

PROPOSED DRAFT RULES/AMENDMENTS OF THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION

Pursuant to section 313(1) of the Investments and Securities Act (ISA) 2007, the following proposed draft Rules/amendments of the Rules and Regulations are made by the Commission:

2.0 CONSIDERATION OF NEW RULES MADE BY THE RULES COMMITTEE

2.1 The Rules Committee considered proposals made from both within the Commission and stakeholders in the market for the creation of new rules on the following:

A new Rule 15A is hereby created as follows:

A. APPROVAL OF APPOINTMENT OF DIRECTORS OF MARKET OPERATORS

- i. Directors of Market Operators shall be approved by the Commission prior to their appointment.
- ii. A director of a market operator shall have a minimum of WASC or its equivalent with a minimum of 15 years experience in business management or any other qualification as specified in rule 16 of these rules and regulations.

B. PROPOSED RULES ON BONUS ISSUE

A new Rule 40(D) is created as follows:

(D) 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 with 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 to the Registrar within 1 (one) working day of receipt of the approval.

5. Bonus issue 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, the certificate shall be

dispatched within one month of approval by the Commission.

6. 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.

7. Rule 50 - Filing of registration statement

The existing Rule 50 is amended to read Rule 50 (1) with a proviso as follows:

“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”.

A new Rule 50(2) was also created to read as follows:

“The time interval between the initial filing of documents and the time approval is given by the Commission shall be 6 (six) weeks”

Justification

To provide a period within which the Commission can process applications filed with it.

8. New Rule 50(A) – Condition for Approval of Subsequent public offer

A new Rule 50(A) was created to read as follows:

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

10. Rule 70(6) (ii) (Subscription level for Issues not underwritten)

Rule 70(6)(ii) is amended to read as follows:

“where an issue not underwritten is less than 50% subscribed the issue shall be aborted by the issuer”.

11. **Amount to be underwritten (Rule 75)**

Rule 75 is amended as follows:

“Underwriting of public issues shall be at the discretion of the issuer”.

Justification

Mandatory underwriting of public issues imposes additional cost to the issuer. Furthermore firm underwriting is commercially impracticable considering the cost of funds in the market. Therefore where an Issuer decides to underwrite, he does that at its own discretion.

12. **Underwriting Capacity/Commitment (Rule 76)**

Rule 76 is amended by deleting Rule 76(1). The Rule will therefore have no sub-section and would read as follows:

“The level of underwriting commitment by a single underwriter at any time shall not be more than 3 times its shareholders funds for equity offering, and 4 times for fixed income securities”.

Justification

This is to make allowance for the different risk inherent in underwriting equity and fixed income offerings. This takes into consideration the current size of active issuing houses, shareholders funds and the size of new issue transactions.

13. **Underwriting of Rights Issues**

A new Rule 75A titled “Underwriting of Rights Issues” is created as follows:

- (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”.

Justification

Currently, rights are not underwritten because of the pre-emptive rights of shareholders. This rule makes underwriting of rights issue possible but with the consent of shareholders.

14. **Rule 90 (Private Placement)- Conditions for approval of offer**

A new Rule 90(viii) is created to read as follows:

“All subsequent capital raising shall be approved only upon satisfactory account of utilization of previous issue proceeds”.

15. **Rule 100: Know Your Customer**

i. Under **Rule 100(1)(a)(vi)**, “where applicable” should be removed.

Justification

This makes thumb print a mandatory requirement.

ii. A new **Rule 100(1)(a)(vii)**, “Bank Account details” was created.

The subsequent sub-rules should be renumbered accordingly.

iii. **Rule 100 (1)(c)**

A new rule 100 (1)(c) is created as follows:

Account opening documents and mandate form shall be completed electronically or otherwise and made available to the following:

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

It shall be the responsibility of the stockbroker opening the account to circulate copies to the appropriate authorities.

Justification

This is to speed up the transaction process in the capital market by saving time, cost and possible litigation. The Registrar in verifying

certificates would be able to go to the source documents and verify information concerning the investor. This same information would be available to the stockbrokers, CSCS and the Investors.

iv. **Rule 100 (6)(B)**

Existing Rule 100 (6) becomes 100(6) (A), while a new 100(6)(B) is created as follows:

- (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”.

