redemption process (where applicable) is restricted only to Authorized Dealers, unless otherwise stated in the Offer Documents.
d. All provisions and procedures relating to creation and redemption of Units shall be adequately and clearly disclosed in the Offer Documents.
e. All cost and allowable expenses shall be adequately disclosed in the Offer Documents.

7. PRICING AND DEALING OF UNITS

a. An ETF Manager shall not issue Units other than at the price calculated in accordance with the basis disclosed in the Offer Documents and/or Trust Deed;
b. The issue price shall be on a basis approved by the Commission and shall not include management charges and other fees. All management charges and other fees are required to be separately specified in the Offer Documents and/or Trust Deed;
c. An ETF manager shall base the price of Units on market based principles, and at a level which is in the best interest of the ETF and the Unit holders;
d. The calculation of the IOPV per Unit and the end of the day NAV by the Fund Manager shall be based on a formula and process which is consistently applied, and which leads to valuation that are objective and independently verifiable;

8. In the event that the Fund Manager does not publish the NAV of the ETF on a daily basis, a determination of the IOPV PER Unit shall be carried out by the Fund Manager on a regular basis as the Fund Manager considers necessary (as disclosed in the Offer Documents and/or Trust Deed), and this information shall be disseminated on a real-time or near real-time basis **INFORMATION TO BE PROVIDED**

i. An ETF Fund Manager shall provide the following information to the public via any suitable channels on the stipulated period as stated below:
   a. IOPV per Unit – at the close of day;
   b. Portfolio Deposit and NAV per Unit – on daily basis;
   c. Number of Units in circulation – on a monthly basis;
   d. Index level or underlying asset price (as applicable) – for the preceding day;
   e. The constitution of any index basket – on a quarterly basis.

ii. Acceptable communication channel may include one or more of the following:
   a. The ETF's or ETF manager's website;
   b. A hyperlink from the ETF's/ETF Manager's website to the website of the relevant Exchange;
   c. Information pages of vendors who disseminate trading information of securities in their ordinary course of business. The information pages must be easily accessed by retail vendors;
   d. Electronic medium for information dissemination as provided by the relevant Exchange(s) from time to time;
   e. Any other channel considered acceptable by the Commission.

9. VALUATION

INVESTMENT INSTRUMENTS AND VALUATION BASIS

i. **Securities/Commodities listed on the relevant Exchange :–** the valuation basis shall be market price.

   Provided that where a valuation based on market price does not represent the fair value of the securities/commodities (for example during abnormal market conditions) then the securities/commodities shall be valued at fair value as determined in good faith by the Fund Manager based on the methods or basis approved by the Trustee or disclosed in the Offer Documents after appropriate technical consultation, provided that the Commission is subsequently notified.

ii. **Nigerian Government Securities, Government Bonds, Central Bank of Nigeria Certificates, Nigerian Treasury Bills, Banker's Acceptances, Government Investment Certificates, Negotiable certificates of Deposit**:– the valuation basis shall be market price of the securities. In the absence of market quotation, valuation shall be:
   a. At cost and adjusted for accrued interest;
   b. Based on amortization of premium and accretion of discount; or
   c. Based on the average price obtained from at least three (3) Primary Market Dealers (PDM).

   In any case where the market interest rates of similar class of debt securities have changed materially, cost adjusted value shall be mark-to-market.

iii. **Nigerian currency liquid assets** – valuation shall be nominal value.

iv. **Foreign currency liquid assets** – the same valuation basis as Nigerian currency liquid assets of similar type, with such adaptation as maybe necessary.

v. **Any other investment** – Fair value as determined in good faith by the Fund Manager on methods or basis which have been verified by the Auditor of the ETF and approved by the Trustee or adequately disclosed in the Offer Documents.

10. CONTENTS OF ETF PROSPECTUS/OFFER DOCUMENTS

An ETF Offer Document shall contain the information required for a Unit Trust Prospectus (where applicable) as prescribed by the Rules, in addition to the following information:

a. A disclaimer statement on the inside cover/first page, that:

   "the valuation approved or accepted by the Commission shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be considered as an endorsement by the Commission of the value of the subject assets for any other purposes".

b. The Summary page shall state:
   i. The underlying index, security(ies) or asset(s) which the ETF intends to track or replicate as well as a description of the market sector the index, security(ies) or asset(s) represents;
   ii. The ETF's investment strategy and –if an ETF is tracking an index – state whether it will invest in all (full replication) or a representative sample (sampling) of component securities or commodities of the underlying index. If the ETF invests in a representative sample of component securities or commodities of the index, it shall disclose how the sample is constituted;
   iii. The ETF's policy on investment income i.e whether it shall be distributed to Unit holders or reinvested in the Fund;
   iv. Circumstances that may lead to tracking errors and strategies to be employed in addressing and minimizing such errors;
   v. The material risks of investing in the ETF and the mitigants;
   vi. The weightings of the major components securities or commodities of the underlying index. Where a representative sample of the component of the underlying index is used to track or replicate the index, the weightings of the major securities or commodities in the sample shall be disclosed;
   vii. Procedures in relation to creation and redemption of Units;
   viii. A statement that there is no guarantee or assurance of exact or identical replication at any time of the performance of the index (if applicable).

c. An ETF's Offer Documents shall also disclose:

   I. details of the pricing of Units, including:
      i. Basis for determination of the issue/offer price;
      ii. Basis for determination of the IOPV;
   II. The means by which investors may obtain update and relevant information or details on the underlying asset/security of a Unit.

11. REPORTING AND AUDIT

a. An ETF (with the exemption of a secondarily listed foreign ETF) shall comply with all reporting and audit requirement of a CIS as prescribed by the ISA and these Rules;
b. Quarterly reports of an ETF shall be published in the Fund's/Fund Manager's website within one month of the period to which the report relates;
c. The Fund Manager shall prepare and present the financial statements of the ETF in accordance with approved accounting standards, the ISA 2007, the applicable Rules and Regulations, and the constituent documents of the ETF;
d. The financial statement of the ETF shall be audited annually by an auditor appointed by the Fund Manager (with the approval of the Trustee or in accordance with the constituent documents of the ETF);

e. The annual report of the ETF shall be submitted to the Commission within three (3) months of the Fund's financial year end;
f. The Custodian/Depository of an ETF shall on a quarterly basis conduct and submit a report or reconciliation of all Units as well as the underlying assets to the Commission;
g. The annual report of the ETF shall be published and distributed to Unit holders within three (3) months of the Fund's financial year end and as the Commission may prescribe from time to time.

[SECRR(A) January 27,2011]

Rule 249C. Islamic Fund Management.

INTRODUCTION

These rules set out the requirements for carrying on Islamic Fund Management, either as an "Islamic Window" or an Islamic Fund Manager that entirely carries on Islamic Fund Management.

These rules shall be read in conjunction with rules 41 (1) of the Commission's Rules and Regulations on Unit Trust Schemes and other relevant rules of the Commission.

DEFINITION

In these Rules, except otherwise stated, the following terms are defined as follows:-

Fund Manager: has the same definition as defined in the ISA 2007.

Islamic Fund Management: means fund management that complies with shariah requirements.

Shariah Advisory Council/Shariah Supervisory Board (SSB):
means a recognized body/group that advises/interprets shariah complaint/related issues.

The Shariah advisory council shall be set up by the regulators to serve the financial market.

Shariah Adviser: means a person or a corporation that advise the fund manager on shariah related issues.

1. Qualification for a Shariah Adviser:

(a) An individual acting as Shariah Adviser shall meet the following criteria;
i) The person shall not have been convicted for any offence arising from criminal proceedings.
ii) The person has never been declared bankrupt
iii) The person is of good repute and character
iv) The person possesses the necessary qualifications and expertise, particularly on Islamic fiqh/jurisprudence and has experienced exposure in Islamic Finance and Capital Market.

(b) Fund Managers engaged in Islamic Fund Management may also appoint a non-resident Shari'ah Adviser who may be:
i. an individual,
ii. a corporation or

iii. an Islamic Bank.

2. The Fund Manager shall disclose to the Commission the following information:

a. Information request on Shari'ah Adviser (Non-Resident) for an individual:

i. Full name/address;
ii. Jurisdiction of residence;
iii. Contact information;
iv. Shari'ah/qualification and experience;
v. Letter of appointment/registration as shari'ah adviser from any other jurisdiction;
vi. Any other information as the Commission may require.

b. For a Corporation:

i. Name/registered address;
ii. Jurisdiction of incorporation/company number;
iii. Shari'ah qualification/experience of relevant personnel;
iv. Letter of appointment/registration as Shari'ah Adviser from other jurisdictions;
v. Contact person/contact details.

c. Role of Shari'ah Adviser

The role of Shariah Adviser shall include, but shall not be limited to the following:

i. To advise on all aspects of Islamic fund management in accordance with Shari'ah principles.

ii. To provide Shari'ah expertise/guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant SEC rules including resolutions issued by Shari'ah Supervisory Board.

iii. To review reports of compliance of Fund Manager or any investment transaction reports to ensure that investment activities are Shari'ah compliant.

iv. To provide a periodic report to the Trustees certifying whether the Islamic fund has been managed/administered in accordance with the Shari'ah principles and the rules.

In carrying out the above roles, the Shari'ah Adviser shall act with due care, skill and diligence.

3. CONTENT OF A TRUST DEED

In addition to the provisions of the Rules and Regulation, the Trust Deed of any Fund Manager offering Islamic Fund Management shall state that the Islamic fund management aims to operate in accordance with Shari'ah principles.

4. FUND MANAGER

The Fund Manager managing shariah complaint Fund shall:

(a) at all times, have adequate employees with necessary qualifications, expertise and experience to achieve the objectives of the Fund.
(b) Provide adequate and sufficient training, whether internal or otherwise, for all its employees and licensed representatives so that they acquire the necessary knowledge for its business; and
(c) ensure its Shari'ah adviser is well versed on Islamic fund management and has adequate Shari'ah knowledge on Islamic finance and capital markets.

5. Composition of Investment Committee

In addition to the provision of the Rules and Regulation, the investment committee shall also include the Shariah Adviser who is knowledgeable on Islamic Finance and fiqh.

6. PORTFOLIO MANAGEMENT

(a) Shari'ah-compliance investments

(i) The Fund Manager offering shari'ah compliant portfolio management must ensure that its investment activities are limited to Shari'ah-compliant investments;

(ii) The Fund shall invest, at its discretion, in securities listed on a recognized securities or commodities exchange in Nigeria. However, part of the Fund's assets may be invested in unquoted securities in line with the rules of the Commission.

(iii) For investment in securities traded on a recognized stock or commodities exchange, the Fund Manager shall only invest in securities according to the methodology endorsed by internationally established standards board especially those issued by recognized Shari'ah bodies such as the Accounting Auditing Organisations of Islamic Financial Institutions (AAOIFI) and Organisation of Islamic Countries (OIC) Fiqh Academy.

(b) Maintenance of accounts

The fund manager shall ensure that the Fund's asset and properties are properly safeguarded under the securities law in accordance with Shari'ah requirements; and other relevant rules of the Commission. They shall not be mingled with accounts of other Funds managed by the same Fund Manager.

(c) Risk management

The Fund Manager shall undertake appropriate risk management techniques (inclusive of temporary defence measures in line with current market conditions) and tools for its Islamic fund management.

7. WRITTEN DISCLOSURE AND DECLARATION

(a) The Fund Manager shall prepare annually a written disclosure and declaration to the board of directors of the Fund Manager, and the Trustees that the Islamic fund management is carried out in accordance with Shari'ah principles.

(b) A Fund Manager shall forward annually a Certificate of Compliance issued by the Shari'ah Advisory Council to the board of directors of the Fund Manager and the Trustees that the management of the Islamic fund is carried out in accordance with Shari'ah principles.

(c) The Fund Manager shall ensure that the disclosure, declaration and other interpretations made by the Shari'ah adviser are maintained and that the records shall be made available for examination upon the Commission's request.

8. INTERNAL AUDIT

The fund manager shall put in place appropriate systems and mechanisms within its internal audit requirements to monitor Shari'ah compliance according to the instructions of the Sharia'ah Supervisory Board (SSB), these Rules and Regulation and other relevant SEC regulations and/or standards, including resolutions issued by the Shari'ah adviser.

9. The following, without limitation, are some of the acceptable principles and concepts which may be applied in an Islamic fund:

a. Musharakah

A partnership between two parties or more to finance a business venture where parties contribute capital either in cash or kind, and share the management. Any profit derived from the venture shall be distributed based on a pre-agreed profit-sharing ratio but a loss shall be shared on the basis of equity participation.

b. Mudharabah

A contract made between two parties to finance a business venture. The parties are a rabb almal or an investor who solely provides the capital, and a mudharib or an entrepreneur who solely manages the project. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. If there is a business loss, it should be borne solely by the capital provider.

c. Murabahah

A contract which refers to the sale and purchase transaction for the financing of an asset whereby the cost and profit margin (mark-up) are made known and agreed to by all parties involved. The settlement for the purchase can be settled either on a deferred lump-sum basis or on an instalmental basis, and is specified in the agreement.

d. Ijarah

An Islamic lease contract implying the sale of an asset /usufruct or service against a definite sum.

e. Wakalah

A contract which gives the power to a person to act on his behalf, as long as he is alive, based on agreed terms and conditions.

f. Istisna

A purchase order contract of assets whereby a buyer shall place an order to purchase an asset to be delivered in the future. In other words, a buyer shall require a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. Both parties to the contract shall decide on the sale and purchase prices and the settlement can be delayed or arranged based on the schedule of work completed. This merely applies in construction and manufacturing business only and parties can set the schedule of price payment and delivery at their negotiated terms.

g. Hawalah

A contract which allows a debtor/creditor to transfer the debt obligation to a third party.

h. Musawamah

Musawamah is the negotiation of a selling price between two parties without reference by the seller to either costs or asking profit. The seller is under no obligation to reveal the cost as part of the negotiation process.

[SECRR(A) January 27,2011]

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 investment 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 **2007** and the Rules and Regulations made thereunder for the purpose of giving information to the public with regard to the offer for subscription of units of the scheme;

(*c*) The directors of the issuer collectively and individually accept full responsibility for the accuracy of the information given and confirm, having made reasonable enquiries, that to the best of their knowledge and belief there are no material facts the omission of which would make any statement contained herein misleading;

(*d*) The Commission has approved the issue, offer or invitation in respect of the public offering and the approval shall not be taken to indicate that the Commission recommends the public offering. The Commission shall not be liable for any non-disclosure on the part of the company and takes no responsibility for the contents of this document, makes no representation as to its accuracy or completeness, and expressly disclaims any liability whatsoever arising from reliance upon the whole or any part of the contents of the prospectus.

The valuation approved or accepted by the Commission shall only be utilized for the purpose of the proposal submitted to and approved by it and shall not be construed as an endorsement by the Commission on the value of the subject assets for any other purpose.

[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 **2007** 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 $2^1/_2$ 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 SECURITIES AND EXCHANGE COMMISSION. THE INVESTMENTS AND SECURITIES ACT **2007** PROVIDES FOR CIVIL AND CRIMINAL LIABILITIES FOR THE ISSUE OF A PROSPECTUS WHICH CONTAINS FALSE OR MISLEADING INFORMATION. REGISTRATION OF THIS PROSPECTUS AND THE UNITS WHICH IT OFFERS DOES NOT RELIEVE THE PARTIES OF ANY LIABILITY ARISING UNDER THE ACT FOR FALSE OR MISLEADING STATEMENTS CONTAINED OR FOR ANY OMISSION OF A MATERIAL FACT IN THE PROSPECTUS.

(2) Every prospectus shall set forth on the page describing the **"offer"** the following statements—

(*a*) a copy of this prospectus together with the documents specified herein, having been approved by the Trustees, has been delivered to the Securities and Exchange Commission (**"the Commission"**) for registration;

(*b*) this prospectus is issued in compliance with the Investments and Securities Act **2007** 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 Manger, 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, revaluation surplus/deficit, net book value and any other relevant information;

(xxv) application forms.

[SECRR(A) 2006 (2), s. 30.]

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 settlement 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 $^{1}/_{2}$ 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, **2007** and the Commission;s 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 $2^1/_2$ 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 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. 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.]

Rule 281A. Investment by Collective Investment Schemes in Unlisted Equities.

1. **Unlisted Securities shall be eligible instruments in which the funds and assets of a Collective Investment Scheme may be invested.**

2. **Eligibility Criteria**

Fund manager:

A fund manager seeking approval to invest assets of Fund in unlisted securities shall have:

a) **a minimum paid-up capital of N500, 000,000, unimpaired by losses or such amount as may be prescribed by the Commission from time to time;**
b) **Partners, Principals and sponsored individuals who have been in the business of private equity investment management for a minimum period of five (5) years.**

Unquoted company:

A fund manager shall only invest in unlisted securities of a Company that has:

(a) **demonstrated compliance with the code of corporate governance;**
(b) **consistently produced audited accounts for the preceding 5 years;**
(c) **a consistent history of profitability for at least the preceding five years.**
(d) **The company shall not be leveraged above a reasonable amount as may be prescribed by the Commission from time to time.**

3. **Investment Restriction**

The funds and assets of a CIS shall not be invested in unlisted securities where the investment:

(a) **is in early/start up stage of the target company, or will qualify as Seed Capital;**
(b) **shall cause the value of the assets of the Fund so invested to exceed 20% of the Net Asset Value of the Fund;**
(c) **shall cause the value of the Fund so invested in the securities of a single unlisted company to exceed 5% of the Net Asset Value of the Fund;**
(d) **is in a company where the Board, Management, or affiliate of the fund manager jointly or severally have more than 10% stake.**

4. **Rating**

A CIS shall only invest in the unlisted securities of a company that has been rated to be of Investment Grade by a reputable/SEC registered Rating Agency;

A CIS which invests in unlisted securities shall undergo and submit a report of an annual rating by a SEC registered rating agency.

5. **Additional Disclosure**

A fund manager seeking to invest assets of a Fund in unlisted securities shall disclose:

(a) **the nature and extent of its professional indemnity insurance coverage, in the Funds' offer documents;**
(b) **the interest of its Board, Management or affiliate (if any), in the target unquoted company;**
(c) **all risk associated with investments in unquoted securities, and proposed strategies to mitigate those risks;**
(d) **the Fund's proposed maximum exposure to unlisted securities;**
(e) **To investors through the Fund Prospectus, the fact that the fund shall also invest in unlisted securities.**

6. Investor Protection

(a) The constituent documents of a Fund which intends to invest in unlisted securities must provide for a liability clause stating that the Fund Manager takes full responsibility for any investment in unlisted security;

(b) A copy of an agreement between the Fund Manager and the target company on the investment exit strategy shall be submitted to the Commission prior to making the investment.

7. Valuation

(a) A CIS fund manager who invests in unlisted securities shall perform a quarterly valuation of the portfolio of unlisted equities.

(b) The methods or bases of valuation shall be adequately disclosed in the Schemes Prospectus.

(c) Fair value shall be determined on methods or bases which have been verified by the Schemes auditor and approved by the Trustees.

(d) In estimating fair value of an investment the Fund Manager shall apply methodology that is appropriate in the light of the nature, facts and circumstances of the investment and its materiality in the context of the total investment portfolio, and shall use reasonable inputs, assumptions and estimates.

(e) Fair value shall reflect reasonable estimates and assumptions of all significant factors that parties to an arms' length transaction would be expected to consider including those which impact upon the expected cash flows from the investment, and upon the degree of risk associated with those cash flows.

8. Reports/Returns

A CIS which invest in unlisted securities shall attach a detailed report on the investment in the monthly, quarterly, and annual reports/returns in the format prescribed by the Commission.

9. Target investors

Where a Fund intend to invest a significant portion of its asset in unlisted securities, (i.e. 40% & above) such funds shall be solely meant for institutional or high net worth investors.

[SECRR(A) January 27,2011]

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 undertaken 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., **2007**—

– 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 directions 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 directly or indirectly by him; where he is not the beneficial owner of any such securities, a statement to that effect should be made;

(vii) the approximate amount of any class of securities of the issuer or any of its parents or subsidiaries beneficially owned by him and his associates, if more than 5 percent;

(viii) if fewer nominees are named than the number fixed by or pursuant to the governing instruments state the reasons for this procedure and that the proxies cannot vote for a greater number of persons than the number of nominees named.

(7) ***Solicitation on behalf of management***

Where solicitation is made on behalf of management and action is to be taken with respect to—

(*a*) the election of directors;

(*b*) any bonus, profit-sharing or other remuneration plan, contract or arrangement in which any director, or officer of the issuer will participate;

(*c*) any pension or retirement plan in which any such person will participate; or

(*d*) the granting or extension to any such person of any options, warrants or rights issued to shareholders, as such, on a *pro rata* basis,the following information should be stated:

(i) all direct remuneration paid by the issuer and its subsidiaries during the issuer's last accounting year to the following persons for services in all capacities—

(*a*) each director of the issuer whose remuneration in total exceeds ₦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 $33^1/_3$ 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(where applicable);

(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) **State and Local Government shall publish their audited annual financial statements in at least two (2) national newspapers throughout the life of the bond. Also, the rating of the state and local government bonds shall be reviewed annually provided that the rating shall be no more than 12 months apart and shall be published in at least two national newspapers;**

(xix) State and Local Government shall publish information on funds utilization *annually* in at least two (2) national newspapers. The publication shall be subject to clearance by the Commission;

(xx) Underwriting shall be at the discretion of the Issuer. In the event that the Issuer and its financial adviser decide that there shall be no underwriting, the minimum level of subscription shall be in line with the provisions of Rule 70(6) (ii);

Provided that, where an issue not underwritten is undersubscribed, the Commission shall be informed of the source of the funding gap and such information shall be filed together with the proposed basis of allotment;

[SECRR(A) March 24,2010]

(xxi) 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.

(6) Where the Commission is satisfied with the securities offered by the issuer, it shall on an application by the issuing house waive the requirement for an irrevocable letter of authority provided that the Issuing House shall not revert to the use of the irrevocable letter of authority to the office of the Accountant-General of the Federation for the recovery of the loan.

The following conditions shall be satisfied by the issuer:

(a) The Internally Generated Revenue (IGR) of the issuer shall not be less than 60% of its total revenue of the state for the preceding year.

(b) Investment in the Bond issue not backed by an irrevocable letter of authority shall be restricted to Qualified Institutional Investors and High Networth Individuals as defined under these rules and regulations.

(c) The guarantors rating shall not be below investment grade.

(d) In addition to the issuer's Internally Generated Revenue(IGR), the issuer shall provide a third party guarantee from a bank, insurance company, supranational institutions, international financial institutions or any other acceptable to the Commission, to cover payment of the principal and interest in the event of default.

(e) The guarantor shall be the primary banker of the issuer for the purposes of its IGR through the tenure of the debt issue.

(f) in the event of default by the issuer, the trustee shall within three months of such default request the guarantor to pay the principal sum and interest outstanding on the debt issue. Notice of the request by the trustee to the guarantor shall be filed with the Commission.

(g) the trustee shall within thirty days of such default notify the Commission and outline further steps intends to take in the matter.

(h) A duly executed copy of the third party guarantee shall be lodged with the trustee not later than 5 days before the issue is open to the public.

The issuer shall disclose in the prospectus that the bond issue is not backed by an irrevocable letter of authority. This shall be boldly printed on the front cover of the prospectus (Renumber current sub rule 5 as sub rule 6).**Rule 307A: Corporate Bonds**

These rules shall apply to all bond issuance by any public company, foreign public companies and supranational bodies.

1. Documents/Information Required:

In relation to any issue, offer or invitation made pursuant to these rules, the following documents shall be filed along with the registration statement:

(a) Duly completed form SEC 6;

(b) Appropriate filing and Registration Fees;

(c) Two copies of the resolution by the general meeting authorizing the issue of the bond;

(d) Two copies of the Memorandum and Articles of Association of the Issuer certified by the Corporate Affairs Commission;

(e) A copy of Certificate of Incorporation of the Issuer certified by the Company Secretary;

(f) A signed copy of the Issuers *latest* audited accounts for the preceding three (3) years, with the latest account not more than nine months *old;*

(g) Reporting Accountant report;

(h) Consent letters of the parties to the offer;

(i) Two copies of *the draft* vending agreement between the issuer and the issuing house;

(j) *Draft* underwriting agreement (where applicable);

(k) Rating report by a registered rating agency;

(l) A letter of No Objection from the relevant regulatory body (where applicable);

(m) Two copies of draft Trust Deed;

(n) A *draft* prospectus, Right Circular, Placement *memorandum* or any form of information memorandum shall contain the following information:

i. Background information on the Issuer and/or Originator in the case of Asset-Backed Securities (ABS) issue including Mortgage Backed Securities (MBS);

ii. Profile of Directors of the Issuer;

iii. A description of the transaction and structure of the issue;

iv. Details of the utilization of proceeds. If proceeds are to be utilized for project, details of the project;

v. Details of estimated expenses for the issue;

vi. Conflict of interest situations, risk factors and mitigating factors;

vii. For issuances made for the purpose of refinancing an existing debt, information on the existing debt should be provided;

viii. **Coupon rate, the date of maturity or if the issue matures severally, a brief information on the serial maturities;**

ix. **Names, telephone numbers and facsimile number and the e-mail addresses of principal officers of the issuer and Principal Advisers of the issue;**

x. **Terms and conditions of the issue;**

xi. **Any other material information in relation to the issue.**

(o) Declaration by the Issuer on compliance with all requirements of the Act;

(p) Such other material information as may be required by the Commission.

2. Condition for Approval

***The Issuance of Bonds* by Public companies and supranational bodies shall be subject to the following conditions:**

(a) Eligibility of Debt Offering

i. **Any public company, foreign *public* company *or* supranational bod*y is* eligible to issue corporate bonds;**

ii. **All necessary approvals (where applicable) in relation to the issue, from other regulatory authorities shall be obtained and filed with the Commission *together with the registration statement.* Any conditions imposed by such regulatory authorities, shall be complied with throughout the tenor of the bond;**

iii. **All issues of corporate bonds shall be rated by a rating agency registered with the Commission and disclosed in the offer documents. The rating shall be reviewed annually throughout the tenor of the bond and published in at least two national newspapers;**

iv. **For a bond that will be issued through public offering, the credit rating shall not be below an investment grade;**

v. **No Issuer shall offer bond if it is in default of payment of interest or repayment of principal in respect of *previous debts issuance* for a period of more than six (6) months.**

(b) Mode of issue

Corporate bond*s* may be issued by way of an offer for subscription, rights issue or private placement.

(c) Resolution

There shall be a resolution by the general meeting authorizing the issue of the bond.

(d) Disclosure and creation of charge

Where the debenture is secured, the Issuer shall ensure the assets on which the *debenture* is secured *are* adequate and this should be specifically stated together with the ranking of the charge(s) in the offer documents.

In case of second or residual charge or subordinated obligation, the offer documents shall clearly state the risks associated with such subsequent charges by giving details.

[SECRR(A) March 24,2010]

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 notifying 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 violate the provisions of the Act and the Rules and Regulations made thereunder and such operators or persons against whom complaints/allegations have been made to the Commission.

(2) The rules of procedure of the Committee are contained in Schedule 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

		Initial	
		N k	
1.	Application Form	5,000.00	
2.	Broker/Dealer	100,000.00	
3.	Broker	100,000.00	
4.	Dealer	100,000.00	
5	Inter-Dealer Broker	100,000	
6.	Corporate Sub-Broker	50,000.00	
7.	Underwriter	200,000.00	
8.	Issuing House	200,000.00	
9.	Registrar	100,000.00	
10.	Fund/Portfolio Manager	100,000.00	
11.	Corporate Investment Adviser	100,000.00	
12.	Individual Investment Adviser	50,000.00	
13.	**Commodities Broker**	**50,000.00**	
14.	Sponsored Individual	1,000.00	
15.	Banker to an Issue	100,000.00	
16.	Trustee	100,000.00	
17.	Rating Agency	100,000.00	
18.	Capital Market Consultant (Corporate)	100,000.00	
19.	Capital Market Consultant (Partnership)	50,000.00	
20.	Capital Market Consultant (Individual)	50,000.00	
21.	Venture Capital Company / Fund manager	100,000.00	
22.	**Fund Manager**	**100,000**	
23.	**Portfolio Manager**	**100,000**	
24.	**Market Maker**	**200,000**	
25.	**Custodian of Securities**	**200,000**	
26.	**Depository Agency**	**N/A**	
27.	**Jobber**	**100,000**	

A2. Market Facilities

		N k	
1.	Securities Exchange	250,000.00	
2.	Commodities Exchanges	200,000.00	
3.	Securities Exchange Branches	100,000.00	
4.	Commodities Exchange Branches	100,000.00	
5.	OTCs and other S.R.O.s	200,000.00	
6.	**Capital Trade Points**	**100,000.00**	
7.	**Clearing, Settlement, Depository and Custodial Agencies**	**200,000.00**	

PART B

Minimum Capital Requirement (N)

1.	Broker/dealer	70 million
2.	Broker	40 million
3.	Dealer	30 million
4.	Interdealer Broker	50 million
5.	Corporate sub-broker	5 million
6.	Individual sub-broker (net worth)	500,000.00
7.	Underwriter	100 million
8.	Issuing house (non-bank)	150 million
9.	Registrar	50 million
10.	Portfolio manager	20 million
11.	Capital market Fund manager/Venture Capital Fund manager	20 million
12.	Corporate investment adviser	5 million
13.	Individual investment adviser (net worth)	500,000.00
14.	Commodities broker	40 million
15.	Stock Exchange	500 million
16.	Commodity Exchange	500 million
17.	OTCs and other S.R.O.s	500 million
18.	Clearing, Settlement and Custodial Agency	500 million
19.	Capital Trade Point	20 million
20.	Capital Market Consultant (corporate)	5 million
21.	Capital Market Consultant (partnership) (net worth)	2 million
22.	Capital Market Consultant (individual) (net worth)	500,000.00
23.	Trustee	40 million
24.	Rating Agency	20 million

25.	Venture Capital Company	20 million
26.	**Fund/Portfolio Manager**	**40 million**
27.	**Market Maker**	**2 billion**
28.	**Receiving Banker**	**As stipulated by the CBN**

PART C
Securities

(1) **Application fee for registration of a** Collective Investment Scheme, flat rate of N35,000.00

(2) Filing fee for registration of securities flat rate of N10,000.00

(3) The registration fees of securities of public companies (including rights issue) special funds and processing fees on offer for sale are as provided hereunder—

First Tier Market:

For the first half a billion worth of securities Offered ~~1%~~ **0.30%**
Next half a billion ~~0.75%~~ **0.225%**
Above one billion ~~0.50%~~ **0.15%**
[SECRR(A)August 2008]

Second Tier Market:

~~Flat rate for securities offered at~~ ~~0.50%~~
Bonus issue ~~1%~~ **0.3%** of nominal value of shares
[SECRR(A)August 2008]

(4) Fees on Federal/State/Local Government bonds and debentures of public limited companies:
i. Primary market (registration fee) **0.15% [SECRR(A)March 2010]**
ii. Secondary market transaction 0.1%

(5) Authorisation fee for units of the fund of unit trust scheme:
First N10 million 0.1%
Next N10 million 0.075%
Above N20 million and up to N40 million 0.050%
Any sum thereafter **0.025% [SECRR(A)March2010]**

(6) Registration of real estate investment funds
First N50 million 0.1%
Next N50 million 0.075%
Above N100 million and up to N200 million 0.050%
Any sum thereafter **0.025% [SECRR(A)March2010]**

(7) Registration of Venture Capital funds
First N100 million 0.1%
Next N100 million and up to N400 million 0.075%
Above N400 million and up to N900 million 0.050%
Any sum thereafter **0.025% [SECRR(A)March2010]**

(8) Processing fee for schemes of merger/acquisition and take-over
Filling fee for pre-merger notice N50,000.00 **per company**
Filling fee for acquisition and take-over N50,000.00
First N500 million share capital ~~1%~~ **0.30%**
Next N500 million share capital ~~0.75%~~ **0.225%**
Any sum thereafter ~~0.50%~~ **0.15%**
Filling fee for internal restructuring N50,000.00 per company
[SECRR(A)August 2008]

(9) Registration of existing securities (for public companies whose securities are not yet registered)

First N500 million (of paid-up share capital)	~~1%~~ **0.30%**
Next N500 million	~~0.75%~~ **0.225%**
Any sum thereafter	~~0.50%~~ **0.15%**
	[SECRR(A)August 2008]

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%~~ **0.30%** market value of security **[SECRR(A)August 2008]**
2.	Filing fee for proxy materials	N5,000.00
3.	Fees for inspection, copying and certifying records kept by S.E.C.:	
	(a) Inspection of any document	N500.00
	(b) Certification of any document:-	
	(1) first page	N100.00
	(2) every subsequent page	N25.00
	(c) Photocopying (each page)	N10.00

Note: These fees are subject to review by the Commission from time to time.

SCHEDULE II

Penalties/Fines

Late filing fee:	
First two weeks – corporate body	N2,000.00
Sponsored individuals	N1,000.00 each
Every subsequent day the default subsists: corporate body	N1,000.00 per day
Sponsored individual	N500.00 per day
Late filing of allotment returns	2% above MPR on cumulative balance of issue proceeds.
Failure by a company to file Form S.E.C. IA within 30 days of concluding any transaction involving foreign portfolio investment	N50,000.00 flat.
Late filing of quarterly/yearly returns	N2,000.00 per day for the period of default.
Non-filing of quarterly/yearly returns	N5,000.00 per day for the period of default.
Late remittance of S.E.C. fees on market deals	N100,000.00 flat rate and in addition payment of interest on the amount due to the Commission at the monetary policy rate (MPR) of the Central Bank of Nigeria (CBN), and where the default continues for a period exceeding 60 days, the operator shall be referred for enforcement action.

Underpayment	**Any underpayment of SEC fee shall attract a penalty of three months NIBOR plus compounded interest monthly. Further default shall result in the market operator being referred for enforcement action.** **[SECRR(A) January 2011]**
Failure to seek prior approval of the Commission before issuing securities	up to N5,000.00 per day for the period of default.
Failure to attend registration meeting	
(a) Corporate	equivalent amount of registration fee payable 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

Forms

FORM S.E.C. 1A:	Foreign Direct and Portfolio Investments
FORM S.E.C. 1B:	Registration of Bonus/Script Issues
FORM S.E.C. ID	Notification to the Commission of intention to inspect documents
FORM S.E.C. 2:	Application for Registration of Sponsored Individuals, Individual Investment Adviser, Principal Officers of Securities Exchange, Capital Trade Point, Securities Clearing, Settlement, Depository and Custodial Agency, Capital Market Experts
FORM S.E.C. 2A:	Notification of Resignation of Sponsored Individual by the Sponsoring Company
FORM S.E.C. 2B:	Transfer of Registration of Sponsored Individual to Another Corporate Body
FORM S.E.C. 2C:	Registration of Sub-broker
FORM S.E.C. 3:	Registration as a Broker/Dealer, Broker, Dealer, Issuing House, Investment Adviser (Corporate Bodies), Fund/Portfolio Managers, Underwriters, Banker to an Issue, etc
FORM S.E.C. 3A:	Rating Agency
FORM S.E.C. 3B:	Registration of Venture Capital
FORM S.E.C. 4:	Registration of Registrar and Share Transfer Agent
FORM S.E.C. 4A:	Registration of Trustees
FORM S.E.C. 5:	Registration of Securities Exchanges, (Stock Exchanges, Commodity Exchanges, etc.)
FORM S.E.C. 5A:	Registration of Body or Association of Securities Dealers

FORM S.E.C. 5B: Registration of Capital Trade Point

FORM S.E.C. 5C: Registration of Clearing, Settlement, Depository and Custodial Agencies

FORM S.E.C. 6: Registration of Securities of Public Companies, State/Local Government Bonds/Securities and Special Funds

FORM S.E.C. 6A: Registration of Unit/Investment Trust Scheme

FORM S.E.C. 6A1: Registration of Private equity funds

FORM S.E.C. 6A2: Registration of Venture Capital

FORM S.E.C. 6B: Report of Subsequent Transactions by Holders of 5% or More Shareholdings in any Company

FORM S.E.C. 6C: Registration of Interest in Securities

FORM S.E.C. 6D: Registration of Securities Arising from Cross-border Transactions

FORM S.E.C. 6F: Registration of Foreign Securities

FORM S.E.C. 7: Amendment of Registration Information by Capital Market Operators

FORM S.E.C. 7A: Notification of Change of Registrar by Companies

FORM S.E.C. 8: Withdrawal from Registration as a Market Operator

FORM S.E.C. 8A: Withdrawal from Registration of Securities

FORM S.E.C. AR–1: Annual Report by Public Companies

FORM S.E.C.AR–2: Annual Report by Capital Market Operators

FORM S.E.C. AR–3: Annual Report by Self-regulatory Organisation

FORM S.E.C. QR1: Quarterly Return by Self-regulatory Organisation on Dealing Members

FORM S.E.C. QR2: Quarterly Return from Broker/Dealer

FORM S.E.C. QR3: Quarterly Return by Issuing House on Sale of Securities

FORM S.E.C. QR4: Quarterly Return from Registrar

FORM S.E.C. QR5: Quarterly Return from Fund/Portfolio Manager

FORM S.E.C. QR6: Quarterly Return by CIS Schemes

FORM S.E.C. QR7: Quarterly Return by Custodians

FORM S.E.C. QR8: Quarterly Return for Private equity funds

FORM S.E.C. QR9: Quarterly Return from Public Unquoted Company

FORM S.E.C. QR9A: Quarterly Return by Public Companies on Unclaimed Dividends

FORM S.E.C. QR10: Quarterly Return from Investment Adviser

FORM S.E.C. ID: Application for Inspection of Document

FORM S.E.C. CD: Application for Certification of Document

FORM S.E.C/QR/IDB/2A: Quarterly Return from Inter-Dealer Broker

……. Quarterly Return from Underwriter

……. Quarterly Returns by Issuing House on Securities and Use of Issue Proceeds

SCHEDULE IV

Information, Returns and Reports Required to be Filed by Public Companies, Capital Market Operators, Collective Investment Schemes and other Self-regulatory Organisations.

1. Annual report and accounts of public companies.
2. Quarterly and Half yearly return by public companies.
3. Continuous reporting of material changes in activities by public companies.
4. Quarterly Report/Return from Capital Market Operators.
5. Annual Report and Accounts by Capital Market Operators.
6. Monthly Return from Capital Market Operators.
7. Miscellaneous Returns by Capital Market Operators.
8. Quarterly Return by Securities Exchanges and other Self-regulatory Organisations.
9. Monthly and quarterly returns of Collective Investment Schemes.
10. Quarterly Returns of Venture Capital and Private Equity Funds

SCHEDULE V

Report on Securities and Use of Proceeds

FORM S.E.C. QR8

PART A—Report to be Filed by Issuing house

1. Name of issuer.
2. Name of issuing house.
3. Name(s) of underwriter(s).
4. Date of the report.
5. (a) Date offering commenced.
   (b) Date offering closed (if closed).
   (c) State reasons for extension of time granted.
   (d) If offering was terminated prior to completion, state the date and describe briefly the reasons for such discontinuance.
6. (a) Total number of shares or units offered.
   (b) Number of such shares or units sold from commencement of offering to date.
   (c) Number of such shares or units still being offered.
7. (a) Total amount received from the public from commencement of offering to date.
   (b) Amount underwritten.
   (c) Underwriting commission.
   (d) Other expenses paid to date or for the account of the issuer;-
      i. legal;
      ii. accounting;
      iii. printing and advertising;
      iv. others.
   (e) Total costs and expenses.
   (f) Proceeds paid to issuer after above deductions.
8. List the names and address of all brokers/dealers who have, to the knowledge of the issuer, participated in the distribution of the securities offered.
9. State the number of shares held by each promoter, director, officer or controlling person of the issuer if different from the amount stated in the Prospectus.
10. Signature.
11. Date.

PART B—Report to be Filed by Issuer

1. Name of issuer.
2. Name of issuing house.
3. Information on securities
   (a) amount;
   (b) description;
   (c) date offering commenced;
   (d) date offering closed (if closed);
   (e) amount of proceeds received;
   (f) time proceeds received.
4. Furnish a reasonably itemised statement of the use made of the proceeds from the sale of the securities from the commencement of the offering to date.
5. State any amount of bridging loan received, which was paid from proceeds, and give date and manner of receipt of such loan.
6. If the proceeds from the sale of the securities have been temporarily invested pending their ultimate use, give a statement as to the nature and terms of such temporary investment and when the proceeds shall be used for the purposes for which they were intended.
7. State briefly the nature and extent of each type of the issuer's principal activities to date.
8. List the names and addresses of all brokers/dealers who have to the knowledge of the issuer participated in the distribution of the securities offered.
9. State the number of shares held by each promoter, director, officer or controlling person of the issuer if different from the amount stated in the Prospectus.
10. Signature.
11. Date.

SCHEDULE VI

Basis of Computation of Bid and Offer Prices for Collective Investment Schemes

The bid and offer prices of units in a collective investment scheme shall be based on the net asset value of the scheme calculated on a weekly basis by the scheme manager as follows:

Offer Price:

Value per unit = (1) minus (summation of 2- 10) divided by number of units on sale rounded off.

1. Total market value of securities based on the Exchange daily official list as at the date of valuation (lowest market offer price).
2. Stamp duties;
3. Brokerage fee;
4. S.E.C. fee;
5. Other relevant approved costs
6. Actual cost of investment in unquoted securities(if applicable);
7. Estimate of capital appreciation/diminution in value for unquoted companies(if applicable);
8. Un-invested cash;
9. Undistributed income to date less expenses;
10 Total value of money market instrument;
11. Manager's charge.

Bid Price:

Value per unit = summation of (1) minus (2 - 8) divided by number of units on sale rounding off.

1. Total market value of securities based on exchange daily official list as at date of valuation (highest market bid price).
2. Actual cost of investment in unquoted securities(if applicable).
3. Estimate of capital appreciation for unquoted companies(if applicable).
4. Un-invested cash.
5. Undistributed income to date less expenses.
6. Total value of money market instruments.
7. Stamp duties.
8. Brokerage fee.
9. S.E.C. fee.

10. Other relevant approved costs.

Note:
Securities traded on a Stock Exchange or any regulated market will generally be valued at the last traded price quoted on the relevant exchange or market as at the date of computation. If no trade is reported for that date or if the exchange was not open on that day, the last published sale price or the recorded bid price (whichever is more recent) shall be used. Unlisted equity securities will be valued initially at cost and thereafter, as the Scheme's Manager shall in its discretion deem appropriate. Unlisted securities (other than equities), for which there is an ascertainable market value will be valued generally at the last known price dealt on the market on which the securities are traded on or before the day preceding the relevant date of valuation and unlisted securities (other than equities), for which there is no ascertainable market value, will be valued at cost plus interest (if any) accrued from purchase to (but excluding) the Valuation Date plus or minus the premium or discount (if any) from par value written off over the life of the security. Any value otherwise than in Nigeria Naira shall be converted at the prevailing market exchange rate.

SCHEDULE VII

Rules of Procedure of S.E.C. Administrative Proceedings Committee

Introduction

These rules of procedures shall apply for the time being to proceedings of the Administrative Proceedings Committee of the Securities and Exchange Commission.

The Administrative Proceedings Committee of the Commission is a body established pursuant to the Investments and Securities Act for the purpose of **resolving disputes in the capital market and** giving opportunity for **fair** hearing to capital market operators and other institutions in the market who are perceived to have violated or have actually violated or threatened to violate the provisions of the ISA and the **R**ules and **R**egulations made thereunder or such operators against whom investors have lodged complaint.

Rule 1. Definitions

"Appropriate Department" means the Department for the time being responsible for investigation and enforcement in the Commission.

"Commission"means the Securities and Exchange Commission established by the Investments and Securities Act (ISA).
'Committee"means the Administrative Proceedings Committee of the Securities and Exchange Commission.

'Complainant"means a person who has filed a complaint before the Committee or on whose behalf a complaint has been filed.

'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) In a matter initiated by the Commission:
- **i. the Head of Department responsible for investigation in the Commission;**
- **ii. the person or institution against whom an allegation of violation of the Act or Rules has been made;**
- **iii. any other person required by the Committee to be joined or joined by leave of the Committee.**

b) In any other case:
- **i. the Complainant;**

ii. **the Respondent;**
iii. **any person considered by the Committee to have an interest in the proceedings or joined by leave of the Committee.**

Rule 3: Reference of matters to the Committee

a) **Complaints shall be forwarded to the Commission by the Complainant or its/his representative or any interested party and the Commission shall cause the complaint to be investigated by the appropriate Department;**

b) **Where the appropriate Department is of the opinion that any provision of the Investments and Securities Act (ISA), the Rules and Regulations or the Code of Conduct for Capital Market Operators and their Employees made there under have been or is threatened to be violated, it shall prepare a report of the matter and formulate appropriate claim(s) and particulars thereof or details of the alleged violations and forward them to the Secretary of the Committee with all documents considered by the Department.**

Rule 4: Service of Notice and Commencement of Hearing

a) **On the directive of the Chairman of the Committee, the Secretary shall fix a day for hearing of the matter and shall serve notice thereof on each party to the proceedings.**

i. **The Secretary shall serve on each party, copies of the particulars *of claims* or details of the alleged violations prepared by the appropriate Department and all the documents considered relevant to the hearing of the matter;**

ii. **The notice of hearing which shall contain the names of the parties, the particulars of claim(s) and or details of the alleged violations, date, place and time of hearing may be served personally, electronically or by registered post addressed to the last known address of each party to the proceedings.**
Provided that where a notice is returned undelivered, the Chairman of the Committee may direct that the notice of hearing be advertised in two (2)National daily Newspapers or such acceptable mode of service and such publication/service shall be deemed to be adequate service on the parties;

iii. **There shall be at least fourteen (14) working days between the service of the Hearing Notice and the date fixed therein for hearing;**

iv. **The Respondent(s) shall, within seven (7) working days *from* the date of service of the claims and particulars thereof and/or hearing notice file with the Secretary, any defence or answer in response to the claim(s) or alleged violations which shall also be served on any other party named in the matter;**

v. **The parties may file and serve any additional documents they may wish to file within three (3) working days from the service of the Respondent's defence or answer;**

vi. **Upon the expiration of the period specified under this Rule, the matter shall be set down for hearing;**

vii. **No adjournment shall be allowed except the Committee believes that declining to grant such will lead to a grave miscarriage of justice against the party seeking it.**

Rule 5: Hearing in absence of Parties

a) **If any party fails to appear at the hearing, the Committee may, upon proof of service on such party of the notice of hearing, proceed to hear and determine the matter in its/his absence;**

b) **Any party who failed to appear at the hearing may within one (1) month from the pronouncement of the findings and decisions of the Committee apply for a re-hearing adducing compelling reasons for its/his absence and if the Committee is satisfied that it is just to re-hear the matter, it may grant the application upon such terms as to payment of administrative charges or otherwise.**

Rule 6: Hearing of Witnesses and Reception of Documents

a) The Committee may in the course of the proceedings hear such witnesses and receive such documentary, electronic or other type of evidence as in its opinion may assist it in arriving at a decision in any matter before it;

b) Where a witness will not appear in person, a sworn witness statement shall be filed with the Committee;

c) The Committee may compel the attendance of witnesses or production of documents or other materials to be used as evidence in proceedings before it, when it considers such attendance or production of evidence necessary.

Rule 7: Amendment to claim(s)/alleged violations before the Committee

If in the course of the proceedings it appears to *any of the parties or* the Committee that any process filed by any party requires amend*ment*, the Committee may allow such amendments as it shall deem fit upon such terms as it may consider appropriate.

Rule 8: Counter-Claim, Set-off and Similar Actions

a) A party in an action before the Committee shall have a right of Counter-Claim or Set Off against the other party or parties;

b) Any Counter-Claim or Set Off filed by any party shall be in writing with details or particulars of such Counter-Claim or Set Off;

c) Copies of the Counter-Claim or Set Off shall be served on the other party to the proceedings who shall have a right of reply exercisable within seven (7) days of such service.

Rule 9: Venue and Time

a) Unless otherwise indicated, the venue for hearing of proceedings before the Committee shall be the head office of the Commission;

b) Unless otherwise indicated, the time of sitting of the Committee shall be 10.00 am or so soon thereafter on the date(s) contained in the Notice(s) or as may be adjourned by the Committee.

Rule 10: Inter-Party Settlement

a) During the pendency of matters before the Committee, parties are at liberty to apply for adjournment to enable them explore an amicable settlement of the matter amongst themselves;

b) Settlements arrived at through the process in (a) above, shall be signed by the affected parties and their legal representatives (if any) and if acceptable to the Committee be made the decision of the Committee and implemented accordingly;

c) This Rule shall not apply to matters initiated by the Commission or matters involving manipulation, insider dealing and any other serious violations to be determined by the Commission from time to time.

Rule 11: Appearance before the Committee

a) All parties to matters before the Committee shall have a right of audience;

b) A party to the proceedings before the Committee may appear in person or be represented by a legal practitioner acting as counsel provided that the Committee may order a party to appear in person if it is of the opinion that in the interest of justice and the protection of investors it is necessary to do so;

c) The Committee shall be entitled to administer oath in matters and proceedings brought before it.

Rule 12: Administrative Charges

The Committee may order any party to pay administrative charges in respect of proceedings before it.

Rule 13: Record of Proceedings

a) **The Secretary shall cause to be taken, written and/or electronic record of proceedings of the Committee;**
b) **The Secretary shall make available on request to any person entitled to be heard upon an appeal against the decision of the Committee, or to any other person he deems fit, a copy of the records referred to in paragraph (a) of this Rule on payment of such fees as may be determined by the Commission.**

Rule 14: Dispensing with provisions

The Committee may abridge, enlarge, modify or dispense with any time, condition or requirement of these Rules with respect to time, notices or modalities in any case where it appears to the Committee to be just and expedient and shall be at liberty to adopt any procedure it deems appropriate for a prompt, just and efficient determination of matters before it.