16. **Rule 200: Issue and Handling of Certificates**

Rule 200 (7)

Rule 200 (7) is created to read as follows:

- (i) A broker shall upon receipt of a certificate for verification, conduct an appropriate know your customer due diligence on the investor and within 24 hours thereafter, forward the certificate to the Registrar.
- (ii) “The Registrar shall within 10 working days from the day of receipt of a certificate from the Broker, verify the certificate”.
- (iii) “Where the signature of the shareholder requires his banker’s confirmation, the Registrar shall return the certificate to

the stockbroker within 2 working days of making that determination and the stockbroker shall contact the shareholder within 2 working days of receipt of the certificate”.

17. **Rule 226: Depository receipts of Nigerian entities**

A new Rule 226(3) is created as follows:

“GDR issues shall be approved only upon satisfactory account of utilization of proceeds from previous raising”.

Justification

This is to strengthen the provision for monitoring of the utilization of issue proceeds for both the GDR and other offers.

18. **Harmonization of Rule 109B(vi) of the Rules and Regulations with Section 161(a) of CAMA 1990.**

Rule 109B (vi) was amended to read as follows;

“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 old”.

Justification

This is to harmonise the Rules with the provisions of section 161(a) of CAMA which does not allow shares to be purchased out of the Share premium account, as contained in the existing rule 109(B).

C. **DRAFT PROPOSED RULES ON ISSUANCE OF CORPORATE BOND**

A new Rule 307A is created as follows:

Rule 307(A): 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 audited accounts for the preceding three (3) years, with the latest account not more than nine months;
- (g) Reporting Accountant report;
- (h) Consent letters of the parties to the offer;
- (i) Two copies of Vending Agreement between the issuer and the issuing house;
- (j) 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 prospectus, Right Circular, Placement memo or any form of information memo 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 mitigants 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

Bonds Issuance by Public companies/corporations and supranational bodies shall be subject to the following conditions:

(a) Eligibility of Debt Offering

- i. Any public company, foreign company supranational bodies are 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 prior to filing of the application with the Commission. 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 bonds if it is in default of payment of interest or repayment of principal in respect of bonds issued previously for a period of more than six (6) months.

(b) Mode of issue

Corporate bond 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.

Justification: Even though, there is a provision in the company's memart that empower the directors to borrow money in the normal course of business however in view of the amount involved, and the special nature of the borrowing and as additional comfort, there is need for shareholders resolution.

(d) Disclosure and creation of charge

Where the debenture is secured, the Issuer shall ensure the assets on which the security is secured is 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.

Condition for approval of Initial Public Offer and Listing by Introduction

A new Rule 50 is hereby created.

A company may be eligible to issue 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 track record;
- ii. It has a track record of distributable profits excluding extraordinary profits for at least two out of the immediately preceding three (3) years;
- iii. It has positive shareholders funds.

Justification

To ensure that only quality securities are offered to the public or listed which will go a long way to sustain the confidence of investors. A company that does not qualify to do an IPO can offer securities via private placement to institutional and high-networth investors who have the expertise to carry out the necessary due diligence and are financially sophisticated. It is also for a better protection of public good.

1. A new Rule 50(3) was created to read as follows:

Rule 50 (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”.

Justification

This additional disclosure requirement will give the Commission and the investing public additional comfort and it shall apply to all offers and be in the form of a letter.

3. **Bond Issuance (State and Local Government) – Rule 307**

- (a) The following provisions should be added to Rule 307:

- i. 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;
- ii. State and Local Government shall publish information on funds utilization in at least two (2) national newspapers. The publication shall be subject to clearance by the Commission;
- iii. 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.

(b) The following provisions are amended:

- i. **Rule 307(viii)** on underwriting agreement was amended by adding “where applicable”

4. **Interest on Return Monies**

A new Rule 64(5) is created to read as follows:

“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”.

Justification

This is in line with the Investors protection function of the Commission and since the offer proceeds are required to be kept in an interest yielding account, payment of interest becomes imperative. The proposed rule will discourage unnecessary delay in dispatch of return money warrants to investors.

5. **Absorption of oversubscription**

Rule 64 (4) (a) (iii) is amended as follows:

“The surplus amount to be utilized shall not be more than 15% of the **offer size**”.