Rule 15: Powers of the Committee

The Committee shall have jurisdiction in respect of:

a) **disputes between investors and Capital Market Operators;**
b) **disputes between Capital Market Operators;**
c) **disputes between Securities Exchanges, Capital Trade Points and other Self Regulatory Organizations (SROs);**
d) **disputes arising from public offers by companies;**
e) **disputes between Investors and Issuers of securities;**
f) **disputes between Investors;**
g) **disputes between SROs;**
h) **violations or probable or threatened violation of the provisions of the Investments and Securities Act, the Rules and Regulations made there under and the Code of Conduct for Capital Market Operators and their Employees;**
i) **violation of the Code of Corporate Governance for public companies;**
j) **activities and dealings of public companies and their employees;**
k) **issues relating to the registration of Market Operators and SROs;**
l) **public sale or trading in unregistered securities;**
m) **dealing in securities or sale of securities to the public;**
n) **unethical and unprofessional practice, manipulations and use of deceptive devices or contrivances in securities transactions;**
o) **denial of registration;**
p) **non-compliance with orders, guidelines and directives of the Commission;**
q) **any other matter which the Commission may direct it to hear.**

Rule 16: Sanctions

The Committee shall have power to impose any of the following sanctions:

a) **suspension or cancellation of registration of Capital Market Operators;**
b) **revocation of the certificate of a Securities Exchange or Capital Trade Point;**
c) **suspension or expulsion or other decisions/actions against members of Securities Exchanges, Capital Trade Points and other Self Regulatory Organizations (SROs) in respect of their members;**
d) **suspension or expulsion or other decisions/actions against members/officials of securities exchanges, capital trade points and other SROs where they fail to act against their members/officials;**
e) **removal of executive officers of a capital market operator, securities exchange, capital trade point and other SROs;**
f) **suspension of registration of securities;**
g) **fines for late registration and non-compliance with the ISA, Rules and Regulations of the Commission and the Code of Conduct for Capital Market Operators and their Employees;**
h) **restitution and compensation orders;**
i) **determination of compensation for insider dealing cases;**

j) **Disqualification of professionals *or sponsored individuals* from *operating in the capital market.***

k) imposing conditions for registrations;

l) imposing the rate of interest payable to subscribers by issuing Houses for late return of monies;

m) payment of administrative charges;

n) any other sanction which the Commission may prescribe from time to time.

Rule 17: Decisions of the Committee

a) **Every decision of the Committee shall be confirmed by the Commission before it becomes effective. The confirmation shall be made not later than thirty (30) days after the decision was taken by the Committee, provided that in the absence of the Board of the Commission, confirmation of the Committees' decision shall be by the Minister of Finance or any person performing that function.**

b) **Decisions of the Commission shall be communicated in writing to the parties by the Secretary to the Committee within five (5) days of the confirmation of the decision.**

Rule 18: Appeals

Any party who is not satisfied with the decision of the Committee as confirmed by the Commission may within 30 days of the receipt of the decision appeal to the Investments and Securities Tribunal (IST).

Rule 19: Citation

These Rules shall be cited as Rules of Procedure of the Administrative Proceedings Committee (APC) of the Securities and Exchange Commission.

Rule 20: Commencement

These Rules shall take effect from any date approved by the Commission and shall regulate any further steps that may be taken by the Committee and parties in respect of all pending proceedings before the Committee.(March 24,2010)

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.

7. CODE OF CONDUCT FOR CUSTODIAN OF SECURITIES

A custodian of securities shall:

1. **maintain the highest standard of integrity, fairness and professionalism in the discharge of its duties;**

2. **be prompt in distributing dividends, interest, or any income received or collected by it on behalf of its clients on the securities held in custody;**

3. **be continuously accountable for the movement of securities in and out of custody account, deposit, and withdrawal of cash from the client's account and shall provide complete audit trail, whenever called for by the client or the Commission;**

4. **establish and maintain adequate infrastructural facilities to be able to discharge custodial services to the satisfaction of clients, and the operating procedures and systems of the custodian of securities shall be well documented and backed by operations manuals;**

5. **maintain client confidentiality in respect of the client's affairs.**

6. **create and maintain the records of securities held in custody in such manner that the tracing of securities or obtaining duplicate title documents is facilitated, in the event of loss of original;**

7. **extend to other custodial entities, depositories and clearing organisations, all such co-operation that is necessary for the conduct of business in the areas of inter custodial settlements, transfer of securities and transfer of funds;**

8. **ensure that an arms length relationship is maintained, both in terms of staff and systems, from its other businesses.;**

9. **exercise due care and diligence in safekeeping and administration of the assets of clients in its custody for which it is acting as custodian.**

10. **not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non real-time.**

8 . CODE OF CONDUCT FOR PARTICIPANT

A participant shall;

1. **make all efforts to protect the interests of investors.**

2. **always ensure that:**

   (a) **the best possible advice to the clients having regard to the clients' needs and his own professional skills are given;**

   (b) **all professional dealings are effected in a prompt, effective and efficient manner;**

   (c) **enquiries from investors are adequately dealt with;**

   (d) **grievances of investors are redressed without delay;**

3. **maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.**

4. **be prompt and diligent in opening of a client account, dispatch of Dematerialization Request Form, and execution of Debit Instruction Slip and in all other activities undertaken by it on behalf of clients;**

5. **resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible but in any event not later than one month of receipt of complaint;**

6. **not increase charges/fees for the services rendered without giving at least 30 days proper notice to the beneficial owners;**

7. **not make any exaggerated statement to the clients about its qualifications and capability to render services or about its achievements with regard to services rendered to other clients;**

8. **not divulge to other clients, the press or any other person any information about its clients which has come to its knowledge except with the approval of the clients or when required by law or competent authorities;**

9. **maintain the required level of knowledge and competence at all times and abide by the provisions of the Act, Rules and Regulations, Circulars and directives issued by the Commission and the depository;**

10. **not make any untrue statement or suppress any material fact in any document, report, paper or information furnished the Commission and the depository;**

11. **ensure that the Commission is promptly informed about any action, legal proceedings etc initiated against it in respect of breach or non compliance by or against it, of any law, rules and regulations, directives of the Commission or of any other regulatory body;**

12. **take adequate steps to ensure that continuity in data and record keeping is maintained and that the data and records are not lost, falsified or destroyed. It shall also ensure that an up to date back up for electronic records and data is always available;**

13. **provide adequate freedom and powers to its compliance officer for the effective discharge of his or her duties;**

14. **ensure that the senior management, particularly decision makers, have access to all relevant information about the business on a timely basis;**

15. **ensure that best practices of corporate governance are in place.**

Schedule X

METHOD OF CALCULATION OF ANNUAL TURNOVER OR ASSETS TO BE APPLIED IN RELATION TO MERGER THRESHOLDS

Nigerian Statement of Accounting Standards (SAS) 30 Apply.

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the assets, and the turnover, of a firm must be calculated in accordance with the Nigerian Statement of Accounting Standards (SAS)30, subject only to the following provisions as contained in this schedule.

METHOD OF CALCULATION OF ASSETS

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet *at* the end of the last audited financial year, subject to the provisions of sub-items (1) and (2).

1. **In particular:**

   (a) **the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;**

   (b) **the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in the merging entities balance sheets;**

   (c) **no deduction may be taken for liabilities or encumbrances of the firm;**

   (d) **the calculation of the combined assets shall be based on the combined assets of the companies before the merger. The combined assets, excludes any goodwill or intangible assets that would arise as a result of the merger;**

   (e) **the combined assets are not adjusted for any investments the acquiring firm might have in the target firm or amounts due by one firm to the other; and**

   (f) **assets in Nigeria includes all assets arising from activities in the country.**

2. **If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired *or* any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements-:**

   (a) **The following items must be added to the calculation of the firm's asset value:**

      i) **The value of those recently acquired assets; and**
      ii) **Any asset received in exchange for those recently acquired asset.**

   (b) **The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:**

      i) **The value of those recently divested assets at the date of their divestiture.**

METHOD OF CALCULATION OF TURNOVER

For the purpose of Section 120 of the Investments and Securities Act (ISA), 2007, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from Nigeria, arising from the following transactions and events as recorded on the firm's income statement for the last audited financial year, subject to the provisions of sub-items (1), (2) and (3):

(a) **the sale of goods;**
(b) **the rendering of services; and**
(c) **the use by others of the firm's assets yielding interest, royalties and dividends.**

1. **In particular:**

   (a) **When calculating turnover, the following amounts may be excluded:**

i) **any amount that is properly excluded from gross revenue in accordance with *any relevant SAS;***

ii) **taxes, rebates or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;**

(b) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the target firm;

(c) revenue excludes gains arising 'from non-current assets and from foreign currency transactions; and

(d) for banks and insurance firms, revenue includes those amounts of income required to be included in an income statement in terms of *any relevant* SAS, but excluding those amounts contemplated in paragraph (c).

2. If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture, asset, shares or any other interest not shown on those financial statements OR divested itself of any subsidiary company, associated company, joint venture, assets, shares or any other interest shown on those financial statements;

(a) the turnover generated by those recently acquired assets, must be included in the calculation of the firm's turnover if this turnover should in terms of *any relevant* SAS be included in the turnover of the firm;

(b) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm's turnover if this was included in the turnover of the firm.

3. If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub item (2) are for more or less than 12 months, the values recorded on those statements must be pro-rated *or extrapolated* to the equivalent of 12 months.

Schedule XI

ANTI-MONEY LAUNDERING/COMBATING FINANCING OF TERRORISM (AML/CFT) COMPLIANCE MANUAL FOR CAPITAL MARKET OPERATORS 2010

PREAMBLE

Section 13 (n), (aa) and (dd) of the Investments and Securities Act 2007, empowers the Securities and Exchange Commission (Commission) to protect the integrity of the securities market against all forms of abuse, fraudulent and unfair trade practices. Given the prominence Anti–Money Laundering/Combating Financing of Terrorism (AML/CFT) issues have assumed in International financial circle and the risks they pose to the financial market globally and Nigeria in particular, a comprehensive and stringent provision to fight this menace has become imperative.

Pursuant to the above, the Commission has issued this compliance manual to guide Capital Market Operators (CMOs) in the implementation of the Know Your Customer (KYC) and Customer Due Diligence (CDD) requirements for the capital market. The manual has been enriched by the enabling AML/CFT legislation enacted by Nigeria, using the FATF Recommendations, as a benchmark and some international best practices documents.

The manual would not only minimize the risk faced by the Market on laundering the proceeds of crime but will also provide protection against fraud, reputational and other financial market risks. Consequently, all Capital Market Operators are required to adopt a risk – based approach in the identification and management of their AML/CFT risk in line with the requirements of this manual.
Nigerian Capital Market Operators should note that these AML/CFT guidelines have prescribed sanctions for non-compliance with this Manual and other relevant anti-money laundering laws and regulations concerning CDD issues, non-rendition of prescribed reports as well as failure to keep appropriate records. It is, therefore, in their best interest to ensure compliance at all times consistent with the prescriptions contained herein.

DEFINITION OF TERMS
For the proper understanding of this Manual, certain terms used are defined as Follows:

Applicant for Business: The person or company seeking to establish a 'business relationship' or an occasional clients undertaking a 'one-off' transaction whose identity must be verified.

Beneficial owner: Beneficial owner refers to the natural person(s) who ultimately owns or controls a clients and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

Beneficiary: Beneficiary owner refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the Non Profit Organizations. They include all trusts (other than charitable or statutory permitted non-charitable trusts) must have beneficiaries, who may include the settlor, and a maximum time, known as the perpetuity period, normally of 100 years.

Business Relationship: Business relationship' is any arrangement between the ***Capital Market Operator*** and the applicant for business which purpose is to facilitate the carrying out of transactions between the parties on a 'frequent, habitual or regular' basis.

Capital Market Operator: means any person (individual or corporate) duly registered by the Commission to perform specific functions in the Capital Market.

Cooling off rights: means the rights of an investor to return products purchased and get a refund if the individual changes his mind.

Cross-border transaction: Cross-border transaction means any transaction where the originator and beneficiary Operators are located in different jurisdictions. This term also refers to any chain of transaction that has at least one cross-border element.

Designated categories of offences: Designated categories of offences means:

- participation in an organised crime group and racketeering;
- terrorism, including terrorist financing;
- trafficking in human beings and migrant smuggling;
- sexual exploitation, including sexual exploitation of children;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen and other goods;
- corruption and bribery;
- fraud;
- counterfeiting currency;
- counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage-taking;

- robbery or theft;
- smuggling;
- extortion;
- forgery;
- piracy; and
- insider trading and market manipulation.

Designated non-financial businesses and professions: Designated non-financial businesses and professions means:

- Casinos (which also includes internet casinos).
- Real estate agents.
- Dealers in precious metals.
- Dealers in precious stones.
- Legal practitioners, notary public and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to "internal" professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

- Trust and Company Service providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- acting as (or arranging for another person to act as)a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Domestic transfer: Domestic transfer means any wire transfer where the originator and beneficiary institutions are both located in Nigeria.
This term therefore refers to any chain of wire transfers that takes place entirely within Nigeria's borders, even though the system used to effect the wire transfer may be located in another jurisdiction.

False disclosure: False disclosure refers to a misrepresentation of the value of currency or bearer negotiable instruments being transported, or a misrepresentation of other relevant data which is asked for in the disclosure or otherwise requested by the authorities.

The FATF Recommendations: The FATF Recommendations refers to the Forty Recommendations and to the Nine Special Recommendations on Terrorist Financing.

Funds Transfer: The terms funds transfer refers to any transaction carried out on behalf of an originator (both natural and legal) through a ***capital Market***

Operator by electronic means with a view to making an amount of money available to a beneficiary through another ***capital Market Operator***. The originator and the beneficiary may be the same person.

Legal persons: Legal persons refer to bodies corporate foundations, partnerships, or associations, or any similar bodies that can establish a permanent clients relationship with a capital Market Operator or otherwise own property. Non-profit Organizations/Non-governmental

Organizations: The term non-profit organization/non governmental organizations refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.

Originator: The originator is the account holder, or where there is no account, the person (natural or legal) that places the order with the ***capital Market Operator*** to perform the ***Capital Market Transaction.***

One-off Transaction: A 'one-off transaction' means any transaction carried out other than in the course of an established business relationship.

It is important to determine whether an applicant for business is undertaking a one-off transaction or whether the transaction is or will be a part of a business relationship as this can affect the identification requirements.

Payable through account: Payable through account refers to correspondent accounts that are used directly by third parties to transact business on their own behalf.

Physical presence: means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.

Proceeds: Proceeds refer to any property derived from or obtained, directly or indirectly, through the commission of an offence.

Property: Property means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

Relevant authority: Means any persons or organization which has mandate over your activity as an individual.

Risk: All references to risk in this Manual refer to the risk of money laundering and/or terrorist financing.

Settlor: Settlors are persons or companies who transfer ownership of their assets to trustees by means of a trust deed. Where the trustees have some discretion as to the investment and distribution of the trusts assets, the deed may be accompanied by a non-legally binding letter setting out what the settlor wishes to be done with the assets.

Shell bank: Shell bank means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision.

Suspicious Transaction: For the purpose of this Manual, a suspicious transaction may be defined as one which is unusual because of its size, volume, type or pattern or otherwise suggestive of known money aundering methods. It includes such a transaction that is inconsistent with a lient's known, legitimate business or personal activities or normal business for that type of account or that lacks an obvious economic rationale.

Terrorist: It refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii)

organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Terrorist act: A terrorist act includes but are not limited to:

(i) An act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

(ii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.

Terrorist financing: Terrorist financing (FT) includes the financing of terrorist acts, and of terrorists and terrorist organisations.

Terrorist financing offence: A terrorist financing (FT) offence refers not only to the primary offence or offences, but also to ancillary offences.

Terrorist organization: Refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Those who finance Terrorism: Those who finance terrorism refers to any person, group, undertaking or other entity that provides or collects, by any means, directly or indirectly, funds or other assets that may be used, in full or in part, to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of such persons, groups, undertakings or other entities. This includes those who provide or collect funds or other assets with the intention that they shall be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts.

Trustee: Trustees, include paid professionals or companies or unpaid persons who hold the assets in a trust fund separate from their own assets.

They invest and dispose of them in accordance with the settlor's trust deed, taking account of any letter of wishes. There may also be a protector who may have power to veto the trustees 'proposals or remove them, and/or a custodian trustee, who holds the assets to the order of the managing trustees.

Unique identifier: A unique identifier refers to any unique combination of letters, numbers or symbols that refer to a specific originator.

PART A

1. AML/CFT INSTITUTIONAL POLICY FRAMEWORK

A. General Guidelines on Institutional Policy

i. Every Capital Market Operator shall adopt policies stating its commitment to comply with AML/CFT obligations under the law and regulatory directives and to actively prevent any transaction that otherwise facilitates criminal activity or terrorism.

ii. Every Capital Market Operator shall formulate and implement internal controls and other procedures that will deter criminals from using its facilities for money laundering and terrorist financing and to ensure that its obligations are always met.

B. AML/CFT Compliance Officer Designation and Duties

Each Capital Market Operator shall designate its AML/CFT Compliance Officer with the relevant competence, authority and independence to implement the institution's AML/CFT compliance programme.

The duties of the AML/CFT Compliance Officer, among others, include:

i. Developing an AML/CFT Compliance Programme;
ii. Receiving and vetting suspicious transaction reports from staff;
iii. Filing suspicious transaction reports with the NFIU;
iv. Rendering "nil" reports with the NFIU, where necessary to ensure compliance;
v. Ensuring that the Capital Market Operators compliance programme is implemented;
vi. Coordinating the training of staff in AML/CFT awareness, detection methods and reporting requirements; and
vii. Serving both as liaison officer with the SEC and NFIU and a point-of contact for all employees on issues elating to money laundering and terrorist financing.

C. Cooperation with Relevant Authorities

Each Capital Market Operator is required to state that it will comply promptly with all the requests made in pursuant with the law and provide information to the SEC, NFIU and other relevant government agencies on AML and CFT matters.

where there is a request for Information on money laundering and terrorist financing each Capital Market Operator shall do the following:

(a) Search immediately the institution's records to determine whether it maintains or has maintained any account for or has engaged in any transaction with each individual, entity or organisation named in the request;

(b) Report promptly to the requesting authority the outcome of the search; and

(c) Protect the security and confidentiality of such requests.

D. SCOPE OF OFFENSIVE PROCEEDS

A. Capital Market Operators shall identify and report to the NFIU, the proceeds of crime derived from the following:

i. Participation in an organized crime groups and racketeering;
ii. Terrorism, including terrorist financing;
iii. Trafficking in human beings and migrant smuggling;
iv. Sexual exploitation, including sexual exploitation of children;
v. Illicit trafficking in narcotic drugs and psychotropic substances;

vi. Illicit arms trafficking;
vii. Illicit trafficking in stolen and other goods;
viii. Corruption and Bribery;
ix. Fraud;
x. Counterfeiting currency;
xi. Counterfeiting and piracy of products;
xii. Environmental crime;
xiii. Murder, grievous bodily injury;
xiv. Kidnapping, illegal restraint and hostage taking;
xv. Robbery or theft;
xvi. Smuggling;
xvii. Extortion;
xviii. Forgery;
xix. Piracy; and
xx. Insider trading and market manipulation.

B. Measures to Be Taken Against ML/TF

Capital Market Operators secrecy and confidentiality laws shall not in anyway, inhibit the implementation of the requirements in this guideline in view of the provisions in the EFCC Act; MLP Act and ISA, giving the relevant authorities the power to access information to properly perform their functions in combating money laundering and financing of terrorism; the sharing of information between relevant authorities, either domestically or internationally; and the sharing of information between Capital Market Operators, where this is required or necessary.

PART B

2. CUSTOMER DUE DILIGENCE *(CDD)*

A. General

i. Capital Market Operators shall not be permitted to keep anonymous accounts or accounts in fictitious names, provided that where nominee accounts are maintained, details of the beneficial owners shall be provided on request;

ii. Capital Market Operators shall undertake clients due diligence (CDD) measures when:

a. business relationship is established;

b. carrying out occasional transactions above the threshold of N250,000 or as may be determined by SEC from time to time, including where the transaction is carried out in a single operation or several operations that appear to be linked; and

c. carrying out occasional transactions that are wire transfers, including those applicable to cross-border and domestic transfers between Capital Market Operators and when credit or debit cards are used as a payment system to effect money transfer. It does not, however, include the following types of payment:

i. any transfer flowing from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanying such transfers does flow from the transactions such as withdrawals from a bank account through an ATM machine, cash advances from a credit card or payment for goods.

ii. Capital Market Operator-to-Capital Market Operator transfers and settlements where both the originator and the beneficiary are Capital Market Operators acting on their own behalf.

d. there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or any other thresholds referred to in this Manual; or

e. there are doubts about the veracity or adequacy of previously obtained clients identification data;

Provided that, a Capital Market Operator shall not be required (after obtaining all the necessary documents and being so satisfied) to repeatedly perform identification and verification exercise every time a client conducts a transaction.

B. CUSTOMER DUE DILIGENCE (CDD) MEASURES

i. Capital Market Operators shall:
   a. carry out the full range of the CDD measures in this manual.
   b. Identify all their clients and verify their identities using reliable, independently sourced documents, data or information.

ii. The type of clients' information to be obtained and identification data to be used to verify the information shall include the following:
   In respect of clients that are legal persons, Capital Market Operator Shall:
   a. verify any person purporting to have been authorized to act on behalf of such a clients by obtaining evidence of his/her identity and verifying the identity of such a person; and
   b. verify the status of the legal person by obtaining proof of incorporation from the Corporate Affairs Commission (CAC) or similar evidence of establishment or existence and any other relevant information.

iii. Capital Market Operators shall identify a beneficial-owner and take reasonable measures to verify his/her identity using relevant information or data obtained from a reliable source to satisfy themselves that they know who the beneficial-owner is.

iv. Capital Market Operators shall in respect of all clients determine whether a client is acting on behalf of another person. Where the client is acting on behalf of another person, the Capital market operator is required to take reasonable steps to obtain sufficient identification-data and to verify the identity of that other person.

v. Capital Market Operators shall take reasonable measures in respect of clients that are legal persons to:
   a. understand the ownership and control structure of such a client; and
   b. determine the natural persons that ultimately own or control the client.

vi. The natural persons include those persons who exercise ultimate and effective control over the legal person. Examples of types of measures needed to satisfactorily perform this function include:

   a. For companies -The natural persons are those who own the controlling interests and those who comprise the mind and management of the company;

   b. For trusts – The natural persons are the settlor, the trustee and person exercising effective control over the trust and the beneficiaries.

vii. Where the client or the owner of the controlling interest is a public company subject to regulatory disclosure requirements (i.e. a public company listed on a recognized securities exchange) it is not necessary to identify and verify the identity of the shareholders of such a public company.

viii. Capital Market Operators shall obtain information on the purpose and intended nature of the business relationship of their potential clients.

ix. Capital Market Operators shall conduct ongoing due diligence on the business relationship as stated by the clients.

x. The ongoing due diligence includes scrutinizing the transactions undertaken by the client throughout the course of the Capital Market Operator/ client relationship to ensure that the transactions being conducted are consistent with the Capital Market Operator's knowledge of the client, its business and risk profiles, and the source of funds (where necessary).

xi. Capital Market Operators shall ensure that documents, data or information collected under the CDD-process are kept up-to-date and relevant by undertaking reviews of existing records, particularly the records in respect of higher-risk business-relationships or clients' categories.

xii. For clients that may require additional caution to be exercised when transacting with them, activities in the client's accounts shall be monitored on a regular basis for suspicious transactions.

xiii. While extra care shall be exercised in such cases, the Capital Market Operator shall refuse to do business with such clients or automatically classify them as high risk and subject them to an enhanced customer process. In this regard, Capital Market Operators shall weigh all the circumstances of the particular situation and assess whether there is a higher than normal risk of money laundering or financial terrorism.

xiv. A Capital Market Operator shall consider reclassifying a client as higher risk if following initial acceptance of the clients, the pattern of account activity of the clients does not fit in with the Capital Market Operator's knowledge of the clients. A suspicious transaction report shall also be considered.

xv. A Capital Market Operator shall not commence business relation or perform any transaction, or in the case of existing business relation, shall terminate such business relation if the clients fails to comply with the clients due diligence requirements. A Capital Market Operator shall also consider lodging a suspicious transaction report with the NFIU.

C. HIGHER RISK CATEGORIES OF CLIENTS

i. The basic principle of a risk based approach is that reporting institutions adopt an enhanced CDD process for higher risk categories of clients, business relationships or transactions. Similarly, simplified CDD process is adopted for lower risk categories of clients, business relationships or transactions.

ii. for determining a clients risk profile, the following are examples of high risk clients that a reporting institution shall consider exercising greater caution when approving the opening of account or when conducting transactions:

a. Non-resident clients;

b. Clients from locations known for its high crime rate (e.g. drug production, trafficking, smuggling);

c. Clients from or in countries or jurisdictions which do not or insufficiently apply the FATF Recommendations (such as jurisdictions designated as Non Cooperative Countries and Territories (NCCT) by the FAFT or those known to the reporting institution to have inadequate AML/CFT laws and regulations);

d. Politically Exposed Persons (PEPs) and persons/ companies related to them;

e. Complex legal arrangements such as unregulated investment vehicles/special purpose vehicles (SPV); or

f. Companies that have nominee-shareholders;

iii. Upon determining clients as "high-risk", the reporting capital market operator shall undertake enhanced CDD process on the clients which shall include enquiries on:

a. the purpose for opening an account;

b. the level and nature of trading activities intended;

c. the ultimate beneficial owners;

d. the source of funds;

e. senior management's approval for opening the account;

iv. The Capital Market Operator shall continue to undertake enhanced monitoring of the business relationship.

D. *Lower Risk Clients, Transactions or Products*

i. Where there are low risks, Capital Market Operators shall apply reduced or simplified CDD measures when identifying and verifying the identity of their clients and the beneficial-owners.

ii. There are low risks in circumstances where;

a. the risk of money laundering or terrorist financing is lower.

(a) information on the identity of the clients and the beneficial owner of a client is publicly available.

b. adequate checks and controls exist elsewhere in national systems.

iii. The following maybe considered to be low risk clients:

a. Capital Market Operators provided they are subject to requirements for the combat of money laundering and terrorist financing which are consistent with the provisions of this Manual and are supervised for compliance with them;
b. Public companies (listed on a securities exchange or similar situations) that are subject to regulatory disclosure requirements;
c. Government ministries and parastatals/enterprises;
d. Life insurance policies where the annual premium and single monthly premium are within the threshold determined by NAICOM;
e. Insurance policies for pension schemes if there is no surrender-value clause and the policy cannot be used as collateral;
f. A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member‘s interest under the scheme; and
g. Beneficial-owners of pooled-accounts held by Designated Non-Financial Businesses and Professions (DNFBPs) provided that they are subject to requirements to combat money laundering and terrorist financing consistent with the provisions of Money Laundering (Prohibition) Act.

iv. Capital Market Operators that apply simplified or reduced CDD measures to clients' resident abroad are required to limit such to clients in countries that have effectively implemented the FATF Recommendations.

v. Capital Market Operators shall adopt CDD measures on a risk sensitive-basis as provided for in this manual. Capital Market Operators shall determine in each case whether the risks are lower or not, having regard to the type of clients, product, transaction or the location of the clients.

E. TIMING OF VERIFICATION

i. Capital Market Operators shall verify the identity of the clients, beneficial-owner and occasional clients before or during the course of establishing a business relationship or conducting transactions for them.

ii. Capital Market Operators shall complete the verification of the identity of the clients and beneficial owner following the establishment of the business relationship, only when:
   a. This can take place as soon as reasonably practicable;
   b. It is essential not to interrupt the normal business conduct of the clients; and
   c. The money laundering risks can be effectively managed.

iii. Examples of situations where it may be essential not to interrupt the normal conduct of business are:
   a. **Securities transactions***:* In the securities industry, companies and intermediaries may be required to perform transactions very rapidly, according to the market conditions at the time the clients is contacting them and the performance of the transaction may be required before verification of identity is completed.

   b. Non face-to-face business.

c. Life insurance business in relation to identification and verification of the beneficiary under the policy. This may take place after the business relationship with the policy holder is established.

In all such cases, identification and verification shall occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy.

iv. Where a client is permitted to utilize the business relationship prior to verification, Capital Market Operators shall adopt risk management procedures concerning the conditions under which this may occur. These procedures include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside the expected norms for that type of relationship.

F. FAILURE TO COMPLETE CDD

i. Every Capital Market Operator that does not comply with the foregoing provisions shall:

a. not be permitted to open the account, commence business relations or perform the transaction; and

b. Be required to render a suspicious transaction report to the NFIU.

ii. The Capital Market Operators that has already commenced the business relationship shall terminate the business relationship and render suspicious transaction reports to the NFIU.

G. EXISTING CLIENTS

i. Capital Market Operators shall apply CDD requirements to existing clients on the basis of materiality and risk and to continue to conduct due diligence on such existing relationships at appropriate times.

ii. The appropriate time to conduct CDD by Capital Market Operators Shall include when:

a. a transaction of significant value takes place,

b. clients documentation standards change substantially,

c. there is a material change in the way that the account is operated,

d. the institution becomes aware that it lacks sufficient information about an existing client.

iii. The Capital Market Operators shall properly identify the clients in accordance with these criteria. The clients' identification records shall be made available to the AML/CFT compliance officer, other appropriate staff and relevant authorities.

3. DEFINITION OF POLITICALLY EXPOSED PERSON (PEP)

a. Politically Exposed Persons (PEPs) are individuals who are or have been entrusted with prominent public functions both in foreign countries as well as in Nigeria. Examples of PEPs include, but are not limited to;

(i) Heads of State or government;
(ii) Governors;
(iii) Local government chairmen;
(iv) Senior politicians;
(v) Senior government officials;
(vi) Judicial or military officials;
(vii) Senior executives of state owned corporations;
(viii) Important political party officials;
(ix) Family members or close associates of PEPs; and
(x) Members of Royal Families.

b. Capital Market Operators shall in addition to performing CDD measures, put in place appropriate risk management systems to determine whether a potential client or existing clients or the beneficial-owner is a politically exposed person.

c. Capital Market Operators shall obtain senior management approval before they establish business relationships with PEPs and to render monthly returns on their transactions with PEPs to the NFIU.

d. Where a client has been accepted or has an ongoing relationship with the Capital Market Operator and the client or beneficial-owner is subsequently found to be or becomes a PEP, the Capital Market Operator is required to obtain senior management approval in order to continue the business relationship.

e. Capital Market Operators shall take reasonable measures to establish the source of wealth and the sources of funds of clients and beneficial-owners identified as PEPs and report all anomalies immediately to the SEC and NFIU.

f. Capital Market Operators in a business relationship with PEPs shall conduct enhanced ongoing monitoring of that relationship. In the event of any transaction that is abnormal, Capital Market Operators shall flag the account and report immediately to the NFIU.

4. NEW TECHNOLOGIES AND NON-FACE-TO-FACE TRANSACTIONS

Capital Market Operators shall put in place:

a. policies or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes such as internationally accepted Credit or Debit Cards.

b. policies and procedures to address any specific risks associated with non -face to face business relationships or transactions. These policies and procedures shall be applied automatically when establishing clients relationships and conducting ongoing due diligence.

c. A Capital Market Operator that relies upon a third party shall immediately obtain the necessary information concerning property which has been laundered or which constitutes proceeds from, instrumentalities used in and intended for use in the commission of money laundering and financing of terrorism or other predicate offences. Such capital market operator shall satisfy itself that copies of identification data and other relevant documentation relating to the CDD requirements are made available by the third party upon request without delay.

d. The Capital Market Operator shall be satisfied that the third party is a regulated institution with measures in place to comply with requirements of CDD.

5. RELIANCE ON INTERMEDIARIES AND THIRD PARTIES ON CDD FUNCTIONS

a. Capital Market Operators relying on intermediaries or other third parties which have no outsourcing or agency relationships, business relationships, accounts or transactions between Capital Market Operators for their clients shall perform some of the elements of the CDD process on the introduced business. The following criteria shall be met:

i. Immediately obtain from the third party the necessary information concerning certain elements of the CDD process;

ii. Take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available by the third party upon request without delay;

iii. Satisfy themselves that the third party is regulated in accordance with Core Principles of AML/CFT and has measures in place to comply with the CDD requirements set out in this Manual; and

iv. Make sure that adequate KYC provisions are applied to the third party in order to get account information for competent authorities.

b. The ultimate responsibility for clients' identification and verification remains with the Capital Market Operators relying on the third party.

6. MAINTENANCE OF RECORDS ON TRANSACTIONS

Capital Market Operators shall;

a. maintain all necessary records of transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by the SEC and NFIU in specific cases). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.

b. maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by the SEC and NFIU in specific cases).

c. ensure that all clients-transaction records and information are available on a timely basis to the SEC and NFIU.

d. Some of the necessary components of transaction-records to be kept include clients' and beneficiary's names, addresses (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, the type and identifying number of any account involved in the transaction.

7. ATTENTION ON COMPLEX AND UNUSUAL LARGE TRANSACTIONS

a. Capital Market Operators shall pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Such transactions or patterns of transactions include:

i) significant transactions relative to a relationship,

ii) transactions that exceed certain limits,

iii) very high account turnover inconsistent with the size of the account balance or

iv) Transactions which fall out of the regular pattern of the account's activity.

b. Capital Market Operators shall examine as far as possible the background and purpose for such transactions and set forth their findings in writing to the NFIU; such finding shall be kept available for *SEC*, NFIU, other relevant authorities and auditors for at least five years.

8. COMPLIANCE, MONITORING AND RESPONSE TO SUSPICIOUS TRANSACTIONS

a. Institutional Policy

Every capital Market Operator shall***;***

i. have a written policy framework that would guide and enable its staff to monitor, recognize and respond appropriately to suspicious transactions.

ii. designate an officer appropriately as the AML/CFT Compliance Officer to supervise the monitoring and reporting of suspicious transactions.

iii. be alert to the various patterns of conduct that have been known to be suggestive of money laundering and maintain a checklist of such transactions which shall be disseminated to the relevant staff.

iv. When any staff of a Capital Market Operator detects any "red flag" or suspicious money laundering activity, the operator is required to promptly institute a "Review Panel" under

the supervision of the AML/CFT Compliance Officer. Every action taken must be recorded. The operator and its staff shall maintain confidentiality in respect of such investigation and any suspicious transaction report that may be filed with the relevant authority.

This action is, however, in compliance with the provisions of the money laundering law that criminalize "tipping off" (i.e. doing or saying anything that might tip off someone else that he is under suspicion of money laundering).

v. A Capital Market Operator that suspects or has reason to suspect that funds are the Proceeds of a criminal activity or are related to terrorist financing shall report promptly its suspicions to the NFIU. All suspicious transactions, including attempted transactions are to be reported regardless of the amount involved. This requirement applies regardless of whether the transactions involve tax matters or other things.

vi. Capital Market Operators, their directors, officers and employees (permanent and temporary) are prohibited from disclosing the fact that a report is required to be filed with the relevant authorities.

b. Internal controls, compliance and audit

i. Capital Market Operators shall establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism and to communicate these to their employees.
These procedures, policies and controls shall cover the CDD, record retention, the detection of unusual and suspicious transactions, the reporting obligation, among other things.

ii. The AML/CFT compliance officer and appropriate staff shall have timely access to clients' identification data, CDD information, transaction records and other relevant information.

iii. Capital Market Operators shall develop programs against money laundering and terrorist financing which shall include:

a. The development of internal policies, procedures and controls, including appropriate compliance management arrangement and adequate screening procedures to ensure high standards when hiring employees;

b. An ongoing employee training program to ensure that employees are kept informed of new developments, including information on current ML and CFT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting; and

c. Adequately resourced and independent audit function to test compliance with the procedures, policies and controls.

iv. A Capital Market Operator shall also put in place a structure that ensures the operational independence of the Compliance Officer (CCO).

9. SANCTIONS

a. The sanctions provided hereunder are not only proportionate and dissuasive but also designed to affect legal persons/Capital Market Operators and their directors/senior management staff, depending on the requirements breached. Every Capital Market Operator who fails to comply or contravenes the provisions contained in this manual shall be subject to sanctions by the SEC and any other relevant authority.

b. Any individual, being an official of a Capital Market Operator, who fails to take reasonable steps to ensure compliance with the provisions of this Manual, shall be sanctioned accordingly. For purpose of emphasis, incidence of false declaration or false disclosure by the Capital Market

Operator or its officers shall be subject to administrative review and sanction as stipulated in this Manual.

c. Any Capital Market Operator or its officer that contravenes the provisions of this Manual shall be subject to applicable sanctions by the SEC as follows:

i. Against the Operator

a. Imposition of a penalty not exceeding N500,000 from the first to the fifth instances on each offence; and

b. On the sixth instance, SEC shall set up an investigation panel to:

i. examine the operator's operations and identify the role of the Board, Management and officers in respect of the malpractice;

ii. recommend additional punishment on all officers that are culpable; and

iii. recommend ways and means to stop the Capital Market Operator from committing such malpractice in future and this may include obtaining an undertaking from the Capital Market Operator.

ii. Against the Officers

Any person being a director, senior management, manager or employee of a Capital Market Operator, either acting alone or in partnership with others, contravenes the provisions of this Manual under any circumstances shall be subject to any or all of the following sanctions:

i. On the first two infraction, be warned in writing by the operator and report to SEC;

ii. On the third infraction, the operator may consider terminating employee's appointment;

iii. In each instance, the names of the officers penalized the nature of the offence and the sanction imposed shall be reported to SEC.

10. SHELL BANKS

a. These are banks which have no physical presence in any country. Shell banks are prohibited from operating in Nigeria as provided in BOFIA (as amended – in view). Capital Market Operators are not allowed to establish correspondent relationships with high risk foreign banks (e.g. shell banks) with no physical presence in any country or with correspondent banks that permit their accounts to be used by such banks.

b. Capital Market Operators shall take all necessary measures to satisfy themselves that correspondent Capital Market Operators in a foreign country do not permit their accounts to be used by shell banks.

11. SUSPICIOUS TRANSACTIONS "RED FLAGS"

(a) **Potential Transactions Perceived or Identified as Suspicious**

i. Transactions involving high-risk countries vulnerable to money laundering, subject to this being confirmed.

ii. Transactions involving shell companies.

iii. Transactions with correspondents that have been identified as higher risk.

iv. Large transaction activity involving monetary instruments such as traveler's cheques, bank drafts, money order, particularly those that are serially numbered.

v. Transaction activity involving amounts that are just below the stipulated reporting threshold or enquiries that appear to test an institution's own internal monitoring threshold or controls.

(b) **Terrorist Financing "Red flags"**

i. Persons involved in a transaction share an address or phone number, particularly when the address is also a business location or does not seem to correspond to the stated occupation (e.g., student, unemployed, or self employed).

ii. Securities transaction by a nonprofit or charitable organisation, for which there appears to be no logical economic purpose or for which there appears to be no link between the stated activity of the organisation and other parties in the transaction.

iii. Large volume of securities transactions through a business account, where there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves designated high-risk locations.

iv. The stated occupation of the clients is inconsistent with the type and level of account activity.

v. Multiple personal and business accounts or the accounts of non profit organisations or charities that are used to collect and channel securities to a small number of foreign beneficiaries.

(c) **Other Unusual or Suspicious Activities**

i. Employee exhibits a lavish lifestyle that cannot be justified by his/her salary.

ii. Employee failure to comply with approved operating guidelines.

iii. Employee is reluctant to take a vacation.

(d) **Other forms of reporting**

Capital Market Operators shall report all securities transactions in any currency above a threshold of N1, 000,000 for individual and N5, 000,000 for corporate person to the NFIU.

12. **ATTENTION FOR HIGHER RISK COUNTRIES**

a. Capital Market Operators shall give special attention to business relationships and transactions with persons (including legal persons and other Capital Market Operators) from or in countries which do not or insufficiently apply the FATF recommendations.

b. Capital Market Operators shall report, as stated below, transactions that have no apparent economic or visible lawful purpose. The background and purpose of such transactions shall, as far as possible, be examined and written findings made available to assist competent authorities such as SEC, NFIU, auditors and law enforcement agencies (LEAs) to carry out their duties.

c. Capital Market Operators that conduct business with foreign institutions which, do not continue to apply or insufficiently apply the provisions of FATF Recommendations, are required to take measures such as the following:

i. Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories to Capital Market Operators for identification of the beneficial owners before business relationships are established with individuals or companies from that jurisdiction;

ii. Enhanced relevant reporting mechanisms or systematic reporting of cross border securities transactions on the basis that financial transactions with such countries are more likely to be suspicious;

iii. In considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking into account the fact that the relevant Capital Market Operator is from a country that does not have adequate AML/CFT systems;

iv. Warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering; limiting business relationships or financial transactions with the identified country or persons in that country.

13. AML/CFT EMPLOYEE-EDUCATION AND TRAINING PROGRAMME

Institutional Policy

a. Capital Market Operators shall design a comprehensive employee education and training programs not only to make employees fully aware of their obligations but also to equip them with relevant skills required for the effective discharge of their AML/CFT tasks.

b. The timing, coverage and content of the employee training program shall be tailored to meet the perceived needs of the Capital Market Operators. Capital Market Operators shall render quarterly returns on their level of compliance to the SEC and NFIU.

c. The employee training programs are required to be developed under the guidance of the AML/CFT Compliance Officer in collaboration with the top Management. The basic elements of the employee training program are expected to include:

   i. AML regulations and offences
   ii. The nature of money laundering
   iii. Money laundering 'red flags' and suspicious transactions, including trade-based money laundering typologies
   iv. Reporting requirements
   v. Clients due diligence
   vi. Risk-based approach to AML/CFT
   vii. Record keeping and retention policy.

d. Capital Market Operators shall submit their Annual AML/CFT Employee training program to the SEC and NFIU not later than the 31st of December every financial year against the next year.

14. MONITORING OF EMPLOYEE CONDUCT

Capital Market Operators shall monitor their employees' accounts for potential signs of money laundering. They are also required to subject employees' accounts to the same AML/CFT procedures as applicable to other clients' accounts. This is required to be performed under the supervision of the AML/CFT Compliance Officer. The latter's own account is to be reviewed by the Internal Auditor or a person of adequate/similar seniority. Compliance reports including findings are to be rendered to the SEC /NFIU.

15. PROTECTION OF STAFF WHO REPORT VIOLATIONS

a. Capital Market Operators shall direct their employees in writing to always co-operate fully with the Regulators and law enforcement agents and to promptly report suspicious transactions to them. They are also required to make it possible for employees to report any violations of the institution's AML/CFT compliance program to the AML/CFT Compliance Officer. Where the violations involve the Compliance Officer, employees are required to report such to a designated higher authority such as the Internal Auditor.

b. Capital Market Operators shall inform their employees in writing to make such reports confidential and that they will be protected from victimization for making them.

16. ADDITIONAL AREAS OF AML/CFT RISKS

a. *Capital Market Operators shall* review, identify and record other areas of potential money laundering risks not covered by this Compliance Manual and report same quarterly to the NFIU.

b. Capital Market Operators shall review their AML/CFT frameworks from time to time with a view to determining their adequacy and identifying other areas of potential risks not covered by the AML/CFT Compliance Manual.

17. ADDITIONAL PROCEDURES AND MITIGANTS

Having reviewed the AML/CFT framework and identified new areas of potential money laundering vulnerabilities and risks, Capital Market Operators shall design additional procedures and mitigants as contingency plan in their AML/CFT Operational Manuals. These will provide how such potential risks will

be appropriately managed if they crystallize. Details of the contingency plan are to be rendered to SEC and NFIU as at 31st December every financial year.

18. **TESTING FOR THE ADEQUACY OF THE AML/CFT COMPLIANCE**

Every Capital Market Operator shall make a policy commitment and to subject its AML/CFT Compliance Program to independent-testing or require its internal audit function to determine its adequacy, completeness and effectiveness. Report of compliance is required to be rendered to SEC and NFIU as 31st December every financial year. Any identified weaknesses or inadequacies shall be promptly addressed by the Capital Market Operator.

19. **FORMAL BOARD APPROVAL OF THE AML/CFT COMPLIANCE**

The ultimate responsibility for AML/CFT compliance is placed on the Board/Top Management of every Capital Market Operator in Nigeria. It is, therefore, required that the Board ensures that a comprehensive operational AML/CFT Compliance Manual is formulated by Management and presented to the Board for consideration and formal approval. The Manual shall be forwarded to SEC and NFIU within six months of it release. Quarterly reports on the AML/CFT-compliance status of the Capital Market Operator are to be presented to the Board for its information and necessary action.

20. **TERRORIST FINANCING OFFENCES**

a. Terrorist financing offences extend to any person who willfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they shall be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act.

b. Terrorist financing offences are extended to any funds whether from a legitimate or illegitimate source. Terrorist financing offences therefore do not necessarily require that the funds are actually used to carry out or attempt a terrorist-act or be linked to a specific terrorist-act. Attempt to finance terrorist/terrorism and to engage in any of the types of conduct as set out above is also an offence.

c. Terrorist financing offences are predicate offences for money laundering and therefore apply, regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is located or the terrorist act occurred or will occur.

21. CULTURE OF COMPLIANCE

Every Capital Market Operator shall have a comprehensive AML/CFT compliance program to guide its compliance efforts and to ensure the diligent implementation of its Manual.

PART C

22. GUIDANCE ON KYC (Know your customer)

Capital Market Operators shall not establish a business relationship until all relevant parties to the relationship have been identified and the nature of the business they intend to conduct ascertained. Once an on-going business relationship is established, any inconsistent activity can then be examined to determine whether or not there is an element of money laundering for suspicion.

A. **Duty to Obtain Identification Evidence**

i. Capital Market Operators shall be satisfied that a prospective client is who he/she claim to be.

ii. If the client is acting on behalf of another (the funds are supplied by someone else or the investment is to be held in the name of someone else's name) then the Capital Market Operator shall verify the identity of both the clients and the agent/trustee unless the client is itself a Nigerian regulated Capital Market Operator.

iii. Capital Market Operators shall obtain evidence in respect of their clients, unless it is otherwise stated in this manual.

iv. Capital Market Operators shall identify all relevant parties to the relationship from the outset by obtaining satisfactory identification evidence as provided in this manual.

B. **Nature and Level of the Business**

i. Capital Market Operators shall obtain sufficient information on the nature of the business that their client intends to undertake, including the expected or predictable pattern of transactions. The information collected at the outset for this purpose shall include:

a. purpose and reason for opening the account or establishing the relationship;
b. nature of the activity that is to be undertaken;
c. expected origin of the funds to be used during the relationship; and
d. details of occupation/employment/business activities and sources of wealth or income.

ii. Capital Market Operators shall take reasonable steps to keep the information up to date as the opportunities arise, such as when an existing client opens a new account. Information obtained during any meeting, discussion or other communication with the clients shall be recorded and kept in the client's file to ensure, as far as practicable, that current clients' information is readily accessible to the Money Laundering Compliance Officers (MLCO) or relevant regulatory bodies.

ii. **Apply Commercial Judgment**

a. Capital Market Operators shall take a risk-based approach to the 'Know Your Customer' requirement and decide the number of times to verify the clients' records during the relationship, the identification evidence required and when additional checks are necessary.
b. For personal account relationships, all joint-account holders need to be verified. In respect of private company or partnership, focus shall be on the principal owners/controllers and their identities shall also be verified.
c. The identification evidence collected at the outset shall be viewed against the inherent risks in the business or service.

23. **ESTABLISHING IDENTITY**

A. Identification Evidence

i. The client's identification process shall not start and end at the point of establishing the relationship but continue as far as the business relationship subsists. The process of confirming and updating identity and address, and the extent of obtaining additional KYC information collected will however differ from one type of Capital Market Operator to another.

ii. The general principles for establishing the identity of both legal and natural persons and obtaining satisfactory identification evidence set out in this Manual are by no means exhaustive.

B. What is Identity?

i. Identity generally means a set of attributes such as names used, date of birth and the residential address at which the clients can be located. These are features which can uniquely identify a natural or legal person.

ii. In the case of a natural person, the date of birth is required to be obtained as an important identifier in support of the name. It is, however, not mandatory to verify the date of birth provided by the clients.

iii. Where an international passport/national identity card is taken as evidence of identity, the number, date and place/country of issue (as well as expiring date in the case of international passport) are required to be recorded.

C. When Must Identity be Verified?

i. Identity shall be verified whenever a business relationship is to be established, on account opening or during one-off transaction or when series of linked transactions take place. "Transaction" in this Manual is defined to include the giving of advice. The "advice" here does not apply to when information is provided about the availability of products or services nor applies to when a first interview/discussion prior to establishing a relationship takes place.

ii. Once identification procedures have been satisfactorily completed and the business relationship established, as long as contact or activity is maintained and records concerning that clients are complete and kept, no further evidence of identity is needed when another transaction or activity is subsequently undertaken.