Justification

The capitalization of oversubscription should be tied to the size of the offer, as there was situation where an offer was heavily oversubscribed, and the 25% oversubscription was more than the offer Size e.g. First Bank. The proposed rule is in line with the international best practice.

6. Advertisement of Private Placements

A new Rule 90(2) was created to read:

“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.

Justification

The Commission’s rules are silent in this regard and some companies do advertise their private placements as if it was a public offer.

7. Opening of interest yielding account for offer proceeds

Rule 64 (1) is amended to read as follows:

“The issuing house (the lead issuing house, if any) shall ensure that all proceeds of an issue are deposited in a separate interest yielding account”.

Justification

To ensure the security of Investors funds and guard against other malpractices in the market.

8. Validity Period of Accounts

A new Rule 40(B) (I)(IV)(h) is created to read as follows:

“The latest audited account 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.

Justification

This is to ensure that both the Issuer/Issuing houses are aware that no application would be entertained if the account is stale and the nine months validity period is in line with international best practice.

9. Extension of Offer period

A new Rule 60 (d) is created to read:

“Before an extension is granted, the issuer’s latest audited account shall remain valid”.

A new Rule 60(e) is created to read:

“where an extension is granted penalty shall not be charged”.

Justification

This will address or discourage issuer/issuing houses from making unnecessary request for extension of offer period.

10. **Listing of Securities after Allotment clearance**

A new rule 71(ii) is created as follows:

“Securities shall be listed not later than 30 days of the allotment clearance (where applicable).

Justification

This will address or discourage unnecessary delay in listing of securities after allotment has been cleared.

11. **All Parties Meeting**

A new 59B is created as follows:

“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”.

Justification

The essence of all parties meeting is to enable all the parties to agree on their responsibilities, hence addressing disagreement in connection with the offer.

12. **Pre-Offer waiting Period (Fixed price offers)**

A new Rule 59C is created to read as follows:

“there shall be a one week pre-offer waiting 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”.

Justification

This will enable the issuing house enough time to print the offer documents and circulate them prior to opening of an issue.

13. **Incorporating Forecast on oversubscription in the offer documents**

A new Rule 56(xv) is created to read;

'a revised forecast in the event of oversubscription and absorption of 15% of the offer shall be published in at least two national Newspapers.

Justification

This is to ensure that the oversubscribed portion that is absorbed by the Issue is accommodated in its forecast.

14. **Rule 40 (3):**

The rule should be redrafted to read:

"Where the issuer had already filed such documents with SEC (e.g. Memorandum 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".

Justification

This will reduce the volume of documentations filed with the Commission and fast track the processing of applications.

15. **Rule 69 (2) is amended to read as follows:**

"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 subscribers would be allotted equal proportion of amount invested. 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".

Justification

This method will ensure fairness in the allotment in the sense that all applicants must be allotted the minimum prescribed units. It may also reduce the case of multiple applications.

PART G

D. Regulation of Mergers, Takeovers and Acquisitions

Rule 227 – Definition

Partnership is a voluntary relationship existing between two or more persons to carry on business as co-owners and share in the profit and loss.

Rule 228 – Scope of the Regulation

(iii) Partnerships;

(iv) Any merger, Takeover, Acquisition or Business Transaction undertaken by any Federal Government owned Agency pursuant to statutory powers vested in it.

Justification: This is to bring it in conformity with Section 118 (2) & (4) of the Investments & Securities Act (ISA) 2007 which clearly provides that the Act shall apply to partnerships and transactions of Federal Government Agencies.

Rule 229

A new Rule 229 (2)(c) was created as follows;

(c) “though the contemplated merger is likely to restrain competition, one of the parties to the merger has proved that it is failing”.

Justification

The failure of a company may be proved where the party asserting that it is failing provides financial information demonstrating that the firm/company will be unable to meet its financial obligations in the near future, information concerning efforts taken to elicit reasonable alternative offer and information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.

Rule 230 – Exemptions

Sub- rule (ii) is deleted while the following new rule (ii) is created:

“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”.

Justification: Existing rule is in conflict with provisions of Section 118 (4) and should be deleted. The new sub rule (ii) is in compliance with the provisions of Section 122 of the Investments & Securities Act (ISA) 2007.