D. Whose Identity Must Be Verified?

i. Clients **-** sufficient evidence of the identity must be obtained to ascertain that the client is the very person he/she claims to be.

ii. a person acting on behalf of another - The obligation is to obtain sufficient evidence of identities of the two persons involved.

iii. There is no obligation to look beyond the client where:

a. the latter is acting on its own account (rather than for a specific client or group of clients);

b. a client is a bank, broker, fund manager or other regulated Capital Market Operator, financial institutions; and

c. all the businesses are to be undertaken in the name of a regulated Capital Market Operator or financial institution.

iv. In other circumstances, unless the client is a regulated Capital Market 3Operator or financial institution acting as agent on behalf of one or more underlying client within Nigeria, and has given written assurance that it has obtained the recorded-evidence of identity to the required standards, identification evidence shall be verified for:

a. the named account holder/person in whose name an investment is registered;

b. any principal beneficial owner of funds being invested who is not the account holder or named investor;

c. the principal controller(s) of an account or business relationship (i.e. those who regularly provide instructions); and

d. any intermediate parties (e.g. where an account is managed or owned by an intermediary).

v. Capital Market Operators shall take appropriate steps to identify directors and all the signatories to an account.

vi. Joint applicants/account holders - identification evidence shall be obtained for all the account holders.

vii. For higher risk business undertaken for private companies (i.e. those not listed on the stock exchange) sufficient evidence of identity and address shall be verified in respect of:

a. the principal underlying beneficial owner(s) of the company with 5% interest and above; and

b. Those with principal control over the company's assets (e.g. principal controllers/directors).

viii. Capital Market Operators shall be alert to circumstances that might indicate any significant changes in the nature of the business or its ownership and make enquiries accordingly and to observe the additional provisions for Higher Risk Categories of Clients under AML/CFT Directive in this Manual.

ix. Trusts – Capital Market Operators shall obtain and verify the identity of those providing funds for the Trust. They include the settlor and those who are authorized to invest, transfer funds or make decisions on behalf of the Trust such as the principal trustees and controllers who have power to remove the Trustees.

x. Savings Schemes and Investments in Third Parties' Names When an investor sets up a savings accounts or a regular savings scheme whereby the funds are supplied by one person for investment in the name of another (such as a spouse or a child), the person who funds the subscription or makes deposits into the savings scheme shall be regarded as the applicant for business for whom identification evidence must be obtained in addition to the legal owner.

xi. Personal Pension Schemes

a. Identification evidence must be obtained at the outset for all investors, except personal pensions connected to a policy of insurance taken out by virtue of a contract of employment or pension scheme.

b. Personal pension advisers are charged with the responsibility of obtaining the identification evidence on behalf of the pension fund provider. Confirmation that identification evidence has been taken shall be given on the transfer of a pension to another provider.

E. Timing of Identification Requirements

i. An acceptable time-span for obtaining satisfactory evidence of identity will be determined by the nature of the business, the geographical location of the parties and whether it is possible to obtain the evidence before commitments are entered into or money changes hands. However, any occasion when business is conducted before satisfactory evidence of identity has been obtained must be exceptional and can only be those circumstances justified with regard to the risk.

ii. To this end, Capital Market Operators shall:

(a) obtain identification evidence as soon as reasonably practicable after it has contact with a client with a view to agreeing with the client to carry out an initial transaction; or reaching an understanding (whether binding or not) with the client that it may carry out future transactions; and

(b) Where the client does not supply the required information as stipulated in (a) above, the Capital Market Operator shall discontinue any activity it is conducting for the client; and bring to an end any understanding reached with the client.

iii. Capital Market Operators shall observe the provision in the Timing of Verification under the AML/CFT Directive of this Manual.

iv. A Capital Market Operator may however start processing the transaction or application immediately, provided that it:

a. promptly takes appropriate steps to obtain identification evidence;

b. Does not transfer or pay any money out to a third party until the identification requirements have been satisfied.

v. The failure or refusal by an applicant to provide satisfactory identification evidence within a reasonable time-frame without adequate explanation may lead to a suspicion that the depositor or investor is engaged in money laundering. The Capital Market Operator shall therefore make Suspicious transaction Reports to NFIU based on the information in its possession before the funds involved are returned to the potential client or where they came from.

vi. Capital Market Operators shall put in place written and consistent policies of closing an account or unwinding a transaction where satisfactory evidence of identity cannot be obtained.

vii. Capital Market Operators shall respond promptly to inquiries made by other persons relating to the identity of their clients.

F. Cancellation & Cooling-Off Rights

Where an investor exercises cancellation rights or cooling-off rights, the sum invested must be repaid subject to some deductions, where applicable. Since cancellation/cooling-off rights could offer a readily available route for laundering money, Capital Market Operators shall be alert to any abnormal exercise of these rights by an investor or in respect of business introduced through an intermediary. In the event where abnormal exercise of these rights becomes apparent, the matter shall be treated as suspicious and reported to NFIU.

G. Redemptions/Surrenders

i. When an investor finally realizes his investment (wholly or partially), if the amount payable is US$1,000 or above or its equivalent thereof; or N250,000 for an individual or N500,000 for a body corporate, or such other monetary amounts as may, from time to time, be stipulated by any

applicable money laundering legislation or regulation, the identity of the investor must be verified and recorded if it had not been done previously.

ii. In the case of redemption or surrender of an investment (wholly or partially), a Capital Market Operator shall take reasonable measures to establish the identity of the investor where payment is made to:

a. the legal owner of the investment by means of a cheque crossed "account payee"; or

b. a bank account held (solely or jointly) in the name of the legal owner of the investment by any electronic means effective for transfer funds.

24. IDENTIFICATION PROCEDURES

A. General Principles

i. A Capital Market Operator shall ensure that it is dealing with a real person or organization (natural, corporate or legal) by obtaining sufficient identification evidence. When reliance is being placed on a third party to identify or confirm the identity of an applicant, the overall responsibility for obtaining satisfactory identification evidence rests with the account holding Capital Market Operator.

ii. The requirement in all cases is to obtain satisfactory evidence that a person of that name lives at the address given and that the applicant is that person or that the company has identifiable owners and that its representatives can be located at the address provided.

iii. Because no single form of identification can be fully guaranteed as genuine or representing correct identity, the identification processes shall be cumulative.

iv. The procedures adopted to verify the identity of private individuals and whether or not identification was done face to face or remotely and are required to be stated in the client's file. The reasonable steps taken to avoid single, multiple fictitious applications or substitution (impersonation) fraud shall be stated by the Capital Market Operator in the client's file.

v. An introduction from a respected client, a person personally known to a Director or Manager or a member of staff often provides comfort but must not replace the need for identification evidence requirements to be complied with as set out in this Manual.

Details of the person who initiated and authorized the introduction shall be kept in the client's mandate file along with other records. It is therefore mandatory that Directors/Senior Managers shall insist on following the prescribed identification procedures for every applicant.

B. New Business for Existing Clients

i. When an existing client closes one account and opens another or enters into a new agreement to purchase products or services, there is no need to verify the identity or address of such a clients unless the name or the address provided does not tally with the information in the Capital Market Operator's file. However, procedures shall be put in place to guard against impersonation and fraud. The opportunity of opening the new account shall also be taken to ask the client to confirm the relevant details and to provide any missing KYC information. This is particularly important:

a. if there was an existing business relationship with the client and identification evidence had not previously been obtained; or

b. if there had been no recent contact or correspondence with the client within the past three months; or

c. when a previously dormant account is re -activated.

ii. In the circumstances above, details of the previous account(s) and any identification evidence previously obtained or any introduction records shall be linked to the new account-records and retained for the prescribed period in accordance with the provision of this Manual.

C. Certification of Identification Documents

i. In order to guard against the dangers of postal-interception and fraud, prospective client shall not be asked to send by post originals of their valuable personal identity documents such as international passport, identity card, driving license, etc.

ii. Where there is no face to face contact with the client and documentary evidence is required, copies certified by a notary public/court of competent jurisdiction, senior public servant or their equivalent in the private sector shall be obtained. The person undertaking the certification must be known and capable of being contacted if necessary.

iii. In the case of foreign nationals, the copy of international passport, national identity card or documentary evidence of his/her address is required to be certified by:

i. the embassy, consulate or high commission of the country of issue;

ii. a senior official within the account opening institution;

iii. Notary public/court of competent jurisdiction

iv. Certified copies of identification evidence are to be stamped, dated and signed "original sighted by me" by a senior officer of the Capital Market Operator. Capital Market Operators shall always ensure that a good production of the photographic evidence of identity is obtained. Where this is not possible, a copy of evidence certified as providing a good likeness of the applicant could only be acceptable in the interim.

D. Recording Identification Evidence

i. Records of the supporting evidence and methods used to verify identity are required to be retained for a minimum period of five years after the account is closed or the business relationship ended.

ii. Where the supporting evidence could not be copied at the time it was presented, the reference numbers and other relevant details of the identification evidence are required to be recorded to enable the documents to be obtained later. Confirmation is required to be provided that the original documents were seen by certifying either on the photocopies or on the record that the details were taken down as evidence.

iv. Where checks are made electronically, a record of the actual information obtained or of where it can be re-obtained must be retained as part of the identification evidence. Such records will make the reproduction of the actual information that would have been obtained before, less cumbersome.

E. Concession in respect of Payment Made by Post.

i. Concession may be granted for product or services (where the money laundering risk is considered to be low) in respect of long-term life insurance business or purchase of personal investment products. If payment is to be made from an account held in the clients' name (or jointly with one or more other persons) at a regulated Capital Market Operator, no further evidence of identity is necessary.

ii. Waiver of additional verification requirements for postal or electronic transactions does not apply to the following:

a. products or accounts where funds can be transferred to other types of products or accounts which provide cheque or money transfer facilities;

b. situations where funds can be repaid or transferred to a person other than the original clients;

c. investments where the characteristics of the product or account may change subsequently to enable payments to be made to third parties.

iii. Postal concession is not an exemption from the requirement to obtain satisfactory evidence of a client's identity. Payment debited from an account in the client's name shall be capable of constituting the required identification evidence in its own right.

iv. Records are required to be maintained indicating how a transaction arose, including details of the Capital Market Operator's branch and account number from which the cheque or payment is drawn.

v. The concession can apply both where an application is made directly to the Capital Market Operator and where a payment is passed through a regulated intermediary.

vi. **Investment Funds**:

In circumstances where the balance in an investment funds account is transferred from one Funds Manager to another and the value at that time is above US$1,000 or N250,000 for an individual and N1 million for a body corporate and identification evidence has neither been taken nor confirmation obtained from the original Fund Manager, then such evidence shall be obtained at the time of the transfer.

25. **ESTABLISHING IDENTITY**

Establishing identity under this Manual is divided into three broad categories:

a. Private individual clients;
b. Quasi corporate clients;
c. Pure corporate clients.

A. Private Individual Clients

General Information:

i. The following information are to be established and independently validated for all private individuals whose identities need to be verified:

a. The true full name(s) used; and
b. the permanent home address, including landmarks and postcode, where available.

ii. The information obtained shall provide satisfaction that a person of that name exists at the address given and that the applicant is that person. Where an applicant has recently moved from a house, the previous address shall be validated.

iii. It is important to obtain the date of birth as it is required by the law enforcement agencies. However, the information need not be verified. It is also important for the residence/nationality of a client to be ascertained to assist risk assessment procedures.

iv. A risk-based approach shall be adopted when obtaining satisfactory evidence of identity. The extent and number of checks can vary depending on the perceived risk of the service or business sought and whether the application is made in person or through a remote medium such as telephone, post or the internet. The source of funds, how the payment was made, from where, and by whom must always be recorded, to provide an audit trail. However, for higher risk products, accounts or clients, additional steps shall be taken to ascertain the source of wealth/funds.

v. For lower-risk transactions or simple investment products, there is an overriding requirement for the Capital Market Operator to satisfy itself as to the identity and address of the client.

1. **Private Individuals Resident in Nigeria**

The confirmation of name and address is to be established by reference to a number of sources. The checks shall be undertaken by cross-validation that the applicant exists at the stated address either through the sighting of actual documentary evidence or by undertaking electronic checks of suitable databases, or by a combination of the two. The overriding requirement to ensure that the identification evidence is satisfactory rests with the Capital Market Operator.

a. Documenting Evidence of Identity

i. In order to guard against forged or counterfeit-documents, care shall be taken to ensure that documents offered are originals. Copies that are dated and signed 'original seen' by a senior public servant or equivalent in a reputable private organization could be accepted in the interim, pending presentation of the original documents. Hereunder are examples of suitable documentary evidence for Nigerian resident private individuals:

(a) **Personal Identity Documents**

i. Current International Passport
ii. Residence Permit issued by the Immigration Authorities

iii. Current Driving Licence issued by the Federal Road Safety Commission (FRSC)
iv. Inland Revenue Tax Clearance Certificate
v. Birth Certificate/Sworn Declaration of Age
vi. National Identity card

(b) **Documentary Evidence of Address**

i. Record of home visit in respect of non-Nigerians
ii. Confirmation from the electoral register that a person of that name lives at that address
iii. Recent utility bill (e.g. PHCN, NITEL, etc.)
iv. Current driving licence issued by FRSC
v. Bank statement or passbook containing current address
vi. Solicitor's letter confirming recent house purchase or search report from the Land Registry
vii. Tenancy Agreement
ix. Search reports on prospective client's place of employment and residence signed by a senior officer of the Capital Market Operator.

2. Checking of a local or national telephone directory can be used as additional corroborative evidence but not as a primary check.

a. **Physical Checks on Private Individuals Resident in Nigeria**

i. It shall be mandatory for a Capital Market Operator to establish the true identities and addresses of its clients and for effective checks to be carried out to guard against substitution of identities by client.

ii. Additional confirmation of the clients' identity and the fact that the application was made by the person identified shall be obtained through one or more of the following procedures:

a. a direct mailing of account opening documentation to a named individual at an independently verified address;
b. an initial deposit cheque drawn on a personal account in the clients name by another Capital Market Operator in Nigeria;
c. telephone contact with the client prior to opening the account on an independently verified home or business number or a "welcome call" to the clients before transactions are permitted, utilizing a minimum of two pieces of personal identity information that had been previously provided during the setting up of the account;
d. internet sign-on following verification procedures where the clients uses security codes, tokens, and/or other passwords which had been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address;
e. card or account activation procedures.

iii. Capital Market Operators shall ensure that additional information concerning the nature and level of the business to be conducted and the origin of the funds to be used within the relationship are also obtained from the clients.

b. Electronic Checks

i. As an alternative or supplementary to documentary evidence of identity and address, the clients identity, address and other available information may be checked electronically by accessing other data-bases or sources. Each source may be used separately as an alternative to one or more documentary checks.

ii. Capital Market Operators shall use a combination of electronic and documentary checks to confirm different sources of the same information provided by the clients.

iii. In respect of electronic checks, confidence as to the reliability of information supplied will be established by the cumulative nature of checking across a

range of sources, preferably covering a period of time or through qualitative checks that assess the validity of the information supplied. The number or quality of checks to be undertaken will vary depending on the diversity as well as the breath and depth of information available from each source. Verification that t he client is the data-subject also needs to be conducted within the checking process.

iv. Some examples of suitable electronic sources of information are as follows:

a. An electronic search of the Electoral Register (is not to be used as a sole identity and address check);

b. Access to internal or external account database; and

c. An electronic search of public records, where available.

v. Capital Market Operator shall put in place internal procedures for the identification of socially but financially disadvantage persons.

vi. Where a Capital Market Operator has reasonable grounds to conclude that an individual client is not able to produce the detailed evidence of his identity and cannot reasonably be expected to do so, the Operator may accept as identification evidence a letter or statement from a person in a position of responsibility such as solicitors, doctors, ministers of religion and teachers who know the client, confirming that the client is who he says he is, and his permanent address.

vii. When a Capital Market Operator has decided to treat a client as "financially excluded", it is required to record the reasons for doing so along with the account opening documents and returns rendered to the SEC and NFIU quarterly.

viii. where a letter/statement is accepted from a professional person, it shall include a telephone number where the person can be contacted for verification. The Capital Market Operator shall verify from an independent source the information provided by the professional person.

ix. In order to guard against "financial exclusion" and to minimize the use of the exception procedure, Capital Market Operators shall include in their internal procedures the "alternative documentary evidence of personal identity and address" that can be accepted.

x. Capital Market Operators shall put in place additional monitoring for accounts opened under the financial exclusion exception procedures to ensure that such accounts are not misused.

2. **A**. **Private Individuals not resident in Nigeria**

i. For those prospective clients who are not resident in Nigeria but who make face -to- face contact, international passports or national identity cards shall generally be available as evidence of the name of the clients.

Reference numbers, date and country of issue shall be obtained and the information recorded in the clients's file as part of the identification evidence.

ii. Capital Market Operators shall obtain separate evidence of the applicant's permanent residential address from the best available evidence, preferably from an official source. A "P.O. Box number" alone is not accepted as evidence of address. The applicant's residential address shall be such that it can be physically located.

iii. Relevant evidence shall be obtained by the Capital Market Operator directly from the clients or through a reputable credit or Capital *Market Operator* in the applicant's home country or country of residence. However, particular care shall be taken when relying on identification evidence provided from other countries. Capital Market Operators shall ensure that the client's true identity and current permanent address are actually

confirmed. In such cases, copies of relevant identity documents shall be sought and retained.

iv. Where a foreign national has recently arrived in Nigeria, reference might be made to his/her employer, university, evidence of traveling documents, etc. to verify the applicant's identity and residential address.

B. Private Individuals not Resident in Nigeria: Supply of Information

i. For a private individual not resident in Nigeria, who wishes to supply documentary information by post, telephone or electronic means, a risk-based approach shall be taken. The Capital Market Operator shall obtain one separate item of evidence of identity in respect of the name of the clients and one separate item for the address.

ii. Documentary evidence of name and address can be obtained:

a. by way of original documentary evidence supplied by the clients;

b. by way of a certified copy of the client's passport or national identity card and a separate certified document verifying address e.g. a driving licence, utility bill, etc; or

c. through a branch, subsidiary, head office of a correspondent bank.

iii. Where the client does not already have a business relationship with the foreign Capital Market Operator that is supplying the information, certified copies of relevant underlying documentary evidence must be sought, obtained and retained by the institutions.

iv. Where necessary, an additional comfort must be obtained by confirming the clients' true name, address and date of birth from a reputable institution in the clients' home country.

3. Information to establish identity

a. **Natural Persons**

For natural persons the following information shall be obtained, where applicable:

i. Legal name and any other names used (such as maiden name);

ii. Correct permanent address (full address shall be obtained and a Post Office box number is not sufficient);

iii. Telephone number, fax number, and e-mail address;

iv. Date and place of birth;

v. Nationality;

vi. Occupation, public position held and name of employer;

vii. An official personal identification number or other unique identifier contained in an unexpired official document such as passport, identification card, residence permit, social security records or driving licence that bears a photograph of the clients;

viii. Signature.

A Capital Market Operator shall verify this information by at least one of the following methods:

(a) Confirming the date of birth from an official document (e.g. birth certificate, passport, identity card, social security records);

(b) Confirming the permanent address (e.g. utility bill, tax assessment, bank statement, a letter from a public authority);

(c) Contacting the clients by telephone, by letter or e-mail to confirm the information supplied after an account has been opened (e.g. a disconnected phone, returned mail, or incorrect e-mail address shall warrant further investigation);

(d) Confirming the validity of the official documentation provided through certification by an authorized person (e.g. embassy official, notary public).

(e) Such other documents of an equivalent nature may be produced as satisfactory evidence of clients' identity.

(f) The Capital Market Operators shall apply effective client identification procedures for non-face-to-face client as for those available physically.

From the information provided, Capital Market Operators shall be able to make an initial assessment of a client's risk profile. Particular attention needs to be focused on those clients identified as having a higher risk profile. Additional inquiries made or information obtained in respect of those clients shall include the following:

(i) Evidence of an individual's permanent address sought through a credit reference agency search, or through independent verification by home visits;
(ii) Personal reference (i.e. by an existing client of the same institution);
(iii) prior client bank reference and contact with the bank regarding the client;
(iv) Source of wealth;
(v) Verification of employment, public position held (where appropriate).

The client acceptance policy shall not be so restrictive to amount to a denial of access by the general public to Securities transactions, especially for people who are financially or socially disadvantaged.

b. **Institutions**

The term institution includes any entity that is not a natural person. In considering the clients identification guidance for the different types of institutions, particular attention shall be given to the different levels of risk involved.

i. **Corporate Entities**

For corporate entities (i.e. corporations and partnerships), the following information shall be obtained:

(a) Name of institution;
(b) Principal place of institution's business operations;
(c) Mailing address of institution;
(d) Contact telephone and fax numbers;
(e) Some form of official identification number, if available (e.g. Tax identification number);
(f) The original or certified copy of the Certificate of Incorporation and Memorandum and Articles of Association;
(g) The resolution of the Board of Directors to open an account and identification of those who have authority to operate the account;
(h) Nature and purpose of business and its legitimacy.

ii. A Capital Market Operator shall verify this information by at least one of the following methods:

a. For established corporate entities -reviewing a copy of the latest report and accounts (audited, if available);
b. Conducting an enquiry by a business information service or an undertaking from a reputable and known firm of lawyers or accountants confirming the documents submitted;
c. Undertaking a company search and/or other commercial enquiries to see that the institution has not been, or is not in the process of being dissolved, struck off, wound up or terminated;
d. Utilizing an independent information verification process, such as accessing public and private databases;
e. Obtaining prior bank references;
f. Visiting the corporate entity,; and
g. Contacting the corporate entity by telephone, mail or e-mail.

The Capital Market Operators shall also take reasonable steps to verify the identity and reputation of any agent that opens an account on behalf of corporate clients, if that agent is not an officer of the corporate client.

iii. **Corporations/Partnerships**

a. For corporations/partnerships, the principal guidance is to look behind the Operator to identify those who have control over the business and the company's/partnership's assets, including those who have ultimate control.

b. For corporations, particular attention shall be paid to shareholders, signatories,or others who inject a significant proportion of capital or financial support or otherwise exercise control. Where the owner is another Capital Market Operator or trust, the objective is to undertake reasonable measures to look behind that company or entity and to verify the identity of the principals.

c. What constitutes control for this purpose will depend on the nature of a company, and may rest in those who are mandated to manage the funds, accounts or investments without requiring further authorisation, and who would be in a position to override internal procedures and control mechanisms.

d. For partnerships, each partner shall be identified and it is also important to identify immediate family members that have ownership control.

e. Where a company is listed on a recognised securities exchange or is a subsidiary of such a company then the company itself may be considered to be the principal to be identified. However, consideration shall be given to whether there is effective control of a listed company by an individual, small group of individuals or another corporate entity or trust. If this is the case then those controllers shall also be considered to be principals and identified accordingly.

c. **Other Types of Operators**

i. The following information shall be obtained in addition to that required to verify the identity of the principals in respect of Retirement Benefit Programmes, Mutuals/Friendly Societies, Cooperatives and Provident Societies, Charities, Clubs and Associations, Trusts and Foundations and Professional Intermediaries:

(a) Name of account;
(b) Mailing address;
(c) Contact telephone and fax numbers;
(d) Some form of official identification number, such as tax identification number;
(e) Description of the purpose/activities of the account holder as stated in a formal constitution; and
(f) Copy of documentation confirming the legal existence of the account holder such as register of charities.

ii. A Capital Market Operator shall verify this information by at least one of the following:

(a) Obtaining an independent undertaking from a legal practitioner or chartered Accountant confirming the documents submitted;
(b) Obtaining prior bank references; and
(c) Accessing public and private databases or official sources.

iii **Retirement Benefit Programmes**

Where an occupational pension programme, employee benefit trust or share option plan is an applicant for an account the trustee and any other person who has control over the relationship such as the administrator, programme manager, and account signatories shall be considered as principals and the capital Market Operator shall take steps to verify their identities.

iv **Mutual/Friendly, Cooperative and Provident Societies**

Where these entities are client the principals to be identified shall be considered to be those persons exercising control or significant influence over the organisation's assets. This often includes Board members, executives and account signatories.

v **Charities, Clubs and Associations**

In the case of accounts to be opened for charities, clubs, and societies, the Capital Market Operators shall take reasonable steps to identify and verify at least two signatories along with the operator itself. The principals who shall be identified shall be

considered to be those persons exercising control or significant influence over the organization's assets.

This includes members of the governing body or committee, the President, Board members, the Treasurer, and all signatories.

In all cases, independent verification shall be obtained that the persons involved are true representatives of the operators.

vi. **Trusts and Foundations**

When opening an account for a Trust, the Capital Market Operator shall take reasonable steps to verify the trustees, the settlor (including any persons settling assets into the trust) any protector, beneficiary and signatories. Beneficiaries shall be identified when they are defined. In the case of a foundation, steps shall be taken to verify the founder, the managers/directors and the beneficiaries.

vii. **Professional Intermediaries**

When a professional intermediary opens a client account on behalf of a single client, that client must be identified. Professional intermediaries will often open "pooled" accounts on behalf of a number of entities. Where funds held by the intermediary are not co-mingled but where there are "sub-accounts" which can be attributable to each beneficial owner, all beneficial owners of the account held by the intermediary shall be identified. Where the funds are co-mingled, the Capital Market Operator shall look through to the beneficial-owners. However, there may be circumstances that Capital Market Operator may not look beyond the intermediary (e.g. when the intermediary is subject to the same due diligence standards in respect of its client base as the Capital Market Operator).

viii. Where such circumstances apply and an account is opened for an open or closed ended investment company (unit trust or limited partnership) also subject to the same due diligence standards in respect of its client base as the Capital Market Operator**,** the following shall be considered as principals and the Capital Market Operator shall take steps to identify them:

(a) The fund itself;
(b) Its directors or any controlling board (where it is a company)
(c) Its Trustee (where it is a Unit Trust)
(d) Its managing (general) partner (where it is a limited partnership)
(e) Account signatories;
(f) Any other person who has control over the relationship such as fund administrator or manager.

ix. Where other investment vehicles are involved, the same steps shall be taken as in above (where it is appropriate to do so). In addition, all reasonable steps shall be taken to verify the identity of the beneficial owners of the funds and of those who have control over the funds.