Rule 231

Rule 231 (1) – Line 1 is amended to read ‘File with the Commission a merger notification for evaluation’. (Wherever ‘pre-merger notice’ appear amend to ‘merger notification’)

Rule 231-Delete sub rule (2).

Rule 232:Requirements for pre-merger notice

Heading is changed to read **Rule 232 (A): Requirements for Merger Notification**

New **Rule 232(A)(v)** was created to read as follows;

(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”

Justification

This is to streamline the requirement for notification of small mergers.

New **Rule 232(A) (vi)** was created as follows;

(vi) “Extract of Board resolutions of the merging companies authorizing the merger duly certified by a director and the company secretary”.

In addition to the existing requirements in Rule 232(A), the following requirements have been added:-

- 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 the company has 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.
- 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 of trends 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.

Justification:

This is to bring the rules into conformity with the provisions of the ISA, 2007.

- 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.

Justification: The cost of employing the services of a separate financial adviser for each of the parties may frustrate the attempts of parties to a small merger.

A New Rule 232 (B) is created as follows

Lower and Upper Thresholds of Mergers is provided as follows;

- (1) “The lower threshold shall be below N250,000,000.00 of 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”.

Justification for Reduction of Lower Threshold: A review of the records of filing by applicants for mergers over the years i.e. 2000- 2008(excluding the mergers in the banking and the insurance industry which were government induced) revealed that only a few companies had an annual turnover or assets that exceeded N30, 000,000.00. The rationale therefore of reducing the threshold would be to bring more companies within the regulatory purview of the Commission.

New Rule 232 (C): Clearance of Scheme Document

A **new Rule 232(C)** is created as follows:

“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 of all parties to the transaction duly notarized by a notary public;
- 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”.

A **new sub-rule 232(ii) (f)** is created as follows:

(e) “ 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 for, 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. 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.
 - ii. Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.

Rule 233: Requirement for formal Approval

Existing **Rule 233 (c) Appendix vii**, dealing with **Schedule of fees**, was moved to **Schedule I** of the Rules and Regulations which generally deals with fees.

A new provision ,which reads as follows: **Proxy fees** - N5, 000 per company for proxy materials, is created under **Schedule I** of the Rules and Regulations.

Rule 233 – Requirements for formal Approval – This heading should be replaced with “**Clearance of Scheme Documents**” and moved to newly created **Rule 232 (C)** i.e. with all provisions under **existing Rule 233** from pages 265-270 of the Rules and Regulations.

New Rule 233: Requirements for formal Approval

Documents to be forwarded:

- a) Extract of court ordered meeting of the merging entities in Support of the Merger duly certified by a Director and the Company Secretary. The resolution shall capture the consideration as approved by majority shareholders, representing not less than three – quarter (3/4) in value of the shares of members being present and voting either in person or by proxy.
- b) Two copies of the Scheme Document duly signed by the parties to the merger.
- c) Evidence of the executed resolutions passed at the separate Court – ordered meetings.
- d) Scrutineers Report showing the result of voting and total number of votes casts
- e) Stamped Power of Attorney of Directors who were absent at the separate Court – ordered meetings (where applicable)
- f) Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable)
- g) Amended copy of the Memorandum and Articles of Association of the Resultant company (where applicable)

Additional information to be included in new Rule 233

- (i) CAC form showing Particulars of Directors
- (j) CAC form showing Allotments (for private companies) only
- (k) Reporting Accountants' Report on the financials and forecasts of the merging entities.
- (l) Evidence of payment of processing fee.
- (m) Relevant SEC Form

A New Rule 233(4) was created as follows:

“Where all requirements have been fulfilled, the Commission shall inform the court, by a statement in writing whether the merger is approved, approved subject to conditions or prohibited”.

Rule 234

Under existing **Rule 234** , line 1, delete the word '**final**' after the word '**the**'.

Rule 234(A) – Post Approval Requirements

The following new provisions were added to the existing Rule 234(f):

- (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)*.

Justification: To ensure adequate protection is given to dissenting shareholders.

New 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 scheme document.

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.

New Rule 234(C): Power to Order the Break up of Company

- (1) Where the Commission suspects 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 parties in writing and the parties 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, 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.

E. METHOD OF CALCULATION OF ANNUAL TURNOVER OR ASSETS TO BE APPLIED IN RELATION TO MERGER THRESHOLDS

A **new Schedule X** was created to include the following; 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 of this notice 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 for 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 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 if these items should in terms of SAS be included in the firm's assets 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; and
 - ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

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 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 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 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 to the equivalent of 12 months.

**F. PROPOSED NEW RULES 249 (A)
PROPOSED RULE ON MONEY MARKET FUND**

1. Definition

Money Market Fund: is a Collective Investment Scheme authorized by the Commission having as its primary objective, the provision to investors/participants in the Scheme of steady streams of income derived from investments in highly rated money market instruments with financial institutions with ratings by a registered rating agency as specified from time to time by the Commission.

Justification

This lays the foundation of the high standard and criteria as set out in this draft Rules that are globally acceptable for what qualifies as a money market Fund as against diversified Schemes investing principally in money market instruments in addition to other securities e.g. equities

2. Use of Name/Title

- i. The name and title 'Money Market Fund' shall apply exclusively to Schemes that qualify as such on the basis of the definition provided in Rule 249 A(i) above and not to Schemes with diversified portfolio notwithstanding the proportion of such portfolio invested in money market instruments;
- ii. No Scheme or proposed Scheme shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc) as a money market fund where such does not meet the definition specified in Rule 249 A(i) above and other criteria within this section.

Justification

Necessary to ensure that only qualifying Scheme or proposed Schemes meeting the high standards/criteria regarding the operations of money market Funds such as credit quality, issuers diversification, stability in Net Asset Value e.t.c. use the name Money Market Funds.

Accordingly an existing Scheme with the name Money Market that does not meet the qualifying criteria set in these draft Rules must drop the use of the name Money Market or upgrade to meet the criteria.

3. Approved/Permissible Instruments

The deposited property of registered and approved Money Market Fund shall only be invested in the following:

- i. High quality money market instrument, unsubordinated short term debt securities, such as Banker's acceptances, certificates of deposits, Commercial Papers, collateralised repurchase agreements;

- ii. Deposits (Fixed/Tenored) with eligible financial institutions.
- iii. Other instruments introduced and approved by the Central Bank of Nigeria from time to time;

Provided that the instruments shall have a credit rating not below the investment grade approved by the Commission

Justification

The quality of the permissible instruments, in addition to other requirements as to issuers diversification, is critical in seeking to ensure the key feature of minimizing deviations between the stabilized Net Asset Value of a Money Market Fund and changes in Market Value.

This also ensures that the Fund's attribute as a relatively safe vehicle of investment is achieved.

4. Term to Maturity of Investment Asset

The approved investments in which a recognized money market fund will invest in shall:

- i. Have a maximum term to maturity at the time of issuance of not more than 366 days
- ii. Undergoes regular yield adjustments within a period not exceeding 366 days
- iii. The remaining term to maturity for short term unsubordinated debt securities in the Fund's portfolio shall be taken to be the period of days remaining till the date of maturity.

Justification

The specification of term to maturity is to ensure that instruments and securities in which the Fund invest in qualify within the term period of One year.

5. Portfolio Maturity

The weighted average maturity of the Fund's portfolio shall not exceed 60 (sixty) days.

Justification

This ensures steady income turnover to investors and where exercised income reinvestment by investors

6. Asset Allocation

The asset of the fund shall be invested 100% in permissible instruments with a term to maturity at the date of acquisition by the fund manager of not more than 366 days.

Justification

100% allocation to assets with a term to maturity of 366 calendars ensures the effective characteristic of the Fund as a Money Market Fund.

7. Investment Restriction

The investment restriction/limit imposed by any law for the time being for the regulation of trust funds shall apply with necessary modifications relating to the nature of the Money market fund.

Justification

This is designed to reinforce the provision in the Trustees Investments Act, which seeks to ensure the diversification of risk associated with investing in the instruments of one issuer or related Companies within the same group.

8. Government Securities

A Fund shall invest a minimum of 30% of the Fund's assets in short term debt securities issued or guaranteed by the Nigerian government.

Justification

In view of the risk free nature of Government securities or guaranteed securities investment in these instruments serve as a safeguard to the funds, in likely event of a downswing in all other money market instruments e.g. Treasury bills, Federal and State Government bonds.