(x) Intermediaries shall be treated as individual clients of the Capital Market Operator and the standing of the intermediary shall be separately verified by obtaining the appropriate information itemized above.

4. **Non Face-to-Face Identification**

i. In view of possible false identities and impersonations that may arise with non face-to-face clients, additional measures/checks shall be undertaken to supplement the documentary or electronic evidence.

These additional measures/checks will apply whether the applicant is resident in Nigeria or elsewhere and shall be particularly robust where the applicant is requiring a margin facility or other product/service that offers money transmission or third party payments.

ii. Procedures to identify and authenticate the client shall be put in place to ensure that there is sufficient evidence either documentary or electronic to confirm his address and

personal identity and to undertake at least one additional check to guard against impersonation and fraud.

iii. The extent of the identification evidence required will depend on the nature and characteristics of the product or service and the assessed risk.

1. If reliance is being placed on intermediaries to undertake the processing of applications on the client behalf, checks shall be undertaken to ensure that the intermediary are regulated for money laundering prevention and that the relevant identification procedures are applied. In all cases, evidence as to how identity has been verified shall be obtained and retained with the account opening records.

2. Capital Market Operators shall conduct regular monitoring of internet-based business/clients. If a significant proportion of the business is operated electronically, computerized monitoring systems /solutions that are designed to recognize unusual transactions and related patterns of transactions shall be put in place to recognize suspicious transactions. AML/CFT compliance officers are required to review these solutions, record exemptions and report same quarterly to the SEC and NFIU.

5. **Establishing Identity for Refugees and Asylum Seekers**

i. A refugee and asylum seeker may require a basic account without being able to provide evidence of identity. In such circumstances, authentic references from Ministry of Internal Affairs or an appropriate government agency shall be used in conjunction with other readily available evidence.

ii. Additional monitoring procedures shall however be undertaken to ensure that the use of the account is consistent with the client circumstances and returns rendered quarterly to NFIU.

6. **Establishing Identity for Students and Minors**

i. When opening accounts for students or other young persons, the normal identification procedures set out in this Manual shall *be* followed as far as possible. Where such procedures would not be relevant or do not provide satisfactory identification evidence, verification could be obtained:

a. via the home address of the parent(s); or

b. by obtaining confirmation of the applicant's address from his/her institution of learning; or

c. by seeking evidence of a tenancy agreement or student accommodation contract.

ii. Often, an account for a minor will be opened by a family member or guardian. In cases where the adult opening the account does not already have an account with the Capital Market Operator, the identification evidence for that adult, or of any other person who will operate the account shall be obtained in addition to obtaining the birth certificate or passport of the child. It shall be noted that this type of account could be open to abuse and therefore strict monitoring shall be undertaken, and reports made and rendered quarterly to NFIU.

iii. For accounts opened through a school-related scheme, the school shall be asked to provide the date of birth and permanent address of the pupil and to complete the standard account opening documentation on behalf of the pupil.

B. **<u>Quasi Corporate Clients</u>**

1. **Establishing Identity - Trust, Nominees and Fiduciaries**

a. Trusts, nominee companies and fiduciaries are popular vehicles for criminals wishing to avoid the identification procedures and mask the origin of the criminal money they wish to launder. The particular characteristics of Trust that attract the genuine clients, the anonymity and complexity of structures that they can provide are also highly attractive to money launderers.

b. Identification and "Know Your Business" procedures shall be set and managed according to the perceived risk, in trust, nominees and fiduciaries accounts.

c. The principal objective for money laundering prevention via trusts, nominees and fiduciaries is to verify the identity of the provider of funds such as the settlor, those who have control over the funds (the trustees and any controller who have the power to remove the trustees). For discretionary or offshore Trust, the nature and purpose of the Trust and the original source of funding must be ascertained.

d. Whilst reliance can often be placed on other Capital Market Operators that are to undertake the checks or confirm identity, the responsibility to ensure that this is undertaken rests with the Capital Market Operator. The underlying evidence of identity must be made available to law enforcement agencies in the event of an investigation.

e. Identification requirements must be obtained and not waived for any trustee who does not have authority to operate an account and cannot give relevant instructions concerning the use or transfer of funds.

2. **Offshore Trusts**

a. Offshore Trusts present a higher money laundering risk and therefore additional measures are needed for Special Purpose Vehicles (SPVs) or International Business Companies connected to Trusts, particularly when Trusts are set up in offshore locations with strict bank secrecy or confidentiality rules. Those created in jurisdictions without equivalent money laundering procedures in place shall warrant additional enquiries.

b. Unless the client for business is itself a regulated Capital Market Operator**,** measures shall be taken to identify the Trust company or the corporate service provider in line with the requirements for professional intermediaries or companies generally.

c. Certified copies of the documentary evidence of identity for the underlying principals such as settlors, controllers, etc. on whose behalf the client for business is acting, shall also be obtained.

d. For overseas Trusts, nominee and fiduciary accounts, where the client is itself a Capital Market Operator that is regulated for money laundering purposes:

   i. reliance can be placed on an introduction or intermediary certificate letter stating that evidence of identity exists for all underlying principals and confirming that there are no anonymous principals;

   ii. the trustees/nominees shall be asked to state from the outset the capacity in which they are operating or making the application;

   iii. documentary evidence of the appointment of the current Trustees shall also be obtained.

e. Where the underlying evidence is not retained within Nigeria, enquiries shall be made to determine, as far as practicable, that there are no overriding bank secrecy or confidentiality constraints that will restrict access to the documentary evidence of identity, shall it be needed in Nigeria.

f. Any application to open an account or undertake a transaction on behalf of another without the client identifying their Trust or Nominee capacity shall be regarded as suspicious and shall lead to further enquiries and rendition of reports to SEC and NFIU.

g. Where a Capital Market Operator in Nigeria is itself the client to an offshore Trust on behalf of its clients, if the corporate Trustees are not regulated, then the Nigerian Capital Market Operator shall undertake the due diligence on the Trust itself.

h. If the funds have been drawn upon an account that is not under the control of the Trustees, the identity of two of the authorized signatories and their authority to operate the account shall also be verified. When the identities of beneficiaries have not previously been verified, verification shall be undertaken when payments are made to them.

3. **Conventional Family and Absolute Nigerian Trusts**

a. In the case of conventional Nigerian Trusts, identification evidence shall be obtained for:

   i. those who have control over the funds (the principal trustees who may include the settlor);

ii. the providers of the funds (the settlors, except where they are deceased);

iii. Where the settlor is deceased, written confirmation shall be obtained for the source of funds (grant of probate or copy of the Will or other document creating the Trust).

b. Where a corporate Trustee such as a bank acts jointly with a co-Trustee, any non-regulated co -Trustees shall be verified even if the corporate Trustee is covered by an exemption. The relevant guidance contained in this Manual for verifying the identity of persons, institutions or companies shall be followed.

c. Although a Capital Market Operator may not review any existing Trust, confirmation of the settlor and the appointment of any additional Trustees shall be obtained.

d. Copies of any underlying documentary evidence shall be certified as true copies. In addition, a check shall be carried out to ensure that any bank account on which the Trustees have drawn funds is in their names. Taking a risk based approach, consideration shall be given as to whether the identity of any additional authorized signatories to the account shall also be verified.

e. It is a normal practice for payment of any trust property to be made to all the Trustees. As a matter of practice, some life assurance companies make payments directly to beneficiaries on receiving a request from the Trustees. In such circumstances, the payment shall be made to the named beneficiary by way of a crossed cheque marked "account payee only" or a bank transfer direct to an account in the name of the beneficiary.

4. **Receipt and Payment of Funds**

a. Where money is received on behalf of a Trust, reasonable steps shall be taken to ensure that:

i. the source of the funds is properly identified; and

ii. the nature of the transaction or instruction is understood.

b. It is also important to ensure that payments are properly authorized in writing by the Trustees.

c. **Identification of New Trustees**

Where a Trustee who has been verified is replaced, the identity of the new Trustee shall be verified before he/she is allowed to exercise control over the funds.

d. **Life Policies Placed in Trust**

Where a life policy is placed in Trust, the client for the policy is also a Trustee and where the Trustees have no beneficial interest in the funds, it shall only be necessary to verify the identity of the person applying for the policy. The remainder of the Trustees would however need to be identified in a situation where policy proceeds were being paid to a third party not identified in the trust deed.

e. **Powers of Attorney and Third Party Mandates**

(a) The authority to deal with assets under a Power of Attorney and Third Party Mandates constitutes a business relationship. Consequently, at the start of the relationship, identification evidence shall be obtained from the holders of powers of attorney and third party mandates in addition to the clients or subsequently on a later appointment of a new attorney, if advised, particularly within one year of the start of the business relationship. New attorney for corporate or Trust business shall always be verified. The most important requirement is for Capital Market Operator to ascertain the reason for the grant of the power of attorney.

(b) Records of all transactions undertaken in accordance with the Power of Attorney shall be maintained as part of the client's record.

v. Executorship accounts

a. When an account is opened for the purpose of winding up the estate of a deceased person, the identity of the executor /administrator of the estate shall be verified.

b. However, identification evidence would not normally be required for the executors/administrators when payment is being made from an established bank or mortgage institution's account in the deceased's name, solely for the purpose of winding

up the estate in accordance with the Grant of Probate or Letters of Administration. Similarly, where a life policy pays out on death, there shall be no need to obtain identification evidence for the legal representatives.

c. Payments to the underlying named beneficiaries on the instructions of the executor or administrator may also be made without additional verification requirements. However, if a beneficiary wishes to transact business in his/her own name, then identification evidence shall be required.

d. In the event that suspicion is aroused concerning the nature or origin of assets comprising an estate that is being wound up, report is required to be rendered to NFIU.

vi. **Unincorporated Business/Partnerships**

a. Where the client is an un-incorporated business or a partnership whose principal partners/controllers do not already have a business relationship with the Capital Market Operators, identification evidence shall be obtained for the principal beneficial owners/controllers. This would also entail identifying one or more signatories in whom significant control has been vested by the principal beneficial owners/controllers.

b. Evidence of the trading address of the business or partnership shall be obtained.

c. The nature of the business or partnership shall be ascertained (but not necessarily verified from a partnership deed) to ensure that it has a legitimate purpose. Where a formal partnership arrangement exists, a mandate from the partnership authorizing the opening of an account or undertaking the transaction and conferring authority on those who will undertake transactions shall be obtained

C. **<u>Pure Corporate Clients</u>**

1. **General Principles**

a. Complex organizations and their structures, other corporate and legal entities are the most likely vehicles for money laundering. Those that are privately owned are being fronted by legitimate trading companies. Care shall be taken to verify the legal existence of the client company from official documents or sources and to ensure that persons purporting to act on its behalf are fully authorized.

Enquiries shall be made to confirm that the legal person is not merely a "brass-plate company" where the controlling principals cannot be identified.

b. The identity of a corporate company comprises:

i. registration number;
ii. registered corporate name and any trading names used;
iii. registered address and any separate principal trading addresses;
iv. particulars of directors;
v. owners and shareholders; and
vi. the nature of the company's business.

c. The extent of identification measures required to validate this information or the documentary evidence to be obtained depends on the nature of the business or service that the company requires from the Capital Market Operator. A risk-based approach shall be taken. In all cases, information as to the nature of the normal business activities that the company expects to undertake with the Capital Market Operator shall be obtained. Before a business relationship is established, measures shall be taken by way of company search at the Corporate Affairs Commission (CAC) and other commercial enquiries undertaken to check that the clients-company's legal existence has not been or is not in the process of being dissolved, struck off, wound up or terminated.

2. **Non Face-to-Face Business**

i. As with the requirements for private individuals, because of the additional risks with non face-to-face business, additional procedures shall be undertaken to ensure that the client business, company or society exists at the address provided and it is for a legitimate purpose.

ii. Where the characteristics of the product or service permit, care shall be taken to ensure that relevant evidence is obtained to confirm that any individual representing the company has the necessary authority to do so.

iii. Where the principal owners, controllers or signatories need to be identified within the relationship, the relevant requirements for the identification of personal clients shall be followed.

3. **Low Risk Corporate Business**

a. Public Quoted Companies

i. Corporate clients that are listed on the securities exchange are considered to be publicly owned and generally accountable. Consequently, there is no need to verify the identity of the individual shareholders.

ii. it is not necessary to identify the directors of a quoted company.

iii. Capital Market Operators shall ensure that the individual officer or employee (past or present) is not using the name of the company or its relationship with the Capital Market Operator for a criminal purpose. The Board Resolution or other authority for any representative to act on behalf of the company in its dealings with the Capital Market Operator shall be obtained to confirm that the individual has the authority to act. Phone calls can be made to the Chief Executive Officer of such a company to intimate him of the application to open the account with the capital Market Operator.

iv. No further steps shall be taken to verify identity over and above the usual commercial checks where the applicant company is:

a. Listed on a securities exchange; or

b. there is independent evidence to show that it is a wholly owned subsidiary or a subsidiary under the control of such a company.

v. Due diligence shall be conducted where the account or service required falls within the category of higher risk business.

b. Private /Public unquoted Companies

i. Where the client is a private/public unquoted company and none of the principal directors or shareholders already have an account with the Capital Market Operator, the following documents shall be obtained from an official or recognized independent source to verify the business itself:

a. a copy of the certificate of incorporation/registration, evidence of the company's registered address and the list of shareholders and directors;

b. a search at the Corporate Affairs Commission (CAC) or an enquiry via a business information service to obtain the information in (a) above; and

c. an undertaking from a firm of lawyers or accountants confirming the documents submitted to the Capital Market Operator.

ii. Attention shall be paid to the place of origin of the documents and the background against which they were produced. If comparable documents cannot be obtained, then verification of principal beneficial owners/controllers shall be undertaken.

4. **Higher Risk Business Relating to Private/Public unquoted Companies**

i. For private/public unquoted Companies undertaking higher risk business (in addition to verifying the legal existence of the business) the principal requirement is to look behind the corporate entity to identify those who have ultimate control over the business and the company's assets. What constitutes significant shareholding or control for this purpose will depend on the nature of the company. Identification evidence is required to be obtained for those shareholders with interests of 5% or more.

ii. The principal control rests with those who are mandated to manage the funds, accounts or investments without requiring authorization and who would be in a position to override internal procedures and control mechanisms.

iii. Identification evidence shall be obtained for the principal- beneficial owner(s) of the company and any other person with principal control over the

company's assets. Where the principal owner is another corporate entity or Trust, the objective is to undertake measures that look behind that company or vehicle and verify the identity of the beneficial-owner(s) or settlors. When a Capital Market Operator becomes aware that the principal-beneficial owners/controllers have changed, they shall ensure that the identities of the new ones are verified.

iv. Capital Market Operators shall identify directors who are not principal controllers and signatories to an account for risk based approach purpose.

v. where there is suspicion as a result of change in the nature of the business transacted or investment account, further checks shall be made to ascertain the reason for the changes .

vi. Particular care shall be taken to ensure that full identification and "Know Your Clients" requirements are met if the company is an International Business Company (IBC) registered in an offshore jurisdiction.

5. **Foreign *Capital Market Operator***

i. For foreign Capital Market Operators, the confirmation of existence and regulated status shall be checked by one of the following means:

a. checking with the home country's Securities Market Regulator or relevant supervisory body;

b. checking with another office, subsidiary or branch in the same country;

c. checking with the Nigerian regulated correspondent Capital Market Operator of the overseas Operator;

d. obtaining evidence of its license or authorization to conduct Securities business from the Operator itself.

ii. In addition to the identity of the Principal Employer, the source of funding shall be verified and recorded to ensure that a complete audit trail exists if the employer is dissolved or wound up.

iii. For the Trustees of Occupational Pension Schemes, satisfactory identification evidence can be based on the inspection of formal documents concerning the Trust which confirm the names of the current Trustees and their addresses for correspondence. In addition to the documents, confirming the trust identification can be based on extracts from Public Registrars or references from Professional Advisers or Investment Managers.

iv. Any payment of benefits by or on behalf of the Trustees of an Occupational Pension Scheme shall require verification of identity of the recipient.

v. Where individual members of an Occupation Pension Scheme are to be given personal investment advice, their identities shall be verified.

vi. where the Trustees and Principal Employer have been satisfactorily identified (and the information is still current) it may be appropriate for the Employer to provide confirmation of the identity of individual employees.

6. Other Institutions

A. **Charities in Nigeria**

i. Adherence to the identification procedures required for money laundering prevention purpose would remove the opportunities for opening unauthorised accounts with false identities on behalf of charities. Confirmation of the authority to act in the name of the charity is mandatory**.**

ii. The practice of opening unauthorised accounts of this type under sole control is strongly discouraged. Accounts for charities in Nigeria are required to be operated by a minimum of two signatories duly verified and documentation evidence obtained.

B. **Registered Charities**

i. When dealing with an application from a registered charity, the Capital Market Operator shall obtain and confirm the name and address of the charity concerned.

ii. To guard against the laundering of fraudulently obtained funds (where the person making the application or undertaking the transaction is not the official correspondent or the recorded alternate) a Capital Market Operator is required to send a letter to the official correspondence, informing him of the schemes application before it. The official correspondence shall be requested to respond as a matter of urgency especially where there is any reason to suggest that the application has been made without authority.

iii. Applications on behalf of unregistered charities shall be dealt with in accordance with procedures for clubs and societies set out in these Rules.

C. Clubs and Societies

i. In the case of applications made on behalf of clubs or societies, a Capital Market Operator shall take reasonable steps to satisfy itself as to the legitimate purpose of the organisation by sighting its constitution. The identity of at least two of the principal contact persons or signatories shall be verified initially in line with the requirements for private individuals. The signing authorities shall be structured to ensure that at least two of the signatories that authorize any transaction has been verified. When signatories change, Capital Market Operators shall ensure that the identities of at least two of the current signatories are verified.

ii. Where the purpose of the club or society is to purchase the shares of regulated investment company or where all the members would be regarded as individual clients, all the members in such cases are required to be identified in line with the requirements for personal clients.

iii. Capital Market Operators are required to look at each situation on a case –by case basis.

D. Occupational Pension Schemes

In all transactions undertaken on behalf of an Occupational Pension Scheme where the transaction is not in relation to a long term policy of insurance, the identities of both the Principal Employer and the Trust are required to be verified.

E. Religious Organizations (ROs)

A religious organisation is expected by law to be registered by the Corporate Affairs Commission (CAC) and shall therefore have a registered number. Its identity can be verified by reference to the CAC, appropriate headquarters or regional area of the denomination. As a Registered organisation, the identity of a least two signatories to its account shall be verified.

F. Three-Tiers of Government/Parastatals

Where the client for business is any of the above, the Capital Market Operator shall verify the legal standing of the applicant, including its principal ownership and the address. A certified copy of the Resolution or other documents authorizing the opening of the account or to undertake the transaction shall be obtained in addition to evidence that the official representing the body has the relevant authority to act. Telephone contacts shall also be made with the Chief Executive Officer of the organisation/parastatals concerned, intimating him of the application to open the account with the Capital Market Operator.

G. Foreign Consulates

The authenticity of clients that request to undertake transactions with Capital Market Operators in the name of Nigerian-resident foreign consulates and any documents of authorization presented in support of the application shall be checked with the Ministry of Foreign Affairs or the relevant authorities in the Consulate's home country.

26. INTERMEDIARIES OR OTHER THIRD PARTIES TO VERIFY IDENTITY OR TO INTRODUCE BUSINESS

A. **Who to rely upon and the circumstances**

Whilst the responsibility to obtain satisfactory identification evidence rests with the Capital Market Operator that is entering into the relationship with a client, it is reasonable, in a number of circumstances, for reliance to be placed on another Capital Market Operator to:

i. undertake the identification procedure when introducing a clients and to obtain any additional KYC information from the client; or
ii. confirm the identification details if the clients is not resident in Nigeria; or
iii. confirm that the verification of identity has been carried out (if an agent is acting for underlying principals).

B. **Introductions from Authorised Financial Intermediaries**

i. Where an intermediary introduces a client and then withdraws from the ensuing relationship altogether, then the underlying clients has become the applicant for the business. He shall be identified in line with the requirements for personal, corporate or business clients as appropriate.
ii. An introduction letter shall be issued by the introducing Capital Market Operator or person in respect of each applicant for business. To ensure that product-providers meet their obligations, that satisfactory identification evidence has been obtained and will be retained for the necessary statutory period, each introduction letter shall either be accompanied by certified copies of the identification evidence that has been obtained in line with the usual practice of certification of identification documents or by sufficient details/reference numbers, etc that will permit the actual evidence obtained to be re-obtained at a later stage.

C. **Written Applications**

For a written application (unless other arrangements have been agreed that the service provider will verify the identity itself) an intermediary shall provide along with each application, the clients's introduction letter together with certified copies of the evidence of identity which shall be placed in the clients' file.

D. **Non-Written Application**

Unit Trust Managers and other product providers receiving non-written applications from financial intermediaries (where a deal is placed over the telephone or by other electronic means) have an obligation to verify the identity of clients and ensure that the intermediary provides specific confirmation that identity has been verified. A record shall be made of the answers given by the intermediary and retained for a minimum period of five years.

E. **Introductions from Foreign Intermediaries**

Where introduced business is received from a regulated financial intermediary who is outside Nigeria, the reliance that can be placed on that intermediary to undertake the verification of identity-check shall be assessed by the Compliance officer or some other competent persons within the Capital Market Operator on a case by case basis based on the knowledge of the intermediary.

F. **Corporate Group Introductions**

i. Where a client is introduced by one part of a financial sector group to another, it is not necessary for identity to be re-verified or for the records to be duplicated provided that:
   a. the identity of the clients has been verified by the introducing parent company, branch, subsidiary or associate in line with the money laundering requirements to equivalent standards and taking account of any specific requirements such as separate address verification;
   b. no exemptions or concessions have been applied in the original verification procedures that would not be available to the new relationship;
   c. a group introduction letter is obtained and placed with the clients' account opening records; and
   d. in respect of group introducers from outside Nigeria, arrangements shall be put in place to ensure that identity is verified in accordance with requirements and that the underlying records of identity in respect of introduced clients are retained for the necessary period.
ii. Where a Capital Market Operator have day-to-day access to all the Group's "Know Your Customer" information and records, there is no need to identify an introduced clients or obtain a group introduction letter if the identity of that clients has been verified previously. However, if the identity of the clients has not previously been verified, then any missing identification evidence will need to be obtained and a risk-based approach

taken on the extent of KYC information that is available on whether or not additional information shall be obtained.

iii. Capital Market Operators shall ensure that there is no secrecy or data protection legislation that would restrict free access to the records on request or by law enforcement agencies under court order or relevant mutual assistance procedures. If it is found that such restrictions apply, copies of the underlying records of identity shall, wherever possible, be sought and retained.

iv. Where identification records are held outside Nigeria, it shall be the responsibility of the Capital Market Operators to ensure that the records available do, in fact, meet the requirements in this Manual.

G. **Business Conducted by Agents**

i. Where an applicant is dealing in its own name as agent for its own client**,** a Capital Market Operator shall, in addition to verifying the agent, establish the identity of the underlying client.

ii. A Capital Market Operator may regard evidence as sufficient if it has established that the client:

a. is bound by and has observed this Manual or the provisions of the Money Laundering (Prohibition) Act, as amended*;* and

b. is acting on behalf of another person and has given a written assurance that he has obtained and recorded evidence of the identity of the person on whose behalf he is acting.

iii. Consequently, where another Capital Market Operator deals with its own client (regardless of whether or not the underlying client is disclosed to the Capital Market Operator) then:

a. where the agent is a Capital Market Operator, there is no requirement to establish the identity of the underlying clients or to obtain any form of written confirmation from the agent concerning the due diligence undertaken on its underlying clients; or

b. where a regulated agent from outside Nigeria deals through a clients omnibus account or for a named clients through a designated account, the agent shall provide a written assurance that the identity of all the underlying clients has been verified in accordance with their local requirements.

c. Where such an assurance cannot be obtained, then the business shall not be undertaken.

d. In circumstances where an agent is either unregulated or is not covered by the relevant money laundering legislation, then each case shall be treated on its own merits. The knowledge of the agent will inform the type of the due diligence standards to apply.

H. **Correspondent Relationship**

i. Transactions conducted through correspondent relationships need to be managed, taking a risk-based approach. "Know Your Correspondent" procedures are required to be established to ascertain whether or not the correspondent Capital Market Operator or the counter-party is itself regulated for money laundering prevention. If regulated, the correspondent, Capital Market Operator is required to verify the identity of its clients in accordance with FATF-standards. Where this is not the case, additional due diligence will be required to ascertain and assess the correspondent Capital Market Operator internal policy on money laundering prevention and know your clients procedures.

ii. The volume and nature of transactions flowing through correspondent accounts with Capital Market Operator from high risk jurisdictions or those with inadequacies or material deficiencies shall be monitored against expected levels, destinations and any material variances shall be checked.

iii. Capital Market Operators shall maintain records of having ensured that sufficient due diligence has been undertaken by the remitting bank on the underlying client and the origin of the funds in respect of the funds passed through their accounts.

a. Capital Market Operators shall guard against establishing correspondent relationships with high risk foreign banks (e.g. shell banks with no physical presence in any country) or with correspondent banks that permit their accounts to be used by such banks.

I. **Acquisition of One *Capital Market Operator*/Business By Another**

i. When one Capital Market Operator acquires the business and accounts of another Capital Market Operator, it is not necessary for the identity of all the existing clients to be re-identified, provided that all the underlying clients' records are acquired with the business. It is, however, important to carry out due diligence enquiries to confirm that the acquired operator had conformed with the requirements in this Manual.

ii. Verification of identity shall be undertaken as soon as it is practicable for all the transferred clients who were not verified by the transferor in line with the requirements for existing clients that open new accounts, where:

a. the money laundering procedures previously undertaken have not been in accordance with the requirements of this Manual;

b. the procedures cannot be checked; or

c. the clients-records are not available to the acquiring Capital Market Operator.

27. RECEIVING CAPITAL MARKET OPERATORS AND AGENTS

A. **Vulnerability of Receiving Bankers and Agents to Money Laundering**

Receiving Capital Market Operators may be used by money launderers in respect of offers for sale where new issues are over-subscribed and their allocation is scaled down. In addition, the money launderer is not concerned if there is a cost involved in laundering criminal money. New issues that trade at a discount will, therefore, still prove acceptable to the money launderer. Criminal funds can be laundered by way of the true beneficial-owner of the funds providing the payment for an application in another person's name, specifically to avoid the verification process and to break the audit trail with the underlying crime from which the funds are derived.

B. **Who shall be identified?**

i. Receiving Capital Market Operators shall obtain satisfactory identification evidence of new applicants, including such applicants in a rights issue where the value of a single transaction or a series of linked transactions is US$1,000 or its equivalent for foreign transfers or N250,000 for individuals and N500,0000 for corporate body or more.

ii. If funds to be invested are being supplied by or on behalf of a third party, it is important that the identification evidence for both the applicant and the provider of the funds are obtained to ensure that the audit trail for the funds is preserved.

C. **Applications Received via Brokers**

i. Where the application is submitted (payment made) by a broker or an intermediary acting as agent, no steps need be taken to verify the identity of the underlying applicants. However, the following standard procedures apply:

a. The lodging agent's stamp shall be affixed on the application form or allotment letter; and

b. Application/acceptance forms and cover letters submitted by lodging agents shall be identified and recorded in the Capital Market Operator's records.

ii. The terms and conditions of the issue shall state that any requirements to obtain identification evidence are the responsibility of the broker lodging the application and not the receiving Capital Market Operator.

iii. Where the original application has been submitted by a regulated broker, no additional identification evidence will be necessary for subsequent calls in respect of shares issued and partly paid.

D. **Applications Received from Foreign Brokers**

If the broker or other introducer is a regulated person or institution (including an overseas branch or subsidiary) from a country with equivalent legislation and financial sector procedures, and the broker or introducer is subject to anti-money laundering rules or regulations, then a written

assurance can be taken from the broker that he/she has obtained and recorded evidence of identity of any principal and underlying beneficial owner that is introduced.

E. **Multiple Family Applications**

i. Where multiple family applications are received supported by one cheque and the aggregate subscription price is US$1,000 or its equivalent for foreign transfers; and N250,000 or more for an individual person, then identification evidence will not be required for:

a. a spouse or any other person whose surname and address are the same as those of the applicant who has signed the cheque;

b. a joint account holder; or

c. an application in the name of a child where the relevant company's Articles of Association prohibit the registration in the names of minors and the shares are to be registered with the name of the family member of full age on whose account the cheque is drawn and who has signed the application form.

ii. However, identification evidence of the signatory of the financial instrument will be required for any multiple family application for more than US$1,000 or its equivalent for foreign transfers; or more than N250, 000 for an individual; or more than N500, 000 for a body corporate where such is supported by a cheque signed by someone whose name differs from that of the applicant. Other monetary amounts or more may, from time to time, be stipulated by any applicable money laundering legislation/guidelines.

iii. Where an application is supported by a financial institution's branch cheque or brokers' draft, the applicant shall state the name and account number from which the funds were drawn:

a. on the front of the cheque; or

b. on the back of the cheque together with a branch stamp; or

c.. providing other supporting documents.

F. **Linked Transactions**

i. If it appears to a person handling applications that a number of single applications under US$1,000 and N500, 000 in different names are linked (e.g. payments from the same Capital Market Operator account) apart from the multiple family applications above, identification evidence shall be obtained in respect of parties involved in each single transaction.

ii. Instalment payment issues shall be treated as linked transactions where it is known that total payments will amount to US$1,000 or its equivalent for foreign transfers or N250,000 for an individual; or N500,0000 for body corporate or such other monetary amounts as may, from time to time, be stipulated by any applicable money laundering legislation or guidelines. Either at the outset or when a particular point has been reached, identification evidence shall be obtained.

iii. Applications that are believed to be linked and money laundering is suspected shall be processed on a separate batch for investigation after allotment and registration has been completed. Returns with the documentary evidence are to be rendered to the NFIU accordingly. Copies of the supporting cheques, application forms and any repayment-cheques shall be retained to provide an audit trail until the receiving Capital Market Operator is informed by NFIU or the investigating officer that the records are of no further interest.

28. EXEMPTION FROM IDENTIFICATION PROCEDURES

Where a client's identity was not properly obtained as contained in this Manual and Requirements for Account Opening Procedure, Capital Market Operators shall re-establish the client's identity in line with the contents of this Manual, except where it concerns:

i. Nigerian Capital Market Operators

Identification evidence is not required where the client for business is a Nigerian Capital Market Operator or person covered and regulated by the requirements of this Manual.

ii. One-off Cash Transaction (Remittances, Wire Transfers, etc)

Cash remittances and wire transfers (either inward or outward) or other monetary instruments that are undertaken against payment in cash for clients who do not have an account or other established relationship with the Capital Market Operator (i.e. walk –in clients) present a high risk for money laundering purposes. It is therefore required that adequate procedures are established to record the transaction and relevant identification evidence taken, where necessary. Where such transactions form a regular part of the Capital Market Operator's business, the limits for requiring identification evidence of US $1,000 or its equivalent for foreign transfers; N250,000 for individual and N500,000 for a corporate body must, however, be observed.

iii. **Re-investment of Income**

The proceeds of a one-off transaction can be paid to a client or be further re-invested where records of his identification requirements were obtained and kept. In the absence of this his/her identification requirements shall be obtained before the proceeds are paid to him or be re-invested on his behalf in accordance with the relevant provision of this Manual.

29. **SANCTIONS FOR NON-COMPLIANCE WITH KYC**

Failure to comply with the provisions contained in this Manual will attract appropriate sanction in accordance with Money Laundering Act/Combating Financing Terrorism laws and as detailed in the Anti Money Laundering Act/Combating Financing Terrorism section of this Manual.

(28 JULY 2010)

SCHEDULE XII

CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES

INTRODUCTION

It is generally agreed that weak corporate governance has been responsible for some recent corporate failures in Nigeria. In order to improve corporate governance, the Securities and Exchange Commission, in September 2008, inaugurated a National Committee chaired by Mr. M. B. Mahmoud for the Review of the 2003 Code of Corporate Governance for Public Companies in Nigeria to address its weaknesses and to improve the mechanism for its enforceability. In particular, the Committee was given the mandate to identify weaknesses in, and constraints to, good corporate governance, and to examine and recommend ways of effecting greater compliance and to advise on other issues that are relevant to promoting good corporate governance practices by public companies in Nigeria, and for aligning it with international best practices.

The Board of SEC therefore believes that this new code of corporate governance will ensure the highest standards of transparency, accountability and good corporate governance, without unduly inhibiting enterprise and innovation.

Whilst the Code is limited to public companies, the Commission would like to encourage other companies not covered by the Code to use the principles set out in the Code, where appropriate, to guide them in the conduct of their affairs.

PART A - APPLICATION OF THE CODE

1. Application of the Code

1.1. The Code of Corporate Governance shall apply to the following entities:

(a) all public companies whose securities are listed on a recognised securities exchange in Nigeria;

(b) all companies seeking to raise funds from the capital market through the issuance of securities or seeking listing by introduction;

(c) all other public companies;

1.2. The Code shall apply to the entities listed in sub-section 1.1 above in the following manner:

(a) All public companies whose securities are listed on a recognised securities exchange shall comply with the principles and provisions of this code which should form the basis of the minimum standard of their corporate behaviour.

(b) All companies seeking to raise funds from the capital market, through the issuance of securities or seeking listing by introduction will be expected to demonstrate sufficient compliance with the principles and provisions of this code appropriate to their size, circumstances or operating environment.

1.3. The following shall guide the application of this code:

(a) The Code is not intended as a rigid set of rules. It is expected to be viewed and understood as a guide to facilitate sound corporate practices and behaviour. The Code should be seen as a dynamic document defining minimum standards of corporate governance expected particularly of public companies with listed securities.

(b) The responsibility for ensuring compliance with or observance of the principles and provisions of this code is primarily with the Board of Directors. However, shareholders, especially institutional shareholders, are expected to familiarise themselves with the letter and spirit of the code and encourage or whenever necessary, demand compliance by their companies.

(c) The question whether a company or entity required to comply with or to observe the principles or the provisions of this code, has complied with or has so observed the provisions of the Code shall, in the first instance, be determined by the Board and its shareholders and thereafter by SEC.

(d) Whenever SEC determines that a company or entity required to comply with or observe the principles or provisions of this code is in breach, the SEC shall notify the company or entity concerned specifying the areas of non-compliance or non-observance and the specific action or actions needed to remedy the non- compliance or non-observance.

(e) SEC shall from time to time issue guidelines or circulars to facilitate compliance with or observance of the principles and provisions of this Code.

(f) In their Annual Report to Securities & Exchange Commission (SEC), public companies shall indicate their level of compliance with the Code of Corporate Governance.

(g)Where there is a conflict between this code and the provisions of any other code in relation to a company covered by the two codes, the code that makes a stricter provision shall apply.

PART B THE BOARD OF DIRECTORS

2. Responsibilities of the Board

2.1. The Board is accountable and responsible for the performance and affairs of the company. It should define the company's strategic goals and ensure that its human and financial resources are effectively deployed towards attaining those goals.

2.2. The principal objective of the Board is to ensure that the company is properly managed. It is the responsibility of the Board to oversee the effective performance of the Management in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.

2.3. The primary responsibility for ensuring good corporate governance in companies lies with the Board. Accordingly, the Board should ensure that the company carries on its business in accordance with its articles and memorandum of association and in conformity with the laws of the country, observing the highest ethical standards and on an environmentally sustainable basis.

2.4. The Board shall define a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board. The delegation of any duty or authority to the Management does not in any way diminish the overall responsibility of the Board and its directors as being accountable and responsible for the affairs and performance of the company.

3. Duties of the Board

3.1. The duties of the Board shall include the following:

(a) formulation of policies and overseeing the Management and conduct of the business;

(b) formulation and management of risk management framework;

(c) succession planning and the appointment, training, remuneration and replacement of board members and senior management;

(d) overseeing the effectiveness and adequacy of internal control systems;

(e) overseeing the maintenance of the company's communication and information dissemination policy;

(f) performance appraisal and compensation of board members and senior executives;

(g) ensuring effective communication with shareholders;

(h) ensuring the integrity of financial reports;

(i) ensuring that ethical standards are maintained; and

(j) ensuring compliance with the laws of Nigeria.

4. Composition and Structure of the Board

4.1. The Board should be of a sufficient size relative to the scale and complexity of the company's operations and be composed in such a way as to ensure diversity of experience without compromising independence, compatibility, integrity and availability of members to attend meetings.

4.2. Membership of the Board should not be less than five (5).

4.3. The Board should comprise a mix of executive and non-executive directors, headed by a Chairman. The majority of Board members should be non-executive directors, at least one of whom should be independent director.

4.4. The members of the Board should be individuals with, upright personal characteristics, relevant core competences and entrepreneurial spirit. They should have a record of tangible achievement and should be knowledgeable in Board matters. Members should posses a sense of accountability and integrity and be committed to the task of good corporate governance.

4.5. The Board should be independent of Management to enable it carry out its oversight function in an objective and effective manner.

5. Officers of the Board
5.1. The Chairman

(a) The Chairman's primary responsibility is to ensure effective operation of the Board and that it works towards achieving the company's strategic objectives. He should not be involved in the day-to-day operations of the company. This should be the primary responsibility of the Chief Executive Officer and the management team.

(b) For all public companies with listed securities, the positions of the Chairman of the Board and Chief Executive Officer shall be separate and held by different individuals. This is to avoid over concentration of powers in one individual which may rob the Board of the required checks and balances in the discharge of its duties.

(c) The Chairman of the Board should be a non-executive director.

(d) The Chairman´s functions should include the following:

(i) providing overall leadership and direction for the board and the company;

(ii) setting the annual board plan;

(iii) setting the agenda for board meetings in conjunction with the CEO and the Company Secretary;

(iv) playing a leading role in ensuring that Board and its committees are composed of the relevant skills, competencies and desired experience;

(v) ensuring that Board meetings are properly conducted and the Board is effective and functions in a cohesive manner;

(vi) ensuring that board members receive accurate and clear information in a timely manner, about the affairs of the company to enable directors take sound decisions;

(vii) acting as the main link between the Board and the CEO as well as advising the CEO in the effective discharge of his duties;

(viii) ensuring that all directors focus on their key responsibilities and play constructive role in the affairs of the company;

(ix) ensuring that induction programmes are conducted for new directors and continuing education programmes is in place for all directors;

(x) ensuring effective communication and relations with company's institutional shareholders and strategic stakeholders;

(xi) taking a lead role in the assessment, improvement and development of the Board; and

(xii) presiding over general meetings of shareholders.

5.2. The Chief Executive Officer/Managing Director

(a) The Chief Executive Officer (CEO) or Managing Director (MD) should be the head of the management team and is answerable to the board.

(b) The CEO/MD should be knowledgeable in relevant areas of the company's activities. He should demonstrate industry, credibility and integrity and should have the confidence of the Board and management;

(c) The CEO/MD and the senior management should establish a culture of integrity and legal compliance which should be imbibed by personnel at all levels of the company.

(d) The functions and responsibilities of the CEO/MD should include the following:

i. day-to-day running of the company;

ii. guiding the development and growth of the company;

iii. acting as the company's leading representative in its dealings with its stakeholders;

(e) The authority of the CEO/MD and the relationship between the office and the Board should be clearly and adequately described in a letter of appointment.

(f) The Board may delegate such of its powers to the CEO/MD as it may deem appropriate or necessary to ensure smooth operation of the company.

(g) The remuneration of the CEO/MD should comprise a component that is long-term performance related and may include stock options and bonuses which should however, be disclosed in the company's annual reports.

5.3. Executive Directors

(a) Executive directors, like the CEO/MD, should be persons knowledgeable in relevant areas of the company's activities in addition to possessing such other qualifications needed for their specific assignments or responsibilities.

(b) Executive directors should be involved in the day-to-day operations and management of the company. In particular, they should be responsible for the departments they head and should be answerable to the Board through the CEO/MD.

(c) Executive directors should not be involved in the determination of their remuneration.

(d) The remuneration of executive directors should comprise a component that is long-term performance related and may include stock options and bonuses which should however, be disclosed in the company's annual reports.

(e) Executive directors should not receive the sitting allowances or director's fees paid to non-executive directors.

5.4. Non-Executive Directors

(a) Non-executive directors should be key members of the Board. They should bring independent judgment as well as necessary scrutiny to the proposals and actions of the management and executive directors especially on issues of strategy, performance evaluation and key appointments.

(b) Non-executive directors should accordingly be persons of high calibre with broad experience, integrity and credibility.

(c) Non-executive directors should be provided with a conducive environment for the effective discharge of their duties. Adequate and comprehensive information on all Board matters should be provided in a timely manner.

Board papers should be made available to them at least one week ahead of Board or committee meetings.

5.5. Independent Directors

(a) An independent director is a non-executive director who:

(i) is not a substantial shareholder of the company, that is one whose shareholding, directly or indirectly, does not exceed 0.1% of the company's paid up capital;

(ii) is not a representative of a shareholder that has the ability to control or significantly influence management;

(iii) has not been employed by the company or the group of which it currently forms part, or has served in any executive capacity in the company or group for the preceding three financial years;

(iv) is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity;

(v) is not a professional advisor to the company or the group, other than in a capacity of a director;

(vi) is not a significant supplier to or customer of the company or group;

(vii) has no significant contractual relationship with the company or group and is free from any business or other relationship which could materially interfere with his/her capacity to act in an independent manner; and

(viii) is not a partner or an executive of the company's statutory audit firm, internal audit firm, legal or other consulting firm that have material association with the company and has not been a partner or an executive of any such firm for three financial years preceding his/her appointment.

(b) an independent director should be free of any relationship with the company or its management that may impair, or appear to impair, the director's ability to make independent judgments.

(c) every public company should have a minimum of one independent director on its Board.

6. Multiple Directorships

6.1. There should be no limit on the number of concurrent directorships a director of a company may hold. However, concurrent service on too many boards may interfere with an individual's ability to discharge his responsibilities. The Board and the shareholders should therefore give careful consideration to other obligations and commitments of nominees in assessing their suitability for appointment into the Board. Accordingly,

(a) A prospective nominee to the Board of a company should disclose memberships on other Boards;

(b) The Board should consider the other directorships held by such a prospective nominee and determine whether the prospective nominee can contribute effectively to the performance of the Board and the discharge of its responsibilities before recommending such a person for appointment.

(c) Serving directors should notify the Board through the Chairman of prospective appointments on other Boards.

(d) Directors should not be members of Boards of companies in the same industry to avoid conflict of interest, breach of confidentiality and misappropriation of corporate opportunity.

7. Family and Interlocking Directorship

7.1. To safeguard the independence of the Board, not more than two members of the same family should sit on the Board of a public company at the same time.

7.2. To safeguard the objectivity and independence of the Board, cross memberships on the boards of two or more companies should be discouraged. However, where that will lead to a conflict of interest situation as in cross-memberships of boards of competing companies, then it must be disallowed.

8. Company Secretary

8.1. The company secretary should be a person possessing the relevant qualification and competence necessary to effectively discharge the duties of his office. Accordingly, the company secretary should be appointed through a rigorous selection process that is applicable for appointment of new directors.

8.2. The company secretary has the primary duty of assisting the Board and management in implementing this code and developing good corporate governance practices and culture.

8.3. The Company secretary shall report directly to the CEO/MD but shall also have a direct channel of communication to the Chairman.

8.4. In addition to his statutory functions, the company secretary should carry out the following duties and responsibilities:

(a) provide the Board and directors individually, with detailed guidance as to how their responsibilities should be properly discharged in the best interest of the company;
(b) coordinate the orientation and training of new directors;

(c) assist the Chairman and CEO/MD to determine the annual Board plan and with the administration of other strategic issues at the Board level;

(d) compilation of the Board papers and ensuring that the Board's discussions and decisions are clearly and properly recorded and communicated to the relevant persons;

(e) notify the Board members of matters that warrant their attention; and

(f) provide a central source of guidance and advice to the Board and the company, on matters of ethics, conflict of interest and good corporate governance;

8.5. The company secretary should be properly empowered by the board to effectively discharge his duties and responsibilities. His appointment and termination should be tabled and ratified by the Board.

9. Board Committees

9.1. The Board should determine the extent to which its duties and responsibilities should be undertaken through committees. It should determine the number and composition of such committees ensuring that each committee comprises the relevant skills and competences and its members are able to devote sufficient time to the committee's work.

9.2. The Board may in addition to the Audit Committee required by CAMA establish a Governance/Remuneration Committee and Risk Management Committee and such other committees as the Board may deem appropriate depending on the size, needs or industry requirements of the company.

9.3. It is the responsibility of the Board to facilitate the effective discharge of the duties and responsibilities of Board committees. Accordingly, the Board should ensure that committees are provided all necessary information in a timely manner. Committees should in addition be free to seek independent professional advice at the expense of the company subject to the approval of the Board.

9.4. Only directors should be members of Board committees, however, senior management may be in attendance.

10. The Risk Management Committee

10.1. The Board may establish a Risk Management Committee to assist it in its oversight of the risk profile, risk management framework and the risk-reward strategy determined by the Board.

10.2. The functions of the Committee should be guided by a written terms of reference or a charter and should include the following:

(a) review and approval of the companies risk management policy including risk appetite and risk strategy;

(b) review the adequacy and effectiveness of risk management and controls;

(c) oversight of management's process for the identification of significant risks across the company and the adequacy of prevention, detection and reporting mechanisms;

(d) review of the company's compliance level with applicable laws and regulatory requirements that may impact the company's risk profile;

(e) periodic review of changes in the economic and business environment, including emerging trends and other factors relevant to the company's risk profile; and

(f) review and recommend for approval of the Board risk management procedures and controls for new products and services.

10.3. To enhance the risk management function, a senior management staff should be detailed to perform the function and attend the meetings of the Risk Management Committee.

10.4. The CEO/MD, executive directors and the head of the internal audit unit should attend the meetings of the Risk Management Committee.

11. The Governance/Remuneration Committee

11.1. The Board may establish a Governance/Remuneration committee which should comprise solely of non-executive directors.

11.2. The functions of the Governance/remuneration committee should be guided by a written terms of reference or charter and should include the following:-

(a) establish the criteria for board and board committee memberships, review candidates qualifications and any potential conflict of interest, assess the contribution of current directors in connection with their re-nomination and make recommendations to the Board;

(b) prepare a job specification for the Chairman's position, including an assessment of time commitment required of the candidate;

(c) periodically evaluate the skills, knowledge and experience required on the Board;

(d) make recommendations on experience required by Board committee members, committee appointments and removal, operating structure, reporting and other committee operational matters;

(e) make recommendations on compensation structure for executive directors;

(f) provide input to the annual report of the company in respect of director compensation;

(g) ensure that an succession policy and plan exist for the positions of Chairman, CEO/MD, the executive directors and the subsidiary managing directors for Group companies;

(h) ensure that the Board conducts a Board evaluation on an annual basis;

(i) review the performance and effectiveness of the subsidiary company Boards on an annual basis where applicable; and

(j) review and make recommendations to the Board for approval of the company's organisational structure and any proposed amendments.

12. Meetings of the Board

12.1. To effectively perform its oversight function and monitor management's performance, the Board should meet at least once every quarter.

12.2. Every director should be required to attend at least two-thirds of all Board meetings. Such attendance shall be a criteria for the re-nomination of a director except there are cogent reasons which the Board must notify the shareholders of at the annual general meeting.

13. Appointment to the Board

13.1. The Board should develop a written, clearly defined, formal and transparent procedure for appointment to the Board of directors.

13.2. The criteria for the selection of directors should be written and defined to reflect the existing Board‟s strengths and weaknesses, required skill and experience, its current age range and gender composition.

13.3. The Board should ascertain whether nominees for the position of directors are fit and proper and are not disqualified from being directors.

13.4. Shareholders should be provided with biographical information of proposed directors including:

(a) **Name, age, qualification and country of principal residence**;

(b) whether the appointment is executive, non-executive or independent and any proposed specific area of responsibility;

(c) work experience and occupation in preceding ten years;

(d) current directorships and appointments with statutory or regulatory authorities in the preceding five years;

(e) shareholding in the company and its subsidiaries; and

(f) any real or potential conflict of interest, including whether he is an interlock director.

13.5. A section of the company's annual report should state the processes used in relation to all Board appointments.

14. Remuneration

14.1. Companies should develop a comprehensive policy on remuneration for directors and senior management. Levels of remuneration should be sufficient to attract, motivate and retain skilled and qualified persons needed to run the company successfully. The remuneration policy should:

(a) define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism;

(b) define a process, if necessary with the assistance of external advisers, for determining executive and non-executive directors' compensation; and

(c) provide how and to what extent executive directors' reward should be linked to corporate and individual performance.

14.2. The Board should approve the remuneration of each executive director including the CEO individually taking into consideration direct relevance of skill and experience to the company at that time.

14.3. Only non-executive directors should be involved in decisions regarding the remuneration of executive directors.

14.4. Where share options are adopted as part of executive remuneration or compensation, the Board should ensure that they not priced at a discount except with the authorization of the SEC. Any such deferred compensation should not be exercisable until one year after the expiration of the minimum tenor of directorship.

14.5. Where share options are granted as part of remuneration to directors, the limits should be set in any given financial year and subject to the approval of the shareholders in general meeting.

14.6. Compensation for non-executive directors should be fixed by the Board and approved by shareholders in general meeting. However, the fees and allowances or other incentives tied to corporate performance, paid to non-executive directors, should not be at a level that could compromise their independence.

14.7. Companies should disclose in their annual report, details of shares of the company held by all directors, including on an "if-converted" basis. This disclosure should include indirect holdings.