9. Authorized Collective Investment Schemes

A fund may invest in another authorized money market fund provided that the fund is of a higher investment grade and the proportion of the investment shall not exceed 5% of its net asset value for a single fund and 20% for a group of money market fund.

Justification

Helps ensure portfolio diversification whilst the restrictions ensure safeguard of the fund.

10. Valuation (Amortized Cost Method)

The Fund Manager and Trustee of a Scheme shall work to ensure a stable Net Asset Value per unit of the Scheme of N100 determined on the basis of the Amortized cost method.

11. Stable Net Asset Value Per Unit

A Fund shall market and maintain the unit of the Fund at a stable Net Asset Value of N100.00 per unit.

Justification

This is in line with global practice where money market Funds maintain stable Net asset Value of \$1 or \$10 per unit

12. Valuation Review

i. The Fund Manager of a Scheme shall ensure periodic review of differences between amortized cost value of the Fund and the market value as a result of change in yield/prices and make a report of material deviation where amortized cost value falls below the market value.

(a) Whenever material discrepancies between the amortized cost value of the Fund's portfolio and the market value is in excess of between 10 basis point (0.1%) and 30 basis point (0.3%), this should be brought to the attention of the Board of the Fund Management Company and Fund's Trustees in writing within five days of such discrepancy coming to light;

(b) where discrepancies in excess of between 30 basis points (0.3%) and 50 basis points (0.5%) occur between the amortized cost value of the Fund's portfolio and the market value, the Fund Management Company should with the Trustees jointly notify the Commission- within five days of the Trustees becoming so informed- in a report specifying the action to be taken to reduce the deviation.

Justification

This is essential to ensure expeditious actions to maintain the stable Net Asset Value per unit of the Fund which is a key feature of the Fund

13. Dividend Distribution

i. Dividend reflecting average accrual income to the Fund and net of operating expenses shall be distributed every month of each financial year to eligible unit holders

ii. Dividend payment shall be computed on the basis of the amortized cost.

iii. Information shall be disclosed to unit holders at the point of subscription of the option to elect for reinvestment or payment of dividend.

Justification

This is a global practice and key reason for the attractiveness of Money Market Funds.

The amortized cost method recognizes the original principal invested and accruals of interest income.

To ensure transparency and investor protection

14. Fund Rating

Each Fund shall be rated by a rating agency registered with the Commission and subject to annual review throughout the life of the fund.

Justification

The rating of the fund will enable investors assess the value of the scheme as the ascribed rating will serve to classify a Scheme according to the quality of its underlying investment/portfolio having regards to interest rate risk, market risk, liquidity risk etc, more so taking into consideration the proposed minimum rating requirement of Bbb for the instrument

15. Risk Assessment

Each Fund shall have a laid down risk assessment policy in place which shall be disclosed to unit holders at the final annual general meeting.

Justification

To guide towards and ensure an informed investment decision by Unit holders.

16. Prohibitions**Limits of Investment**

- i. Where the limits on investments in 7, 8 and 9 above are affected as a result of diminution or appreciation in value of the related/affected part of the funds portfolio, the fund Manager shall not enter into any further transaction that will cause a further diminution or appreciation in the limit already breached.
- iii. Necessary action shall be taken to rectify the breach within three month of occurrence.

Justification

Allows the Fund Manager the opportunity to remedy any breach in limits provided in rule 249 A (v) and (vi) and ensure strict compliance with diversification of the Fund's portfolio and reduction of issuer's risk.

G. Amendments to Schedule 1, Part C, items 5,6&7 of SEC Rules and Regulations

Schedule 1, Part C, items 5, 6 and 7 of the Rules and Regulations which empowers the Commission to charge 0.25% of the gross income of Collective Investment Schemes, Venture Capital Fund and Real estate Investment Trust Schemes as annual supervision fees was deleted.

Justification

The rationale for the payment of this fee is no longer justifiable, because companies/entities operating such schemes pay different types of fees to the Commission apart from the annual supervision fee, such fees include registration fees, authorization fees and the general commission charged on transactions.

It was further observed that multiple fees paid by operators of CIS schemes had stunted the growth of the Collective Investments Schemes sub -sector of the Nigerian capital market and can further deepen transactions in that sector.