14.8. All directors should be required to disclose their share holding whether on a proprietary or fiduciary basis in the public company in which they are proposed to be appointed as directors, prior to their appointment.

14.9. The Board should undertake a periodic "peer review" of its compensation and remuneration levels to ensure that the company remains competitive

14.10. The company's remuneration policy and all material benefits and compensation paid to directors should be published in the company's annual report.

15. Performance Evaluation of the Board

15.1. The Board should establish a system to undertake a formal and rigorous annual evaluation of its own performance, that of its committees, the Chairman and individual directors.

15.2. The evaluation system should include the criteria and key performance indicators and targets for the Board, its committees, the Chairman and each individual committee member.

15.3. The Chairman should oversee the annual evaluation of the performance of the chief executive officer. The CEO/MD should similarly perform an annual evaluation for the executive directors based on agreed criteria or performance indicators.

15.4. The result of the Board performance evaluation should be communicated and discussed by the Board as a whole; while those of individual directors should be communicated and discussed with them by the Chairman.

15.5. Where the performance of a director is determined to be unsatisfactory, the director concerned should undergo further training. Where such is not feasible or practicable, the director may be removed in accordance with established procedures.

15.6. The Board may engage the services of external consultants to facilitate the performance evaluation of the Board, its committees; or individual directors.

15.7. The cumulative result of the performance evaluation of the Board and individual directors should be used as a guide in deciding eligibility for re-election.

16. Conflict of Interest

16.1. Companies should adopt a policy to guide the Board and individual directors on conflict of interest situations. Such a policy should include the following principles:

(a) Directors should promptly disclose any real or potential conflict of interest that they may have regarding any matters that may come before the Board or its committees.

(b) A director should abstain from discussions and voting on any matter in which the director has or may have conflict of interest.

(c) If a director is not certain whether he is in a conflict of interest situation, the director concerned should discuss the matter with the Chairman of the Board or with the company secretary for advice and guidance.

(d) If any question arises before the Board as to the existence of a real or perceived conflict, the Board should by a simple majority determine if a conflict exists. The director or directors potentially in the conflict of interest situation shall not participate in any discussion and shall not vote on the issue.

(e) Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow director, have a responsibility to promptly raise the issue for clarification, either with the director concerned or with the Chairman of the Board.

(f) Disclosure by a director of a real, potential or perceived conflict of interest or a decision by the Board as to whether a conflict of interest exists should be recorded in the minutes of the meeting.

17. Insider Trading

Directors of public companies, their immediate families, that is spouse, son, daughter, mother or father, and other insiders as defined under Section 315 of ISA and Rule 110 (3) of the SEC Rules and Regulations, in possession of price sensitive information or other confidential information, shall not deal with the securities of the company where such would amount to insider trading as defined under the Investment and Securities Act 2007.

18. Orientation and Training of Directors

18.1. The Board should establish a formal orientation programme to familiarize new directors with the company's operations, strategic plan, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities.

18.2. It is mandatory for all directors to participate in periodic, relevant, professional continuing education programmes in order to update their knowledge and skills and keep them informed of new developments in the company's business and operating environment. The objective of the training is to assist the directors to fully and effectively discharge their duties to the company. The training shall be at the company's expense.

19. Tenure and Re-election of Directors

19.1. Subject to satisfactory performance and the provisions of CAMA, all directors should be submitted for re-election at regular intervals of at least once every three (3) years. In order to guide decision of shareholders, names and sufficient biographical details of directors nominated for re-election should be accompanied by performance evaluation results and any other relevant information.

19.2. Non-executive directors of public companies should serve for reasonable periods on the Board. However, it is necessary to continually reinforce the Board by injecting new energy, fresh ideas and perspectives. The Board should ensure the periodic appointment of new directors to replace existing non-executive directors.

20. Terms and Conditions of Service

20.1. The terms and conditions of a director's employment or service on the Board should be in writing and issued to the director in the form of a contract.

20.2. The letters of appointment should cover the following issues:

(a) duration or term of appointment;

(b) remuneration package and method of remuneration;

(c) explanation of the duties of care, skill and diligence and other responsibilities of the director;

(d) requirement to disclose any material interests in the company and other entities related to the company;

(e) requirement to periodically disclose material interests in contracts in which the company is interested or involved;

(f) specific requirements, such as Board meeting attendance

(g) synopsis of directors rights;

(h) formal orientation programme or training required for the director to attend;

(i) copy of Board charter, code of ethics or code of conduct and the directors responsibility to observe same;

(j) director evaluation programme used by the company; and

(k) Any other contractual responsibilities.

PART C RELATIONSHIP WITH SHAREHOLDERS

21. Meetings of Shareholders

21.1. The general meetings of the company should be the primary avenue for meeting and interaction between the shareholders, Management and Board;

21.2. The Board should ensure that all shareholders are treated fairly and are given equal access to information about the company;

21.3. General meetings should be conducted in an open manner allowing for free discussions on all issues on the agenda. Sufficient time should be allocated to shareholders to participate fully and contribute effectively at the meetings.

21.4. The chairmen of all Board committees and of the statutory audit committee should be present at general meetings of the company to respond to shareholders queries and questions.

22. Protection of Shareholder Rights

22.1. The Board should ensure that shareholders‟ statutory and general rights are protected at all times. In particular, the Board should ensure that shareholders at annual general meeting maintain their effective powers to appoint and remove directors of the company.

22.2. The Board should ensure that all shareholders are treated equally. No shareholder, however large his shareholding, and whether institutional or otherwise, should be given preferential treatment or superior access to information or other materials.

22.3. It is the responsibility of the Board to ensure that minority shareholders are treated fairly at all times and are adequately protected from abusive actions of controlling shareholders.

22.4. The Board should ensure that the company promptly renders to shareholders documentary evidence of ownership interest in the company such as share certificates, dividend warrants and related instruments. Where these are rendered electronically, the Board should ensure that they are rendered promptly and in a secure manner;

22.5. Shareholder representation on a Board should be proportionate to the size of shareholding. The company should stipulate that shareholders holding more than a specified ratio of the total issued capital of the company should have a representative on the Board unless there are cogent reasons that make that impracticable.

23. Venue of Meeting

The venue of a general meeting should be accessible to shareholders. The Board should ensure that shareholders are not disenfranchised on account of choice of venue.

24. Notice of Meeting

Notices of general meetings shall be 21 days from the date on which the notice was sent out. Companies shall allow at least seven days for service of notice if sent out by post from the day the letter containing the same is posted. The notices should include copies of documents, including annual reports and audited financial statements and other information as will enable members prepare adequately for the meeting.

25. Resolutions

25.1. The Board should ensure that unrelated issues for consideration are not lumped together at general meetings. Statutory business should be clearly and separately set out. Separate resolutions should be proposed and voted on for each substantial issue.

25.2. The Board should ensure that decisions reached at general meetings are properly and fully implemented.

26. The Role of Shareholder Associations

The Board of every public company should ensure that dealings of the company with shareholder associations are always transparent and in strict adherence with the Code for Shareholder Association published by the SEC.

27. Institutional Shareholders

Shareholders of public companies should play a key role in good corporate governance. In particular, Institutional shareholders and other shareholders with large holdings should seek to positively influence the standard of corporate governance in the companies in which they invest. They should demand compliance with the principles and provisions of this Code. They should seek explanations whenever they observe non-compliance with the Code.

PART D RELATIONSHIP WITH OTHER STAKEHOLDERS

28. Sustainability Issues

28.1. Companies should pay adequate attention to the interests of its stakeholders such as its employees, host community, the consumers and the general public. Public companies should demonstrate sensitivity to Nigeria‟s social and cultural diversity and should as much as possible promote strategic national interests as well as national ethos and values without compromising global aspirations where applicable.

28.2. Companies should recognise corruption as a major threat to business and to national development and therefore as a sustainability issue for businesses in Nigeria. Companies, Boards and individual directors must commit themselves to transparent dealings and to the establishment of a culture of integrity and zero tolerance to corruption and corrupt practices.

28.3. The Board should report annually on the nature and extent of its social, ethical, safety, health and environmental policies and practices. Issues should be categorized into the following levels of reporting:

(a) disclosures of the company's business principles and codes of practice and efforts towards implementation of same;

(b) description of workplace accidents, fatalities and occupational and safety incidents against objectives and targets and a suitable explanation where appropriate;

(c) disclose the companies policies, plans and strategy of addressing and managing the impact of HIV/AIDS, Malaria and other serious diseases on company's employees and their families;

(d) application, in the company's operations, of options with the most benefit or least damage to the environment, particularly for companies operating in disadvantaged regions or in regions with delicate ecology in order to minimize environmental impact of the company's operations;

(e) the nature and extent of employment equity and gender policies and practices, especially as they relate to the executive level opportunities;

(f) information on number and diversity of staff, training initiatives, employee development and the associated financial investment;
(g) disclosure on the conditions and opportunities created for physically challenged persons or disadvantaged individuals;

(h) the nature and extent of the company's social investment policy; and

(i) disclosure on the company's policies on corruption and related issues and the extent of the compliance with the policies and the company's code of ethics.

PART E - RISK MANAGEMENT AND AUDIT

29. Risk Management

29.1. The Board is responsible for the process of risk management. It should accordingly form its own opinion on the effectiveness of the process. Management is accountable to the Board for implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the company.

29.2. The Board should:

(a) Oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits. The framework should be formally approved by the Board. The company's risk management policies should be communicated in simple and clear language to all employees to ensure the integration of risk awareness at all levels of the company.

(b) Ensure that the risk management framework is integrated into the day-to-day, operations of the business and provides guidelines and standards for administering the acceptance and on-going management of key risks such as operational, reputational, financial, market, technology and compliance risk.

(c) Undertake at least annually, a thorough risk assessment covering all aspects of the company's business. The results of the risk assessment should be used to update the risk management framework of the company.

(d) Obtain and review periodically relevant reports to ensure the ongoing effectiveness of the company's risk management framework.

(e) Ensure that the company's risk management policies and practices are disclosed in the annual report.

30. The Audit Committee

30.1. Every public company is required under Section 359 (3) and (4) of the CAMA to establish an audit committee. It is the responsibility of the Board to ensure that the committee is constituted in the manner stipulated and is able to effectively discharge its statutory duties and responsibilities. At least one board member of the committee should be financially literate.

30.2. Members of the committee should have basic financial literacy and should be able to read financial statements. At least one member should have knowledge of accounting or financial management.

30.3. Whenever necessary, the committee may obtain external professional advice.

30.4. In addition to its Statutory functions, the audit committee, should have the following additional responsibilities:

(a) assist in the oversight of the integrity of the company's financial statements, compliance with legal and other regulatory requirements, assessment of qualifications and independence of external auditor; and performance of the company's internal audit function as well as that of external auditors;

(b) establish an internal audit function and ensure there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal controls in the company;

(c) ensure the development of a comprehensive internal control framework for the company; obtain assurance and report annually in the financial report, on the operating effectiveness of the company's internal control framework.

(d) oversee management's process for the identification of significant fraud risks across the company and ensure that adequate prevention, detection and reporting mechanisms are in place;

(e) at least on an annual basis, obtain and review a report by the internal auditor describing the strength and quality of internal controls including any issues or recommendations for improvement, raised by the most recent internal control review of the company;

(f) discuss the annual audited financial statements and half yearly unaudited statements with management and external auditors;

(g) discuss policies and strategies with respect to risk assessment and management;

(h) meet separately and periodically with management, internal auditors and external auditors;

(i) review and ensure that adequate whistle-blowing procedures are in place. A summary of issues reported are highlighted to the chairman;

(j) review, with the external auditor, any audit scope limitations or problems encountered and management's responses to same;

(k) review the independence of the external auditors and ensure that where non-audit services are provided by the External Auditors, there is no conflict of interest;

(l) preserve auditor independence, by setting clear hiring policies for employees or former employees of independent auditors;

(m) consider any related party transactions that may arise within the company or group;

(n) invoke its authority to investigate any matter within its terms of reference and the company must make available the resources to the internal auditors with which to carry out this function including access to external advice where necessary; and

(o) report regularly to the Board.

31. Internal Audit Function

31.1. All companies should have an effective risk–based internal audit function. Where the Board, decides not to establish such a function, sufficient reasons must be disclosed in the company's annual report with an explanation as to how assurance of effective internal processes and systems such as risk management, internal control etc will be obtained.

31.2. The purpose, authority and responsibility of the internal auditing activity should be clearly and formally defined in an audit charter approved by the Board through the audit committee. This should be consistent with the definition of internal auditing by the Institute of Internal Auditors (IIA).

31.3. The internal audit unit should be headed by a senior management staff. The unit should be adequately resourced and have appropriate budget to enable it effectively discharge its responsibilities.

31.4. The internal audit unit should report directly to the audit committee while having a line of communication with the CEO/MD. The audit unit should have unrestricted access to the chairman of the audit committee as well as the Chairman of the Board.

31.5. Internal audit should report at least once every quarter, at audit committee meetings on the adequacy and effectiveness of management's governance, risk and control environment, deficiencies observed and the mitigation plans by management.

31.6. The internal audit function should assist the directors and management to maintain effective controls through periodic evaluation to determine the effectiveness and efficiency of the company's internal control systems and make recommendations for enhancement or improvement.

31.7. The evaluation of controls by the internal audit function should encompass the following:

(a) the information systems environment;

(b) the reliability and integrity of financial and operational information;

(c) the effectiveness and efficiency of operations;

(d) safeguarding of assets; and

(e) compliance with laws and regulations.

31.8. The internal audit function should establish a risk-based internal audit methodology that provides a consistent basis for the provision of internal audit services and highlights the key steps and activities to be performed from the planning stage to the reporting phase of the audit.

31.9. The internal audit function should develop an annual risk-based internal audit plan in line with the risk-based internal audit methodology and should be approved by the audit committee.

31.10. The annual risk-based internal audit plan should:

(a) address the broad range of risks facing the company linking this to risk management framework;

(b) identify audit priority areas and areas of greatest threat to the company,

(c) indicate how assurance will be provided on the company's risk management process; and

(d) indicate the resources and skills available or required to achieve the plan.

31.11. The internal audit plan should be based on the result of the assessment of the risks faced by the company in line with the risk management framework and should be approved by the Board. The plan should identify

audit priority areas and determine the frequency of audits as well as the required resources and skills. The risk assessment process should be of a continuous nature so as to identify not only residual or existing but emerging risks and should be conducted at least annually but more often in companies with complex operations.

31.12. Internal audit should provide independent assurance on the robustness and effectiveness of the company's risk management process.

31.13. The internal audit function should co-ordinate with other internal and external providers of assurance in order to ensure proper coverage and to minimize duplication of effort.

31.14. There should be an external assessment of the effectiveness of the internal audit function at least once every three years by a qualified, independent reviewer as defined by the Institute of Internal Auditors, or by an external review team.

32. Whistle-blowing Policy

32.1. Companies should have a whistle-blowing policy which should be known to employees, stakeholders such as contractors, shareholders, job applicants, and the general public. It is the responsibility of the Board to implement such a policy and to establish a whistle-blowing mechanism for reporting any illegal or substantial unethical behavior.

32.2. The whistle-blowing mechanism should be accorded priority and the Board should also reaffirm continually, its support for and commitment to the company's whistle-blower protection mechanism.

32.3. The whistle-blowing mechanism should include a dedicated "hot-line" or e-mail system that could be used anonymously to report unethical practices. A designated senior level officer should review the reported cases and initiate appropriate action, if necessary at the level of the Board or CEO/MD to redress situation.

32.4. The designated senior level officer assigned to review reported cases should provide the Chairman of the audit committee with a summary of reported cases, cases investigated, the process of investigation and the result of the investigation.

33. Rotation of External Auditors

33.1. In order to safeguard the integrity of the external audit process and guarantee the independence of the external auditors, companies should rotate both the audit firms and audit partners.

33.2. Companies should require external audit firms to rotate audit partners assigned to undertake external audit of the company from time to time to guarantee independence. Audit personnel should be regularly changed without compromising continuity of the external audit process.

External audit firms should be retained for no longer than ten (10) years continuously. External Audit firms disengaged after continuous service to company of ten (10) years may be re-appointed after another seven (7) years since their disengagement.

PART G – ACCOUNTABILITY AND REPORTING

34. Disclosures

34.1. In order to foster good corporate governance companies should engage in increased disclosure in Nigeria beyond the statutory requirements in the CAMA.

34.2. The CEO and the Head of Finance Function of every public company should in a written statement to the Board certify that the financial statements present a true and fair view of the affairs of the company.

34.3. The Board of a public company should ensure that the company's annual report contains information on the company's capital structure as follows:

(a) details of issuance of share capital during the year;

(b) borrowings and maturity dates;

(c) details and reasons for share buybacks during the year; and

(d) details of directors' and substantial shareholders' interests in the company and subsidiaries or associated companies.

34.4. The Board of a public company should ensure that the company's annual report includes a corporate governance report that conveys clear information on the strength of the company's governance structures, policies and practices to stakeholders. The report should include the following:

(a) composition of Board of directors as set out in section 4 of this Code stating names of chairman, the CEO/MD, executive and non-executive directors as well as independent directors;

(b) the roles and responsibilities of the board setting out matters which are reserved for the board and those delegated to management;

(c) board appointment process including induction and training of board members;

(d) evaluation process and summary of evaluation results for the board as whole, its committees and each individual director;

(e) directors standing for re-election and their biographical details to enable shareholders make informed decisions about their re-election;
(f) composition of board committees including names of chairmen and members of each committee;

(g) description of the roles and responsibilities of the board committees and how the committees have discharged those responsibilities
(h) the number of meetings of the board and the committees held during the year and the attendance of individual directors at those meetings;

(i) disclosure of the code of business conduct and ethics, if any, for directors and employees;

(j) human resource policies, internal management structure, relations with employees, employee share-ownership schemes and other workplace development initiatives,

(k) company's sustainability policies and programmes covering issues such as corruption, community service, environmental protection, HIV/AIDs and general corporate social responsibility issues;

34.5. In addition to the foregoing, the board of every public company should ensure that the company's annual report make sufficient disclosure on accounting and risk management issues. In particular, the following matters shall disclosed:

(a) a statement of the director's responsibilities in connection with the preparation of the financial statements;
(b) details of accounting policies utilised and reasons for changes in accounting policies;
(c) where the accounting policies applied do not conform to standard practice, the external auditor should express an opinion on whether they agreed with the departure and the reasons for such departure;
(d) a statement from the directors that the business is a going concern, with supporting assumptions or qualifications where necessary;
(e) executive directors' remuneration and share options;
(f) non-executive directors" fees and allowances and share options, if any;
(g) risk management as outlined in Part E of the Code indicating the board's responsibility for the total process of risk management as well as its opinion on the effectiveness of the process;

34.6. The Chairman's statement in the annual report should provide a balanced and readable summary of the company's performance for the period under review and future prospects and should reflect the collective view of the Board.

34.7. The annual report should contain a statement from the Board with regards to the company's degree of compliance with the provisions of this Code. In particular it should provide:

(a) assurances that effective internal audit function exists in the company and that risk management control and compliance system are operating efficiently and effectively in all respects;

(b) justification where the Board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor; explaining the recommendation and the reasons for the Board decision;

(c) statement on sustainability initiatives as set out in part D of the Code;

(d) related party transactions;

(e) the nature of the related party relationships and transactions as well as information about the transactions necessary to understand the potential effect of the relationship on the financial statements.

34.8. All public companies should disclose details of director's interest in contracts either directly or indirectly with the company or its subsidiaries or holding companies. The details should include the name of the director, the nature and details of the contract and the director's interest therein. Provided that the disclosures required here do not include directors' service contracts or contracts between the company and another company where the directors interest is by virtue of being a director of that other company.

34.9. All public companies should disclose any service contracts and other significant contracts with controlling shareholder(s).

34.10. Disclosures on related party transactions relating to directors' current account or loans should include the following:

(a) the amount of the transactions;

(b) the amount of outstanding balances at the beginning and at the end of the financial year including their terms and conditions of the loans and details of any guarantees given or received;

(c) the amount of principal and interest which has fallen due and has not been paid and the amount of provisions for doubtful debts related to the amount of outstanding balances;

(d) the expense recognised during the period in respect of bad or doubtful debts due from related parties; and

(e) A statement whether the transaction was conducted at arms length.

34.11. The disclosures required to be made for related party transaction shall be made separately for each of the following categories:

(a) the parent;

(b) entities with joint control or significant influence over the entity;

(c) subsidiaries;

(d) associates;

(e) joint ventures in which the entity is a partner;

(f) key management personnel of the entity or its parent; and

(g) other related parties.

34.12. Items of a similar nature may be disclosed in aggregate except where separate disclosure is necessary for an understanding of the effects of related party transactions on the financial statements of the company.

34.13. The Board should use its best judgment to disclose any matter though not specifically required in this code to be disclosed if in the opinion of the Board such matter is capable of affecting in a significant form the financial condition of the company or its status as a going concern.

34.14. All public companies should state in their annual reports how they have applied this Code and the extent of their compliance.

34.15. In evaluating and reporting on the extent of compliance with this Code, the board may engage independent experts. Where such is done, the name of the consultant should be disclosed. A summary of the report and conclusions of the consultant shall be included in the company's annual report.

PART H- COMMUNICATION

35. Communication Policy

35.1. Companies should adopt and implement a communications policy that enables the Board and management to communicate, interact with and disseminate information regarding the operations and management of the company to shareholders, stakeholders and the general public.

35.2. The Board should ensure that company reports and other communication to shareholders and other stakeholders are in plain language, readable and understandable and consistent with previous reports.

35.3. Communication with shareholders, stakeholders and the general public especially by public companies with listed securities should be governed by the principle of timely, accurate and continuous disclosure of information and activities of the company so as to give a balanced and fair view the company including its non-financial matters.

35.4. Companies should ensure that shareholders have equal access to company's information. The Board should endeavour to establish web sites and investor-relations portals where the communication policy as well as the companies´ annual reports and other relevant information about the company should be published and made accessible to the public.

PART I- CODE OF ETHICS

36. Code of Ethics

36.1. Companies should have a code of ethics and statement of business practices, which should be implemented as part of the corporate governance practices of the company.

36.2. The Code for Directors should contain at a minimum, the following:

(1) In accordance with legal requirements and agreed ethical standards, Directors and key executives of the company will act honestly, in good faith and in the best interests of the whole Company;

(2) Directors owe a fiduciary duty to the Company as a whole, and have a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office;

(3) They should undertake diligent analysis of all proposals placed before the Board and act with a level of skill expected from directors and key executives of a company;

(4) They should not make improper use of information acquired as Directors and key executives and not disclose non-public information except where disclosure is authorised or legally mandated;

(5) They should keep confidential, information received in the course of the exercise of their duties and such information remains the property of the Company from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by the person from whom the information is provided, or is required by law;

(6) They should not take improper advantage of the position of Director or use the position for personal gain or to compete with the company;

(7) They should not take advantage of Company property or use such property for personal gain or to compete with the Company;

(8) They should protect and ensure the efficient use of the Company's assets for legitimate business purposes;

(9) They should not allow personal interests, or the interest of any associated person, to conflict with the interests of the Company;

(10) They should make reasonable enquiries to ensure that the Company is operating efficiently, effectively and legally, towards achieving its goals;

(11) They should not engage in conduct likely to bring discredit upon the company, and should encourage fair dealing by all employees with the Company's customers, suppliers, competitors and other employees;

(12) They should encourage the reporting of unlawful/unethical behaviour and actively promote ethical behaviour and protection for those who report violations in good faith;

(13) They shall have an obligation, at all times, to comply with the principles of this Code.

36.3. The Board should be responsible for formulating the code of ethics and business practices. All directors, management and employees of the company should be required to abide by the codes. The Board should monitor adherence and ensure that breaches are effectively sanctioned.

36.4. The Code should:

(a) commit the company, its Board and management to the highest standards of professional behaviour, business conduct and sustainable business practices;

(b) be developed in association with management and employees;

(c) receive commitment for its implementation from the Board and the managing director/chief executive officer and individual directors of the company;

(d) be sufficiently detailed as to give clear guidance to users;

(e) be formally communicated to the persons to whom it applies; and

(f) be reviewed regularly and updated when necessary.

PART J INTERPRETATION

37. Interpretation

In this Code, unless the context otherwise requires:-

"Companies"	includes all public companies, all corporations established by statute or other law, all privatised companies and private companies or entities whose activities impact significantly on wide-ranging stakeholders.
"Director"	means a person duly appointed by a company to direct and manage the affairs of the company, and includes alternate Directors.
"Law"	means the applicable Laws of the Federation of Nigeria
."Regulation"	means the applicable regulation made under the Laws of the Federation of Nigeria.
"Related Party"	means entities, including shareholders that control the company or are under common control of a parent company or significant shareholders including family members and key management personnel.
"Shareholder"	means a person who lawfully acquires shares in the capital of a company.
"Stakeholder"	includes directors, employees, creditors, customers, depositors, distributors, regulatory authorities, and the host community.

TO BE SIGNED BY EVERY MARKET OPERATOR AND A COPY TO BE DEPOSITED WITH THE SECURITIES AND EXCHANGE COMMISSION (SEC)