APPENDIX A
SCHEDULE VII

H. RULES OF PROCEDURE OF THE ADMINISTRATIVE PROCEEDING COMMITTEE OF THE SECURITIES AND EXCHANGE COMMISSION

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 claims particulars 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 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 the Committee that any process filed by any party requires to be amended, 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 provided that the leave of the Committee is obtained before any such counter-claim or set-off is filed.
- 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 from practicing before the Commission;
- 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.

Explanatory Notes

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 (ISA) 2007 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 Rules and Regulations made there under or such operators against whom investors have lodged complaints.

I. REGULATION OF PUBLIC COMPANIES

B4 (1) 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.

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.

B4 (2) ANNUAL REPORT

The annual 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 annual reports 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 issue a statement in the Annual Report 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 in accordance with Section 65(1) of the Act.

B4 (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 within 20 days of 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.

Justification

Profit forecast, are part of companies long and short term plans. These are meant to be monitored, reviewed and revised as prevailing circumstance indicates. Basically, they are projections into the unknown future hence certain assumptions are made.

The profit forecast is a summary of the master budget which incorporates all the variables, relevant to the Income Statement, Balance Sheet and Cashflow Statements.

These are released ahead of actual performance to signal to the investing public what they should be expecting in the subsequent periods of the year. It is incumbent on the companies therefore, when these expectations will not be met to alert the investing public and the regulators ahead of time, so that they are not taken unaware.

B4 (4) QUARTERLY REPORT

Public quoted companies shall within 30 days from the end of each quarter file with the Commission a quarterly report prepared in accordance with Statement of Accounting Standards (SAS) 30 and IAS 34.

- B4 (4) (i) The quarterly report shall contain the following by way of notes:
- (a) Accounting policy changes;
 - (b) Seasonality or cyclicity 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 cashflow 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 above publication.
- (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.

B4 (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.

(iii) **UNCLAIMED DIVIDEND**

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

(V) **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 the meeting and interactions as above.

The Audit Committee of every public company shall review the company's financial statements prior to approval by the Board of the company.

- (vi) 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.

B4 (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 disclosure strategies for preventing risks the company is exposed to.

Justification

Managing risk is part of any organization's strategic and operational activities. It is therefore important to report to the investing public the types of risk a company is exposed to, the effort to minimize it and where it becomes inevitable, the effect or likely effect should be promptly made known to the investing public.

K. GUIDELINES FOR THE MONITORING OF UNCLAIMED DIVIDENDS BY PUBLIC COMPANIES

Pursuant to the provisions of Sections 13 of the Investments and Securities Act 2007, this enables SEC to achieve the basic objective of investor

protection and Section 313(1) which empowers the Commission to make regulations prescribing returns to be made by public companies. The Commission hereby issues the following guidelines to public companies for the purpose of regulating unclaimed dividends, managed by individual public quoted companies.

1. **Segregation of Funds**

- a) All publicly quoted companies must maintain segregated accounts for unclaimed dividends funds;
- b) Companies are to separate unclaimed dividends from cash balances and provide explanatory notes to that effect in their annual reports.

2. **Signatories/Managers of the Funds**

- a) All public companies are expected to provide:
 - (i) Names of the Managers and signatories to the segregated accounts;
 - (ii) Resume stating qualification and experience to manage the fund.
- b) The Commission must be notified whenever there is a change in signatories or professionals managing the fund.

3. **Half Yearly Returns Form**

- a) All public companies shall provide up-to-date information on their unclaimed dividend funds, which shall be filed with the Commission on a half yearly basis on the half yearly return form in the following format:
 - (i) Shareholders benefits – Nos. 1-17;
 - (ii) Disclosure of unclaimed dividends – 18-21;
 - (iii) Audit of unclaimed dividends – 22-24.
- b) Information provided should be supported with reconciliation statements.

4. **Quarterly Inspection of the Funds**

The Commission shall embark on quarterly inspection of all relevant books, ledgers, journals etc pertaining to the funds.

Failure to comply with this directive will attract appropriate sanctions.

NOTE:

Unclaimed Dividends refer to dividends returned to the company unclaimed. Unclaimed Dividends are special debts due to and recoverable by shareholders within twelve years and actionable only when declared.